

The **NORTH CAROLINA REGISTER**

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ISSUE DATE: February 1, 1993

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INFORMATION ABOUT THE NORTH CAROLINA REGISTER AND ADMINISTRATIVE CODE

NORTH CAROLINA REGISTER

The *North Carolina Register* is published twice a month and contains information relating to agency, executive, legislative and judicial actions required by or affecting Chapter 150B of the General Statutes. All proposed administrative rules and notices of public hearings filed under G.S. 150B-21.2 must be published in the Register. The Register will typically comprise approximately fifty pages per issue of legal text.

State law requires that a copy of each issue be provided free of charge to each county in the state and to various state officials and institutions.

The *North Carolina Register* is available by yearly subscription at a cost of one hundred and five dollars (\$105.00) for 24 issues. Individual issues may be purchased for eight dollars (\$8.00).

Requests for subscription to the *North Carolina Register* should be directed to the Office of Administrative Hearings, P. O. Drawer 27447, Raleigh, N. C. 27611-7447.

ADOPTION AMENDMENT, AND REPEAL OF RULES

The following is a generalized statement of the procedures to be followed for an agency to adopt, amend, or repeal a rule. For the specific statutory authority, please consult Article 2A of Chapter 150B of the General Statutes.

Any agency intending to adopt, amend, or repeal a rule must first publish notice of the proposed action in the *North Carolina Register*. The notice must include the time and place of the public hearing (or instructions on how a member of the public may request a hearing); a statement of procedure for public comments; the text of the proposed rule or the statement of subject matter; the reason for the proposed action; a reference to the statutory authority for the action and the proposed effective date.

Unless a specific statute provides otherwise, at least 15 days must elapse following publication of the notice in the *North Carolina Register* before the agency may conduct the public hearing and at least 30 days must elapse before the agency can take action on the proposed rule. An agency may not adopt a rule that differs substantially from the proposed form published as part of the public notice, until the adopted version has been published in the *North Carolina Register* for an additional 30 day comment period.

When final action is taken, the promulgating agency must file the rule with the Rules Review Commission (RRC). After approval by RRC, the adopted rule is filed with the Office of Administrative Hearings (OAH).

A rule or amended rule generally becomes effective 5 business days after the rule is filed with the Office of Administrative Hearings for publication in the North Carolina Administrative Code (NCAC).

Proposed action on rules may be withdrawn by the promulgating agency at any time before final action is taken by the agency or before filing with OAH for publication in the NCAC.

TEMPORARY RULES

Under certain emergency conditions, agencies may issue temporary rules. Within 24 hours of submission to OAH, the Codifier of Rules must review the agency's written statement of findings of need for the temporary rule pursuant to the provisions in G.S. 150B-21.1. If the Codifier determines that the findings meet the criteria in G.S. 150B-21.1, the rule is entered into the NCAC. If the Codifier determines that the findings do not meet the criteria, the rule is returned to the agency. The agency may supplement its findings and resubmit the temporary rule for an additional review or the agency may respond that it will remain with its initial position. The Codifier, thereafter, will enter the rule into the NCAC. A temporary rule becomes effective either when the Codifier of Rules enters the rule in the Code or on the sixth business day after the agency resubmits the rule without change. The temporary rule is in effect for the period specified in the rule or 180 days, whichever is less. An agency adopting a temporary rule must begin rule-making procedures on the permanent rule at the same time the temporary rule is filed with the Codifier.

NORTH CAROLINA ADMINISTRATIVE CODE

The North Carolina Administrative Code (NCAC) is a compilation and index of the administrative rules of 25 state agencies and 38 occupational licensing boards. The NCAC comprises approximately 15,000 letter size, single spaced pages of material of which approximately 35% of is changed annually. Compilation and publication of the NCAC is mandated by G.S. 150B-21.18.

The Code is divided into Titles and Chapters. Each state agency is assigned a separate title which is further broken down by chapters. Title 21 is designated for occupational licensing boards.

The NCAC is available in two formats.

- (1) Single pages may be obtained at a minimum cost of two dollars and 50 cents (\$2.50) for 10 pages or less, plus fifteen cents (\$0.15) per each additional page.
- (2) The full publication consists of 53 volumes, totaling in excess of 15,000 pages. It is supplemented monthly with replacement pages. A one year subscription to the full publication including supplements can be purchased for seven hundred and fifty dollars (\$750.00). Individual volumes may also be purchased with supplement service. Renewal subscriptions for supplements to the initial publication are available.

Requests for pages of rules or volumes of the NCAC should be directed to the Office of Administrative Hearings.

CITATION TO THE NORTH CAROLINA REGISTER

The *North Carolina Register* is cited by volume, issue, page number and date. 1:1 NCR 101-201, April 1, 1986 refers to Volume 1, Issue 1, pages 101 through 201 of the *North Carolina Register* issued on April 1, 1986.

FOR INFORMATION CONTACT: Office of Administrative Hearings, ATTN: Rules Division, P.O. Drawer 27447, Raleigh, North Carolina 27611-7447, (919) 733-2678.

NORTH CAROLINA REGISTER



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NORTH CAROLINA REGISTER
Publication Schedule
(August 1992 - December 1993)

Issue Date	Last Day for Filing	Last Day for Electronic Filing	Earliest Date for Public Hearing	Earliest Date for Adoption by Agency	Last Day to Submit to RRC	*Earliest Effective Date
*****	*****	*****	*****	*****	*****	*****
08/03/92	07/13/92	07/20/92	08/18/92	09/02/92	09/20/92	11/02/92
08/14/92	07/24/92	07/31/92	08/29/92	09/13/92	09/20/92	11/02/92
09/01/92	08/11/92	08/18/92	09/16/92	10/01/92	10/20/92	12/01/92
09/15/92	08/25/92	09/01/92	09/30/92	10/15/92	10/20/92	12/01/92
10/01/92	09/10/92	09/17/92	10/16/92	10/31/92	11/20/92	01/04/93
10/15/92	09/24/92	10/01/92	10/30/92	11/14/92	11/20/92	01/04/93
11/02/92	10/12/92	10/19/92	11/17/92	12/02/92	12/20/92	02/01/93
11/16/92	10/23/92	10/30/92	12/01/92	12/16/92	12/20/92	02/01/93
12/01/92	11/06/92	11/13/92	12/16/92	12/31/92	01/20/93	03/01/93
12/15/92	11/24/92	12/01/92	12/30/92	01/14/93	01/20/93	03/01/93
01/04/93	12/09/92	12/16/92	01/19/93	02/03/93	02/20/93	04/01/93
01/15/93	12/22/92	12/31/92	01/30/93	02/14/93	02/20/93	04/01/93
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11/01/93	10/11/93	10/18/93	11/16/93	12/01/93	12/20/93	02/01/94
11/15/93	10/22/93	10/29/93	11/30/93	12/15/93	12/20/93	02/01/94
12/01/93	11/05/93	11/15/93	12/16/93	12/31/93	01/20/94	03/01/94
12/15/93	11/24/93	12/01/93	12/30/93	01/14/94	01/20/94	03/01/94

* The "Earliest Effective Date" is computed assuming that the agency follows the publication schedule above, that the Rules Review Commission approves the rule at the next calendar month meeting after submission, and that RRC delivers the rule to the Codifier of Rules five (5) business days before the 1st business day of the next calendar month.

**EXECUTIVE ORDER NUMBER 186
NORTH CAROLINA -- HEAD START
COLLABORATION PROJECT
ADVISORY COUNCIL**

WHEREAS, the State's impoverished children will be more effectively assisted if local, state, and national service resources and responsibilities are shared; and

WHEREAS, this pooling of resources and responsibilities can be better achieved if the various service providers for impoverished children have a forum for communicating ideas and coordinating collaborative projects;

NOW, THEREFORE, by the authority vested in me as Governor by the constitutions and laws of North Carolina and the United States, **IT IS ORDERED:**

Section 1. ESTABLISHMENT

The North Carolina - - Head Start Collaboration Project Advisory Council is hereby established.

Section 2. MEMBERSHIP

The following individuals or their designees shall serve as members of the Council:

The Senior Education Advisor in the Offices of the Governor;

The President of the System of Community Colleges;

The Secretary of Environment, Health, and Natural Resources;

The Superintendent of Public Instruction;

The Secretary of Commerce;

The Director of the Division of Economic Opportunity in the Department of Human Resources;

The Director of the Division of Facility Services in the Department of Human Resources;

The Director of the Division of Medical Assistance in the Department of Human Resources;

The Director of the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services in the Department of Human Resources;

The Director of the Division of Social Services in the Department of Human Resources;

The Director of the Office of Rural Health and Development Services in the Department of Hu-

man Resources; and

The President of the North Carolina Head Start Association.

In addition, at least nine other members shall be named by the Governor from the North Carolina Association of County Commissioners, the North Carolina Primary Health Care Association, private businesses, and non-profit human service providers.

Section 3. CHAIR

The Governor shall designate the chair of the Council, who shall serve at his pleasure.

Section 4. MEETINGS

The Council shall meet at least quarterly at the call of the chair.

Section 5. PURPOSE

The purpose of this Council is to build cooperation between Head Start and other programs for impoverished children to ensure such children the fullest possible access to such programs within North Carolina. It creates a forum for state agencies, Head Start representatives, private businesses, and other appropriate organizations to develop an understanding among themselves of the role, importance of, and opportunities for collaboration among the various existing service programs for impoverished children.

Section 6. DUTIES

Together with the Special Assistant for Head Start within the Department of Human Resources, the Council shall:

1. Identify possible projects for collaboration between state and Head Start agencies;
2. Plan and oversee such collaborative ventures; and
3. Serve as an information resource concerning the goals and objectives of such inter-agency collaborative projects. The office of the Special Assistant for Head Start shall serve as the central collection and dissemination point for this information.

Section 7. ADMINISTRATION

Administrative support for the Council and its subcommittees shall be provided by the Special Assistant for Head Start in the Department of Human Resources ("DHR"). The U.S. Department of Health and Human Services has provided \$100,000 for the Council under grant number 90-CD-0997, "Head Start in North Carolina: Building a Better Partnership." This amount includes reimbursement for necessary subsistence and travel expenses.

Section 8. EFFECTIVE DATE

This Order shall be effective immediately.

Done in Raleigh, North Carolina this the 6th day of January, 1993.

G.S. 120-30.9H, effective July 16, 1986, requires that all letters and other documents issued by the Attorney General of the United States in which a final decision is made concerning a "change affecting voting" under Section 5 of the Voting Rights Act of 1965 be published in the North Carolina Register.

U.S. Department of Justice

Civil Rights Division

Voting Section

P.O. Box 66128

Washington, D.C. 20035-6128

JRD:GS:KAL:gmh

DJ 166-012-3

92-4924

January 8, 1993

DeWitt F. McCarley, Esq.

City Attorney

P. O. Box 7207

Greenville, North Carolina 27835-7207

Dear Mr. McCarley:

This refers to the fourteen annexations (adopted between June 8 and October 8, 1992) and their designation to districts of the City of Greenville in Pitt County, North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your submission on November 10, 1992.

The Attorney General does not interpose any objection to the specified changes. However, we note that Section 5 expressly provides that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the changes. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41).

Sincerely,

John R. Dunne

Assistant Attorney General

Civil Rights Division

By:

Steven H. Rosenbaum

Chief, Voting Section

**TITLE 1 - DEPARTMENT OF
ADMINISTRATION**

Notice is hereby given in accordance with G.S. 150B-21.2 that the Department of Administration intends to amend rules cited as 1 NCAC 25 .0108, .0209, .0210, .0211, .0213, .0302, .0401, .0503 - .0506, .0603, .0605, .0701 - .0703, .0801 - .0802 and adopt rule cited as 1 NCAC 25 .0901.

The proposed effective date of this action is May 1, 1993.

The public hearing will be conducted at 10:00 a.m. on February 19, 1993 at the Commission Room 5034, Administration Building, 116 West Jones Street, Raleigh, NC 27603-8003.

Reason for Proposed Action:

1 NCAC 25 .0108, .0209 - .0211, .0213, .0302, .0401, .0503 - .0506, .0603, .0605, .0701 - .0703, .0801 - .0802 - The amendments are necessary for the Department of Administration's implementation of the statutory requirements of G.S. 113A-11, which requires the department to adopt rules regulating the State's Environmental Policy Act. 1 NCAC 25 .0901 - This adoption is necessary for the implementation of G.S. 113A-5 which regulates the conduct of executive officers when an adverse environmental impact is noted and no mitigation is available.

Comment Procedures: Any interested person may present his/her comments either in writing at the hearing or orally at the hearing. Any person may request information, permission to be heard, or copies of the proposed regulations by writing or calling David McCoy, Department of Administration, 116 West Jones Street, Raleigh, NC 27603-8003.

**CHAPTER 25 - NORTH CAROLINA
ENVIRONMENTAL POLICY ACT**

SECTION .0100 - GENERAL PROVISIONS

.0108 SCOPE

(a) This Chapter is applicable to any situation where there is:

- (1) an expenditure of public monies or use of public land; and
- (2) an action by a state agency subject to

this Chapter; and

- (3) a potential environmental effect upon either natural resources, public health and safety, natural beauty, or historical or cultural elements of the state's common inheritance.

(b) For the purpose of this Chapter:

- (1) "Action" includes but is not limited to licensing, certification, permitting, the lending of credit, expenditures of public monies, and other similar final agency decisions the absence of which would preclude the proposed activity. Action does not include the allocation of any public federal or state funds transferred ~~by a state agency~~ in accordance with a statutory or regulatory formula, which leave no discretion to the allocating agency.

Note: This last exception is intended to exclude the following types of revenues: Powell bill, sales tax, intangibles tax, beer and wine taxes, utility franchise taxes, and General Revenue Sharing.

- (2) "Environmental effect" includes direct, primary indirect, secondary, and cumulative impacts for the project or program that may be significant, depending upon the manner in which the activity is carried out.
- (3) "Public monies" includes all expenditures in support of the proposed activity by federal, funds in the custody of any state or local public or quasi-public entities ~~entity~~ from whatever source derived, but does not include resources used solely for processing a license, a certificate, or a permit; the lending of credit; or the resources used for the provision of technical services.
- (4) "State Project Agency" means the state department or council of state agency [as defined in Subparagraph (b)(6) of this Rule] agency which has been designated pursuant to Rule .0210(a) of this Chapter for ensuring compliance with the N.C. Environmental Policy Act.
- (5) "State" includes all entities covered by the Executive Budget Act, Article One of the General Statutes, Chapter 143.
- (6) "State Agencies subject to this Chapter" means:
 - (A) the departments listed in G.S. 143B-11.2

- (B) boards, commissions, committees and councils organized within the departments listed in G.S. 143B-2;
 - (C) other departments, boards, commissions, committees and councils which adopt the provisions of this Chapter directly or by reference; and
 - (D) all entities within the executive branch of state government when a final decision is required under G.S. 113A-5.
- (7) The definitions contained in G.S. 113A-1 through G.S. 113A-13 are incorporated by reference.

Statutory Authority G.S. 113A-11.

SECTION .0200 - NCEPA ADMINISTRATION/ ENVIRONMENTAL IMPACT

.0209 ADMINISTRATION: OTHER AGENCIES' RESPONSIBILITIES

(a) The Department of Administration (department) is designated as the primary agency to assist state project agencies in ~~for~~ ensuring compliance with the NCEPA.

(b) The department shall set policy, establish rules procedures and assist in ensure obtaining compliance with the NCEPA. Nothing in these Rules should be construed as giving the department the authority, delegated or otherwise, to impinge on the statutory responsibilities that have been given to cabinet agencies or boards and commissions within those agencies.

~~(c) The department shall perform an advisory role to assist Council of State agencies in compliance with the NCEPA.~~

Statutory Authority G.S. 113A-11.

.0210 COMPLIANCE WITH PROCEDURES

(a) State Project Agency. For each activity subject to this Chapter, one agency must serve as the State Project Agency, and take the responsibility for ensuring compliance with the NCEPA. If more than one state agency is involved, a meeting will be held and voluntary agreement on the State Project Agency responsibility will be sought. Where no agreement is reached among the agencies, the secretary of the department, with the advice of the Environmental Policy Act Advisory Committee Council, shall designate the State Project Agency. The other involved agencies shall be cooperating agencies.

(b) Non-state Local ~~Local~~ projects. State agencies may ask federal and local agencies or special purpose units of government and private companies to submit information about the proposed activity where the ~~local~~ government or company is involved in planning, construction, or otherwise conducting the proposed activity project or program, and the only state involvement is permit granting or plan approval; however, the State Project Agency is ultimately responsible for compliance with the act.

Statutory Authority G.S. 113A-11.

.0211 STATE CLEARINGHOUSE

(a) The Department of Administration shall maintain a clearinghouse to coordinate and administer the requirements of this Chapter.

(b) Among its responsibilities the Clearinghouse shall:

- (1) receive and circulate environmental documents for review and comment as provided by these Rules;
- (2) forward all comments generated by the review process to the State Project Agency and, where appropriate, prepare a single integrated letter of response;
- (3) retain a complete record of environmental documents, review comments, and other substantive materials related to the operation of the Clearinghouse;
- (4) train review coordinators from within all state agencies; and
- (5) coordinate the establishment of minimum criteria and ensure that thresholds are consistent among all agencies.

Statutory Authority G.S. 113A-11.

.0213 ENVIRONMENTAL POLICY ACT ADVISORY COMMITTEE

(a) The secretary of the Department of Administration or a person so designated by the secretary, shall serve as the Chair of the Environmental Policy Act Advisory Committee Council.

(b) The purpose of the committee council is to provide technical advice to the secretary of the department on environmental issues related to the NCEPA.

(c) The secretary will request that nominations be made for the committee council from those departments most involved in environmental protection issues. These include but are not limited to, the Departments of Cultural Resources, Human

Resources, Environment, Health, and Natural Resources, ~~Natural Resources and Community Development~~, and Justice, and Transportation.

Statutory Authority G.S. 113A-11.

SECTION .0300 - MINIMUM CRITERIA

.0302 APPROVAL OF CRITERIA

The following procedures will be used in the establishment of minimum criteria:

- (1) The agency will prepare a draft list of the minimum criteria, describing the ease of measuring the criteria, and how the criteria predict the environmental impact of projects. The agency will submit these lists to the Clearinghouse for circulation and review.
- (2) The Clearinghouse will solicit comments on the criteria from interested parties or agencies having expertise or jurisdiction by law, and will publish a notice of the criteria in the Environmental Bulletin. The period of review is 30 ~~45~~ working days from the date of publication in the Environmental Bulletin.
- (3) The Clearinghouse will forward all comments on the criteria to the submitting agency. In addition, Clearinghouse staff will review the criteria to ensure consistent thresholds among agencies and make any necessary recommendations.
- (4) If there are no comments, the criteria will be approved by the secretary of the department.
- (5) The agency will review all comments and submit a final list of minimum criteria to the Clearinghouse.
- (6) The Clearinghouse will recommend to the Secretary of the Department of Administration approval or rejection of the criteria based on the consideration ~~incorporation~~ of all comments.
- (7) Minimum criteria shall be reviewed every five years and revised as necessary.

Statutory Authority G.S. 113A-11.

SECTION .0400 - COMPLIANCE

.0401 METHOD OF COMPLIANCE

(a) Unless a project falls below the threshold established in an agency's approved minimum criteria, compliance with this Chapter will be achieved through the preparation of one or more of

the following environmental documents:

- (1) an environmental assessment (EA),
- (2) a finding of no significant impact (FONSI), or
- (3) an environmental impact statement (EIS),
- (4) a record of decision (ROD).

(b) The agency responsible for compliance may choose to immediately prepare an EIS if the proposed project is of significant size or complexity.

(c) For all other projects ~~not covered by minimum criteria~~, an EA shall be prepared.

(d) If the EA demonstrates that the project activity will not have a significantly adverse effect on the quality of the environment, the State Project Agency will file a FONSI.

(e) If the environmental assessment demonstrates that the project may result in a significant adverse affect on the quality of the environment, the State Project Agency will file an EIS in accordance with Section .0600 of this Chapter.

(f) Before an activity is commenced for which an EIS has been completed, the State Project Agency will file an ROD as required by Section .0600 of this Chapter.

Statutory Authority G.S. 113A-11.

SECTION .0500 - ENVIRONMENTAL ASSESSMENT

.0503 FORMAT

An EA is to be a concise document not to exceed 25 ~~40~~ pages, containing the following:

- (1) A cover sheet including the name, address and telephone number of the person in the State Project Agency who can supply additional information. The cover sheet shall also contain:
 - (a) designation of the statement as an EA;
 - (b) title of the proposed activity that is the subject of the document; and
 - (c) list of any involved cooperating agencies.
- (2) A section for each item listed in Rule .0502 of this Section.

Statutory Authority G.S. 113A-11.

.0504 INTERNAL REVIEW

(a) Once an EA is prepared, the State Project Agency must decide if it is satisfied as to the completeness of its assessment. If no significant ~~adverse~~ environmental impacts are predicted, the

agency may then submit both the EA and FONSI to the Clearinghouse for review.

(b) The agency may choose to submit only the EA and use the comments, if any, to determine how to proceed. If an agency chooses this procedure, the review process for the EA shall be the same as Rule .0506 of this Section for both reviews.

Statutory Authority G.S. 113A-11.

.0505 CONTENT OF FONSI

A FONSI shall contain the following information:

- (1) a brief narrative description of the proposed activity including a description of the area affected by the proposed activity and a site location map, where appropriate;
- (2) a list of probable environmental impacts of the proposed activity;
- (3) a list of the reason(s) for concluding that the action will not have a significant adverse effect on the quality of the environment, with reference to mitigation activities to be carried out, thereby negating the necessity of preparation of an EIS;
- (4) a statement that no EIS is to be prepared and that the FONSI completes the environmental review record which is available for inspection at the Clearinghouse.
- (5) ~~a summary of the FONSI which shall be published in the Environmental Bulletin.~~

Statutory Authority G.S. 113A-11.

.0506 REVIEW PROCESS

(a) The State Project Agency must submit sufficient copies of the EA and FONSI to the Clearinghouse. The Clearinghouse will circulate these documents to state and local officials to obtain comments and will publish a Notice of Availability ~~the summary of the FONSI~~ in the Environmental Bulletin. Reading copies will be made available at the Clearinghouse for any interested parties. The review period is 30 ~~45~~ working days after publication in the bulletin.

(b) Each reviewing agency and any interested party may make comments on the adequacy of the documents. ~~and whether an EIS should be prepared.~~

(c) Based on consideration of the comments submitted, the Clearinghouse will advise the state

~~project agency as follows: recommend to the secretary of the department whether or not an EIS must be completed. If there are no significant comments, the department will notify the State Project Agency that it has completed the review process requirements for the act.~~

- (1) the document has been determined to lack sufficient information. Supplemental documentation which provides adequate information should be submitted to the Clearinghouse for review and comment;
- (2) the document does not satisfy a finding of no significant impact and an EIS should be prepared;
- (3) the document is adequate and the next appropriate level document should be prepared for review; or
- (4) the document is adequate and completes the review process requirements for the act.

(d) The State Project Agency may adopt or reject the Clearinghouse's recommendation.

(e) No administrative or judicial review is permitted unless undertaken in connection with review of the agency action. No other review of an environmental document is permitted.

Statutory Authority G.S. 113A-11.

SECTION .0600 - ENVIRONMENTAL IMPACT STATEMENTS

.0603 FORMAT AND CONTENT

Agencies should use a format for EIS's which will encourage good analysis and clear presentation of all alternatives, including the proposed activity while minimizing length and complexity. ~~complexity.~~ These documents should not exceed 60 ~~50~~ pages and should include site location maps. Format:

- (1) Cover Sheet. A single cover sheet including the following information:
 - (a) designation of the document as a draft, supplementary or final statement;
 - (b) title of the proposed activity that is the subject of the statement;
 - (c) list of any involved cooperating agencies; and
 - (d) name, address, and telephone number of the person in the State Project Agency who can supply further information.
- (2) Summary. An adequate and accurate summary of the statement stressing the

major conclusions, areas of controversy, and issues to be resolved. The summary shall also list all federal, state, and local permits, licenses, certifications, and other approvals which must be obtained in implementing the proposal. If there is any uncertainty about whether any one of these is necessary, it should be so indicated.

- (3) Purpose and Need. The underlying purpose and need ~~to which the agency is being responded to by responding in proposing the proposed activity.~~
- (4) Alternatives including proposed activity. Based upon information and analysis presented in the following sections on the affected environment and environmental consequences, it should present the environmental impacts of the alternatives including the proposed activity in comparative form. To the extent possible the comparison of alternatives should quantify how the purpose and need would be satisfied by each alternative and the proposed activity. This section is the heart of the EIS, sharply defining the issues and providing a clear basis for choice among options by decision makers and the public. It should also:
 - (a) explore and evaluate all reasonable alternatives, including those not within the jurisdiction of the State Project Agency and the alternative of no action;
 - (b) discuss the reasons for the elimination of alternatives from detailed study;
 - (c) identify the agency's preferred alternative(s) in the draft statement and identify such alternatives in the final statement, unless another law prohibits the expression of such a preference;
 - (d) include appropriate mitigation measures not already included in the alternatives; and
 - (e) assess the social and economic impacts of each alternative. Impacts should be quantified for each alternative, where feasible, but when quantification by standard economic tools is not feasible or intangibles are involved, a description of each impact is required.
- (5) Affected Environment. The EIS must describe the environment of the area(s) to be affected and the environment to be created by the alternatives under consideration. The description should be

no longer than is necessary to understand the effects of the alternatives. Data and analysis in a statement should be commensurate with the importance of the impact, with less important material summarized, consolidated, or simply referenced.

- (6) Environmental Consequences. This Section forms the scientific and analytic basis for the comparisons under Rule .0603(4) of this Section:
 - (a) direct effects and significance;
 - (b) indirect effects and significance;
 - (c) cumulative effects and significance;
 - (d) the relationship between the short-term uses of the environment involved in the proposed action and the maintenance and enhancement of long-term productivity; and
 - (e) any irreversible and irretrievable environmental changes which would be involved in the proposed action should it be implemented;
 - (f) possible conflicts between the proposed activities and the objectives of federal, state, and local plans, policies, and controls for the affected area.
- (7) List of Preparers. The EIS shall list the names and qualifications of the persons who were primarily responsible for preparing the EIS.
- (8) Appendix. If an appendix is included in an EIS, it should meet the following requirements:
 - (a) consist of materials substantiating any analysis fundamental to the principal document, as distinct from material of lesser significance that may accompany the document or be incorporated by reference;
 - (b) normally be analytic and relevant to the decision to be made;
 - (c) shall not be counted in the EIS 60 ~~50~~ page limit; and
 - (d) be circulated with the EIS or be readily available upon request.

Statutory Authority G.S. 113A-11.

.0605 REVIEW PROCESS

- (a) Draft EIS. This document shall be submitted by the State Project Agency and circulated for comment by the Clearinghouse as set out in Rule .0506 of this Chapter. Notice of the availability of the EIS shall be printed in the Environmental

Bulletin, and a 45 30 calendar-day period of review after this notice is published is to be allowed.

(b) The Clearinghouse will forward copies of all comments made by reviewers to the State Project Agency for incorporation in the final document.

(c) Final EIS. The State Project Agency shall submit copies of the final EIS to the Clearinghouse. These documents shall be circulated to the original reviewers for a final review. Notice shall also be given in the Environmental Bulletin. Thirty calendar ~~Fifteen working~~ days after publication of the bulletin shall be allowed for final review.

(d) Based on consideration of the comments submitted, the Clearinghouse will advise the state project agency as follows:

- (1) the document has been determined to lack sufficient information. Supplemental documentation which provides adequate information should be submitted to the Clearinghouse for review and comment;
- (2) a final EIS should be prepared for review addressing the comments submitted; or
- (3) the document is adequate and completes the review process requirements for the act.

~~The Clearinghouse shall prepare a recommendation for the secretary of the department that the record be closed, and that a letter of compliance with the review process requirements be issued, or that the document be returned to the State Project Agency for additional work. If appropriate, the secretary of the department may request a response to the comments.~~

(e) The State Project Agency may adopt or reject the Clearinghouse's recommendation.

(f) No administrative or judicial review is permitted unless undertaken in connection with review of the agency action. No other review of an environmental document is permitted.

Statutory Authority G.S. 113A-11.

SECTION .0700 - PROCEDURE FOR RECONSIDERATION OF MINIMUM CRITERIA

.0701 ACTIONS WHICH MAY BE RECONSIDERED

Any state or local agency or citizen may request a consideration of ~~any of the following:~~

(+) rejection or acceptance of minimum criteria.

- ~~(2) a determination by the State Project Agency that a project falls below the threshold set in approved minimum criteria, or that an environmental document will not otherwise be prepared;~~
- ~~(3) a determination that a FONSI or EIS should be prepared; or~~
- ~~(4) acceptance of the adequacy of the EIS.~~

Statutory Authority G.S. 113A-11.

.0702 PROCEDURE FOR RECONSIDERATION

All requests for reconsideration must be in written form, and should be directed to the Secretary of the Department of Administration and the Director of the Clearinghouse. The request must be made within 30 days after the completion of the normal review cycle, or at any time if no notice has been published in the Environmental Bulletin. Review of requests for reconsideration will be limited to the written request and supporting documentation. No party will be allowed to present oral testimony, to depose or otherwise cross-examine witnesses, to argue the matter or otherwise convert the review into an adjudicatory hearing as that term is used in G.S. 150B-2(2).

Statutory Authority G.S. 113A-11.

.0703 DECISION OF THE SECRETARY FINAL

In reconsidering any matter pursuant to this Section, the Secretary of the Department of Administration may seek the advice of the Environmental Policy Act Advisory Council. The secretary of the Department of Administration shall affirm or reverse the ~~environmental~~ determination, shall direct compliance with that decision, and shall notify the person or agency requesting reconsideration.

Statutory Authority G.S. 113A-11.

SECTION .0800 - MAJOR DEVELOPMENT PROJECTS

.0801 SCOPE

Local governing bodies, under the provisions of G.S. 113A-8 may require by ordinance environmental documentation from special-purpose units of government and private developers of major projects. This Section establishes the state's role when this option is exercised.

Statutory Authority G.S. 113A-8; 113A-11.

.0802 PROCESS

(a) Upon the request of the local government, state agencies with jurisdiction by law or special expertise shall advise on matters related to the environmental documentation. This is not to relieve the local government of their responsibility under G.S. 113A-8 or to accept any responsibility on behalf of the state for the preparation of the document.

(b) An environmental document as defined in G.S. 113A-4(2) may be submitted to the Clearinghouse by the local government. The Clearinghouse shall circulate the document for review and comment in the same manner as provided in this Chapter.

(c) Upon notification from the local government that an environmental document is to be required, the Clearinghouse shall send notification to all affected state agencies and publish such notice in the Environmental Bulletin. In processing applications for state permits, state agencies may ~~shall~~ consider any information generated by the local government pursuant to this Section.

Statutory Authority G.S. 113A-8; 13A-11.

SECTION .0900 - GOVERNOR'S REVIEW

.0901 REVIEW BY GOVERNOR

In those specific cases where the environmental document indicates a major adverse environmental impact for which alternatives are not available, the Governor shall be so advised by the responsible state official.

Statutory Authority G.S. 113A-11.

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Low-Level Radioactive Waste Management Authority intends to amend rules cited as 1 NCAC 37 .0102 - .0103, .0201, .0306.

The proposed effective date of this action is May 3, 1993.

The public hearing will be conducted at 7:00 p.m. on February 22, 1993 at the McKimmon Center, Corner of Gorman & Western Blvd.,

Raleigh, N.C.

Reason for Proposed Action: The amendments are necessary to specify procedures by which the Authority will carry out its statutory duties to select a single preferred site, which it must carry out by December 31, 1993, and to specify two criteria unique to this final selection. Rules governing this duty are required by G.S. §104G-6(a)(2), (a)(20) and 9(b), and were originally adopted in 1988. The amendments incorporate lessons learned in the five years of preliminary site selection carried out under the original rules.

Comment Procedures: The Authority will receive and consider written comments from the public through March 3, 1993. Written comments should be sent to: Rulemaking Coordinator, Chrystal H. Stowe, 116 West Jones Street, Suite 2109, Raleigh, N.C. 27603-8003. Oral comments will be received at a public hearing on February 22, 1993. Oral presentations will be limited to no more than five minutes to allow all persons to be heard. Speakers should sign up at the meeting.

CHAPTER 37 - N.C. LOW-LEVEL RADIOACTIVE WASTE MANAGEMENT AUTHORITY

SECTION .0100 - GENERAL INFORMATION

.0102 DEFINITIONS

(a) The definitions contained in G.S. 104G-2 and 15A-40 NCAC 11 .1202 3G-3302 apply to rules contained in this Chapter.

(b) As used in this Chapter "facility" means a low-level radioactive waste disposal facility as defined in G.S. 104G-2(7).

(c) As used in Section .0200 the term "proximity" means distance from a location or activity that could involve an impact, either positive or negative, or beneficial or detrimental.

(d) As used in this Chapter "community" means, primarily, a county of the State of North Carolina. However, the term may include, as well, any local unit of government associated with an identifiable locality and a permanent population, such as a city or a town.

(e) Within this Chapter, "preferred site" means land within and upon which the facility disposal cells and buffer area may be located, whether or

not such land is identified in terms of legal description. The term includes any contiguous or proximate land which is identified, at the time of preferred site selection, as the intended site of administrative outbuildings or other appurtenances to be associated with the facility, and any characterized, suitable land beyond the initial license area.

(f) Within this Chapter, "initial license area" means land within the preferred site that is designated for the location of such disposal cells and buffer zone as are to be described in an application for a license to dispose of such low-level radioactive waste as North Carolina may reasonably be expected to accept for disposal in the course of fulfilling its legal obligations to the Southeast Interstate Low-Level Radioactive Waste Management Compact, as such obligations are expressed in G.S. 104F-1, Article V(e).

(g) Within this Chapter, "characterized, suitable land beyond the initial license area" means land outside the boundaries of the initial license area that, based upon characterization, is suitable for disposal of such further low-level radioactive waste beyond the volume contemplated in the initial license application as North Carolina may be required to accept for disposal pursuant to the terms of G.S. 104F-1, Article V(e).

(h) Within this Chapter, "participate in the Authority's selection of its preferred site" means:

- (1) to take part in the Authority's formal pre-voting discussion and deliberations conducted pursuant to Rule .0306(h) of this Chapter concerning the suitability of any potentially suitable site for selection as the preferred site;
- (2) to cast a vote pertaining to site selection at the preferred-site selection meeting conducted pursuant to Rule .0306 of this Chapter;
- (3) to cast a vote for the precise boundaries of any preferred site chosen at a meeting conducted pursuant to Rule .0306 of this Chapter; or
- (4) at any time after the Authority's public announcement of the date of the meeting at which it will deliberate and vote on the selection of its preferred site, to attempt to persuade or influence any other member to cast his votes in these matters in a particular way.

(i) Within this Chapter, "pecuniary interest in any potentially suitable site under active consideration" means any of the following:

- (1) personal ownership of any interest in

real estate comprising all or any part of a site having undergone characterization and continuing thereafter as a candidate for selection by the Authority as its preferred site;

- (2) ownership of a legal or equitable interest in any business entity owning an interest in real estate comprising all or any part of a site having undergone characterization and continuing thereafter as a candidate for selection by the Authority as its preferred site; within this Chapter, no person shall be considered to have an interest in any business entity whose interest in such a business entity does not exceed one-half of one per cent of the capital stock of such business entity;
- (3) full-time employment by any commercial business entity known to the individual to own any interest in real estate comprising all or any part of a site having undergone characterization and continuing thereafter as a candidate for selection by the Authority as its preferred site; or
- (4) receiving, either individually or as an owner, partner, member, or employee of a commercial business or professional entity, compensation in the amount of two thousand dollars (\$2,000) or more during the preceding calendar year from any person or business entity owning an interest in real estate comprising all or any part of any site under consideration by the Authority for selection as the preferred site.

(j) Within Rule .0306 of this Chapter, "significant pecuniary benefit" means the accrual of income in the amount of two thousand dollars (\$2,000) or more to an individual that would not have accrued to that individual but for the selection of a particular characterized site as the preferred site.

Statutory Authority G.S. 104G-6(a)(2); 104G-6(a)(20); 104G-9.

.0103 MAILING LIST

The Authority maintains mailing lists for its rulemaking and public meeting activities. Individuals wishing to be notified of these activities should send a letter to:

Low-Level Radioactive Waste Management

Authority
Mailing List
~~Suite 209 Commerce Building~~
~~49 W. Hargett Street~~
~~Raleigh, NC 27604~~
116 West Jones Street
Raleigh, NC 27603-8003

stating the particular activity or activities for which notice is requested and the name, address and phone number of requester. A fee may be charged to cover the actual cost of providing this notice.

Statutory Authority G.S. 104G-6; 104G-9; 150B-21.2.

SECTION .0200 - SITE SELECTION CRITERIA

.0201 INTRODUCTION

The rules contained in this Section set forth the criteria which the Authority will consider in selecting a site for the location of a low-level radioactive waste disposal facility. In selecting this site the Authority must comply with the applicable siting factors and requirements ~~criteria~~ set forth in ~~15A 40 NCAC 11 .1200 (Land Dispos-~~
~~al of Radioactive Waste) 3G-3328~~ and G.S. 104G, which are incorporated in this Chapter by reference. All subsequent amendments and editions of the referenced material are included in this incorporation. The rules contained in this Section set forth additional criteria to be considered by the Authority in evaluating and selecting a site for the facility in accordance with G.S. 104G. The written justification for the criteria contained in these Rules is available from the Authority at the mailing address set out in 1 NCAC 37 .0103.

Statutory Authority G.S. 104G-6; 104G-7; 104G-9; 150B-21.6.

SECTION .0300 - SITE SELECTION PROCEDURE

.0306 PREFERRED SITE

(a) The authority shall select a preferred site in accordance with G.S. ~~104G-20~~ 104G-9 and the procedures contained in this Rule.

(b) The site shall be selected in accordance with the criteria set out in 1 NCAC 37 .0200 and the following additional criteria:

- (1) the advantages of siting the facility to minimize the displacement of permanent residents or improvements to real

property, including but not limited to ongoing businesses and commercial enterprises or utility easements and infrastructure, if any; and

- (2) the relative costs of facility development on alternative sites, including but not limited to:

- (A) costs of acquisition of land or rights of way;
- (B) costs of construction and appurtenant improvements; and
- (C) relocation costs, including those for permanent residents or improvements to real property including, but not limited to, ongoing businesses, commercial enterprises, or utility easements and infrastructure, if any.

(c) Prior to the selection of a preferred site, the Authority shall conduct at least one public meeting in each area where a potentially suitable site has been selected. Notice of the meeting shall be published at least 15 days in advance of the meeting. Notice of the meeting shall be published in a newspaper of general circulation in the area and shall be sent to the Chairman of the county commissioners, the county manager and the county health director of any county in which a site has been identified; the mayor, the manager and the Chairman of the council of any municipality in which a potentially suitable site has been identified, and any person who has requested a copy of the notice in accordance with the procedure set out in 1 NCAC 37 .0103. The notice shall include the date, time and place of the meeting; topics to be addressed at the meeting; the manner in which public comment will be accepted; and the name of the individual to contact for further information.

(d) Information considered during the selection process shall include information provided by the ~~site designation review committees~~ County Boards of Commissioners and information obtained at the public meetings, and may include additional information which the Authority deems appropriate.

(e) In making this selection, the Authority shall actively seek a suitable community interested in hosting the facility, from among the 2 or 3 sites selected, and shall provide information concerning:

- (1) the opportunities for involvement in the decision-making process regarding the construction and operation of the facility;
- (2) information regarding the facility operator and the proposed technology; and
- (3) economic incentives available to the

host including reimbursement for lost land values, lost revenues, ~~income available from the trust fund~~, and authorized taxes or fees.

(f) Prior to voting on any motion to select a preferred site, each member of the Authority will be afforded an opportunity to consider the following relevant and material data and evidence:

- (1) G.S. 104E, 104F, and 104G;
- (2) 1 NCAC 37 and 15A NCAC 11 .0400 and .1200;
- (3) 10 CFR Part 61;
- (4) PHASE 1 SCREENING STUDY, IDENTIFICATION OF POTENTIALLY SUITABLE AREAS, prepared by Ebasco Services, Inc., and submitted to the Authority November 30, 1988;
- (5) NCLLRW DISPOSAL SITE SCREENING PROCESS, PHASE 2 TASK 1 IDENTIFICATION OF CANDIDATE AREAS, prepared by Ebasco Services, Inc., and submitted to the Authority March 20, 1989;
- (6) SUMMARY OF QUESTION AND ANSWER SESSIONS, COMMUNITY FORUMS HELD BY THE NORTH CAROLINA LOW-LEVEL RADIOACTIVE WASTE MANAGEMENT AUTHORITY, FEBRUARY 15 TO APRIL 25, 1989, prepared by Ebasco Services, Inc.;
- (7) 1:24,000 scale United States Department of the Interior Geological Survey topographic maps of each of the 116 potentially suitable site areas provided to the potential operator by Ebasco Services, Inc.;
- (8) PRECHARACTERIZATION REPORT, RICHMOND COUNTY FAVORABLE SITE AREA, NORTH CAROLINA LOW-LEVEL RADIOACTIVE WASTE MANAGEMENT AUTHORITY, presented by Chem-Nuclear Systems, Inc., February 21, 1990;
- (9) PRECHARACTERIZATION REPORT, WAKE COUNTY/CHATHAM COUNTY FAVORABLE SITE AREA, NORTH CAROLINA LOW-LEVEL RADIOACTIVE WASTE MANAGEMENT AUTHORITY, presented by Chem-Nuclear Systems, Inc., February 21, 1990;
- (10) EXECUTIVE SUMMARY, REPORTS OF PRECHARACTERIZATION FINDINGS FROM FAVORABLE

SITE AREAS FOR NORTH CAROLINA'S LOW-LEVEL RADIOACTIVE WASTE DISPOSAL FACILITY, prepared by Chem-Nuclear Systems, Inc., February 21, 1990;

- (11) RESPONSES TO PUBLIC COMMENTS RELATED TO PRECHARACTERIZATION ASSESSMENTS OF RICHMOND COUNTY, WAKE/CHATHAM COUNTY, ROWAN COUNTY AND UNION COUNTY FAVORABLE SITE AREAS, prepared for the North Carolina Low-Level Radioactive Waste Management Authority by the Authority Staff, Chem-Nuclear Systems, Inc., and Ebasco Services, Inc., April 1990;
- (12) Information not otherwise listed in this Rule that is provided to the Executive Director by the Board of Commissioners of any county in which land has undergone characterization, so long as such information is provided to the Executive Director not less than 30 days before the Authority's scheduled preferred site selection meeting;
- (13) An environmental impact report, prepared by the potential site operator in compliance with G.S. 104G-11(b), related to each potentially suitable characterized site;
- (14) Written reports of the potential site operator on each potentially suitable characterized site, to include a Safety Analysis Report;
- (15) Information obtained at public meetings conducted pursuant to 1 NCAC 37 .0306(c), or in written comments associated with such meetings, submitted by members of the public and received by the Authority not less than 30 days before the Authority's scheduled preferred site selection meeting; and
- (16) Other relevant and material evidence from credible sources received by the Authority not less than 30 days before the Authority's scheduled preferred site selection meeting and recorded in the minutes of the preferred site selection meeting as evidence to be considered by the Authority.

(g) Upon motion made and adopted in open session, the Authority may hold an executive session to consider the merits of alternative candidates for preferred site selection and acquisition.

Any voting among alternative nominations, however, must be conducted in open session.

(h) Discussion, nomination, and adoption of alternatives for preferred site selection. The Authority emphasizes that it has a statutory obligation to select a preferred site from among alternative sites that are both characterized and suitable. It therefore expresses its intent to arrive at a majority selection from among the voting alternatives at its site selection meeting, and to continue deliberations at its site selection meeting, with only such temporary recesses as may be essential, until such a majority decision is achieved.

- (1) Free discussion by the Authority members of the relative merits of the alternatives may take place at the Authority's preferred-site selection meeting at any time, except when a vote is pending. Those alternatives shall include:
 - (A) each characterized site;
 - (B) neither characterized site; and
 - (C) undecided.
- (2) Discussion of all alternatives will conclude upon the Chairman's call for a vote on the alternatives, unless any member moves for continued discussion. Should such a motion be seconded, it may be adopted without further discussion by a majority of Authority members who cast votes on the question, and discussion of the alternatives will then continue until such time as the Chairman again calls for a vote on the alternatives and no such motion for continued discussion is adopted. Alternatively, any member may move to discontinue further discussion and to vote on the alternatives, and such a motion, if seconded, may be adopted by a majority of Authority members who cast votes on the question.
- (3) Voting will be conducted on all alternatives at one time in roll-call format. Each member's name will be called, at which time that member will vote for one of the alternatives. In counting votes among the alternatives, abstentions, if any, shall count as "undecided."
- (4) Should no alternative other than "undecided" achieve a majority of votes cast, discussion of the relative merits of the alternatives will resume and further voting be conducted until an alternative

other than "undecided" is selected by majority vote. Any alternative other than "undecided" receiving a majority of the votes cast at the preferred-site selection meeting shall constitute the Authority's action.

- (5) No site will be selected as the preferred site unless it receives the votes of a majority of those Authority members casting votes. The Authority chairman shall vote in the same manner as any other member.

(i) After the Authority's selection of a preferred site, it may delegate to its contractors or staff the task of recommending the preferred site's precise boundaries in terms of a legal description. Precise boundaries may be drawn by reference to any of the criteria set out in 1 NCAC 37 .0200 and, in addition, to previously existing property boundaries. Recommendations for precise preferred-site boundaries shall be submitted to the Authority for formal approval. In addition, the Authority may direct its staff or contractors to submit recommended precise boundaries for any initial license area and characterized, suitable land beyond the initial license area that it may wish to designate.

(j) At no time after the Authority's announcement of the date of the meeting at which it will deliberate and vote on the selection of its preferred site will any member knowingly participate in the Authority's selection of its preferred site, as such participation is defined in Rule .0102(h) of this Chapter, if that member, or any person in the member's immediate family:

- (1) has a pecuniary interest in any potentially suitable site under active consideration for such selection;
- (2) would receive a reasonably foreseeable significant pecuniary benefit from one of the alternative outcomes that would not accrue generally to persons similarly situated, such as employees of comparable employers or persons of the same or similar profession or occupation; or
- (3) is an employee of a business entity that would receive a reasonably foreseeable significant business advantage from one of the alternative outcomes that would not accrue generally to commercial entities in the same or similar business as the member's employer.

(k) Any member of the Authority who desires to be excused from participating in the selection of a preferred site on grounds of a conflict of interest

will declare his desire to be excused and reason for excusal in writing. Any such written declarations will be submitted to the Executive Director prior to the beginning of the meeting convened for the purpose of formal site selection pursuant to Paragraph (h) of this Rule, will be effective if accepted by a majority vote of the Authority, and will be attached to the minutes of the Authority's preferred-site selection meeting. Any member excused from participating under this provision shall be counted as present for purposes of constituting a quorum within the meaning of G.S. 104G-5(f).

Statutory Authority G.S. 104G-4; 104G-6; 104G-9; 104G-11(b); 104G-19; 143-318.11.

Notice is hereby given in accordance with G.S. 150B-21.2 that the Department of Administration intends to adopt rules cited as 1 NCAC 39 .0101, .0201, .0301.

The proposed effective date of this action is May 3, 1993.

The public hearing will be conducted at 10:00 a.m. on February 23, 1993 at the Administration Building, Commission Room 5034, 116 West Jones Street, Raleigh, NC 27603-8003.

Reason for Proposed Action: To allow the Department of Administration to regulate exceptions to the Environmental Policy Act pursuant to G.S. 113A-11.

Comment Procedures: Any interested person may present his/her comments either in writing at the hearing or orally at the hearing. Any person may request information, permission to be heard, or copies of the proposed regulations by writing or calling David McCoy, Department of Administration, 116 West Jones Street, Raleigh, NC 27603-8003.

CHAPTER 39 - DEPARTMENT OF ADMINISTRATION'S MINIMUM CRITERIA

SECTION .0100 - PURPOSE

.0101 PURPOSE

The purpose of these minimum criteria is to establish criteria levels for minor operations or small routine facility projects below which no filing of environmental documents under G.S. 113A shall be required. The primary emphases of these minimum criteria are to:

- (1) insure that adequate protection is provided to the environment in the State Government Center and at other properties under the control of the Department of Administration throughout the state; and
- (2) permit the implementation of the routine operations, maintenance, repair, or construction tasks which the state is required to undertake without undue delay or expense.

Statutory Authority G.S. 113A-11.

SECTION .0200 - NON-MAJOR ACTIVITIES

.0201 NON-MAJOR ACTIVITIES

The following list of criteria shall be considered as descriptive of routine operations, small construction projects, and routine maintenance projects which do not require the filing of an Environmental Impact Statement, Environmental Assessment, or a Finding of No Significant Impact:

- (1) Any single action which involves relocation of staff members into a site using existing State buildings or leased buildings for which the building occupancy classification is not changed.
- (2) Routine disposal operations of hazardous chemicals, asbestos, or other environmentally sensitive operations for which a written procedure has been established, reviewed by appropriate authority, and determined to be in keeping with state or federal law.
- (3) Routine repairs and housekeeping projects which maintain a facility's original condition and physical features, including re-roofing and minor alterations where in-kind materials and techniques are used. This also encompasses structures 50 years of age and older and for which no separate law, rule, or regulation dictates a formal review and approval process.
- (4) Demolition of or additions, rehabilitation and/or renovations to a structure not

- listed in the National Register of Historic Places or less than 50 years of age.
- (5) Purchase by the Department of Administration using Department of Administration's sponsored funding of real estate for which the use of the real estate does not vary from its intended purpose or function at the time of purchase.
- (6) The use of chemicals for boiler feedwater treatment, cooling tower water treatment, pesticides, herbicides, cleaning solvents, and other chemical products which may be considered environmentally sensitive, provided the materials are stored and utilized in keeping with the applicable Material Safety Data Sheet (MSDS).
- (7) The handling of asbestos incident to a repair, maintenance, or minor construction project provided that the asbestos material is removed, stored, disposed of, and handled in accordance with published Department of Administration's procedures for processing asbestos.
- (8) New construction involving all of the following:
- (a) Less than 10,000 square feet;
- (b) Less than two hundred thousand dollars (\$200,000) cost;
- (c) Less than one acre of previously undisturbed ground unless the site is a National Register archaeological site; and
- (d) The use of the structure does not involve the handling and/or the storage of hazardous materials.
- (9) Routine grounds maintenance and landscaping.
- (10) Routine paving or repair of existing parking lots shall fall within the minimum criteria.
- (11) Installation of outdoor sculpture(s) or exhibits.
- (12) Acquisition or enlargement of a state-owned historic site or museum to be managed in accordance with plans for which environmental documents have been approved.
- (13) Granting of leases, easements, or permits authorizing private use of public land for any of the following:
- (a) Installation of aerial and sub-aqueous pipes or pipelines for the transportation of potable water, and any cable line or line for the transmission of electrical energy, telephone or telegraph messages, and radio and television communications.
- (b) Communication towers not located on wetlands, park lands, or areas of recognized natural, scenic, recreation, archaeological, or historic value.
- (c) Construction of a road in accordance with accepted design practices and in compliance with North Carolina Department of Transportation standards and specifications, involving less than 25 cumulative acres of ground surface.
- (d) Filling below the mean high water mark when such filling has been approved by the U.S. Army Corps of Engineers or the North Carolina Division of Coastal Management.
- (e) Sewer line installations with less than three miles of new lines and a design volume not exceeding 1,000,000 gallons per day or individual pump stations not exceeding 1,000,000 gallons per day.
- (f) Ground water withdrawals of less than 1,000,000 gallons per day where such withdrawals are not expected to cause a significant alteration in the established land use patterns, or degradation of ground water or surface water quality.
- (g) Where the proposed private use of the public land does not exceed the minimum criteria established by the agency recommending the lease, easement, or permit.
- (14) Exchange or purchase of land where no agreement exists for the private land to be developed for use in any way that results in a change in the natural cover or topography prior to the exchange or purchase.
- (15) Timber harvest in accordance with the National Forest Service or the North Carolina Division of Forest Resources Management's Plans.

Statutory Authority G.S. 113A-11.

SECTION .0300 - EXCEPTIONS

.0301 EXCEPTIONS TO MINIMUM CRITERIA

The Secretary of the Department of Administration may determine that environmental

documents under the North Carolina Environmental Policy Act are required in any case where one of the following findings applies to a proposed activity:

- (1) The proposed activity may have a potential for significant adverse effects on wetlands, park lands, prime or unique agricultural lands, or areas of recognized natural, scenic, recreational, archaeological, or historical value including indirect effects, or would threaten a habitat identified on the U.S. Department of Interior or state of North Carolina threatened and endangered species lists.
- (2) The proposed activity could cause significant changes in industrial, commercial, residential, agricultural, or silvicultural land use concentrations or distributions which would be expected to create adverse water quality, air quality, or ground water impacts, or affect long-term recreational benefits, shellfish, wildlife, or their natural habitats.
- (3) The proposed activity has indirect impacts, or is part of cumulative effects, not generally covered in the approval process for the state action, and that may result in a potential risk to human health or the environment.
- (4) The proposed activity is of such an unusual nature or has such widespread implications that an uncommon concern for its environmental effects has been expressed to the agency.

Statutory Authority G.S. 113A-11.

TITLE 4 - DEPARTMENT OF COMMERCE

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Cemetery Commission intends to amend rules cited as 4 NCAC 5A .0101, .0106; 5B .0101 - .0103, .0105; 5C .0101, .0103, .0201, .0301, .0303; 5D .0101, .0201 - .0203; adopt rule cited as 4 NCAC 5D .0107; and repeal rule cited as 4 NCAC 5D .0204.

The proposed effective date of this action is May 3, 1993.

The public hearing will be conducted at 10:00

a.m. on March 10, 1993 at 1100 Navaho Drive, Suite 300, Raleigh, N.C.

Reason for Proposed Action: *The proposed rules change the Commission's address, bring certain rules into compliance with the General Statutes, require buyer and seller representatives to be present at meeting, provide for excess care and maintenance trust funds, require accountant to list merchandise stored at cemetery, and consolidate a trust fund regulation.*

Comment Procedures: *Written comments may be sent to the Cemetery Commission, 1100 Navaho Drive, GL-2, Raleigh, NC 27609. Requests for opportunity to present oral testimony and a summary of the testimony must be received at this address by March 1, 1993.*

CHAPTER 5 - CEMETERY COMMISSION

SUBCHAPTER 5A - ORGANIZATION

SECTION .0100 - GENERAL INFORMATION

.0101 NAME AND ADDRESS

The North Carolina Cemetery Commission of the Department of Commerce is located in Raleigh, North Carolina. The mailing address for the Cemetery Commission is ~~Post Office Box 25249,~~ 1100 Navaho Drive, GL-2, Raleigh, North Carolina 27611 27609. The office is open to the public Monday through Friday, 8:00 a.m. to 5:00 p.m., excluding scheduled state holidays.

Statutory Authority G.S. 65-49; 65-51; 150B-10.

.0106 FEES

In addition to the licensing and penalty fees provided by statute to this commission, the following fees are provided after ~~October 5, 1987~~ May 3, 1993:

- (1) One dollar (\$1.00) per grave space, mausoleum crypt, and niche when deeded;
- (2) Four dollars (\$4.00) per vault when contracted;
- (3) Four dollars (\$4.00) per each crypt in a bank of below ground crypts or lawn crypt garden when contracted before completion or one dollar (\$1.00) per each crypt when contracted after completion.

An additional one dollar (\$1.00) shall be paid for each crypt when deeded as provided in Item 1 of this Rule;

- (4) Four dollars (\$4.00) per pre-need memorial;
- (5) Four dollars (\$4.00) per pre-constructed mausoleum crypt or niche when contracted before completion or one dollar (\$1.00) per crypt or niche when contracted after completion. An additional one dollar (\$1.00) shall be paid for each crypt or niche when deeded as provided in Item 1 of this Rule;
- (6) All at need merchandise, cash or credit sales, do not require any assessments;
- (7) One dollar (\$1.00) per preneed opening and closing of a grave space.

Statutory Authority G.S. 65-49; 65-54; 150B-10.

SUBCHAPTER 5B - RULE-MAKING: DECLARATORY RULINGS AND CONTESTED CASES

SECTION .0100 - RULE-MAKING AND DECLARATORY RULINGS

.0101 PETITIONS

(a) Any person wishing to submit a petition requesting the adoption, amendment, or repeal of a rule by the Cemetery Commission shall address a petition to:

North Carolina Cemetery Commission
~~Post Office Box 25249~~
1100 Navaho Drive, GL-2,
Raleigh, North Carolina ~~27611~~ 27609.

(b) The petition should contain the following information:

- (1) a draft of the proposed rule or a summary of its contents;
- (2) reason for proposal;
- (3) effect on existing rules or orders;
- (4) data supporting the proposal;
- (5) names of those most likely to be affected by the proposed rule, with addresses if reasonably known;
- (6) name(s) and address(es) of petitioner(s);
- (7) a description as to how the petitioner(s) is (are) directly or substantially affected by the proposed rule.

(c) The Cemetery Commission will determine, based on a study of the facts stated in the petition, whether the public interest will be served by granting the petition. They will consider all the contents of the submitted petition, plus any

additional information they deem relevant.

(d) Within 30 days of receipt of the petition, the Cemetery Commission will render a final decision. If the decision is to deny the petition, the Commission will notify the petitioner in writing, stating the reason therefor. If the decision is to grant the petition, the Commission, within 30 days of submission will initiate a rule-making proceeding by issuing a rule-making notice as provided in the rules.

Statutory Authority G.S. 65-49; 150B-16.

.0102 NOTICE

(a) Upon a determination to hold a rule-making proceeding, either in response to a petition or otherwise, the Commission will publish a notice in The North Carolina Register of a public hearing on the proposed rule at least 30 days in advance of said hearing and will mail a copy of the notice to everyone on its mailing list.

(b) Any person or agency desiring to be placed on the mailing list for Cemetery Commission rule-making notices may file a request, in writing, furnishing names and mailing addresses to:

North Carolina Cemetery Commission
~~Post Office Box 25249~~
1100 Navaho Drive, GL-2,
Raleigh, North Carolina ~~27611~~ 27609.

(c) In addition to notices sent to persons requesting them, notice of the rule-making proceedings will usually be sent to the North Carolina Cemetery Association and to all state-licensed cemeteries.

Statutory Authority G.S. 65-49; 150B-12.

.0103 HEARINGS

(a) Unless otherwise stated in the particular rule-making notice, hearings before the North Carolina Cemetery Commission will be held at the offices of the North Carolina Department of Commerce in Raleigh, North Carolina.

(b) Any person desiring to present oral data, views, or arguments on the proposed rule must, at least 10 days before the hearing, file a notice with:

North Carolina Cemetery Commission
~~Post Office Box 25249~~
1100 Navaho Drive, GL-2,
Raleigh, North Carolina ~~27611~~ 27609.

Notice of this presentation may be waived or a failure to give notice may be excused, by the Commission, for good cause. Any person permitted to make an oral presentation is encouraged to submit a written copy of the

presentation to the administrator prior to or at the hearing.

(c) A request to make an oral presentation must contain a brief summary of the individual's views with respect thereto, and a statement of the length of time the individual wants to speak. Presentations may not exceed 15 minutes unless, upon request, either before or at the hearing, the Cemetery Commission grants an extension of time, for good cause.

(d) Upon receipt of a request to make an oral presentation, the Administrator of the Cemetery Commission will acknowledge receipt of the request, and inform the requesting person of the imposition of any limitations deemed necessary to the end that a full and effective public hearing on the proposed rule may be held.

(e) Any person may file a written submission containing data, comments, or arguments, after publication of a rule-making notice, up to and including, the day of the hearing. Written submissions, except when otherwise stated in the particular rule-making notice must be sent to:

North Carolina Cemetery Commission

~~Post Office Box 25249~~

1100 Navaho Drive, GL-2,

Raleigh, North Carolina ~~27614~~ 27609.

Such submission must clearly state the rule(s) or proposed rule(s) to which the comments are addressed.

(f) Upon receipt of such written comments, prompt acknowledgement will be made including a statement that the comments therein will be considered fully by the Cemetery Commission.

(g) The chairman of the commission, or his designate, shall have complete control of the hearing proceedings, including: extension of any time requirements, recognition of speakers, time allotments for presentation, direction of the flow of the discussion, and the time management of the hearing. The chairman, or his designate, at all times, shall take care that each person participating in the hearing is given a fair opportunity to present views, data and comments.

(h) Any interested person desiring a statement of the principal reason(s) for and against the adoption of a rule by the Cemetery Commission and the factors that led to the overruling of the consideration urged for or against its adoption may submit a request addressed to:

North Carolina Cemetery Commission

~~Post Office Box 25249~~

1100 Navaho Drive, GL-2,

Raleigh, North Carolina ~~27614~~ 27609.

(i) A record of all rule-making proceedings will

be maintained in the Cemetery Commission office for as long as the rule is in effect, and for two years thereafter, following filing of the rule with the Office of Administrative Hearings. This record will contain: the original petition, if the hearing is in response to a petition; the notice; all written memoranda and information submitted; a record or summary of oral presentation, if any; and the statement explaining the agency ruling, if made.

Statutory Authority G.S. 65-49; 150B-13.

.0105 DECLARATORY RULINGS

(a) Any person substantially affected by a statute administered or rule promulgated by the Cemetery Commission may request a declaratory ruling as to:

- (1) whether, and if so how, the statute or rule applies to a given factual situation, or
- (2) whether a particular agency rule is valid.

(b) The Cemetery Commission will have the sole power to make such declaratory rulings. All requests for declaratory rulings shall be written and mailed to:

North Carolina Cemetery Commission

~~Post Office Box 25249~~

1100 Navaho Drive, GL-2,

Raleigh, North Carolina ~~27614~~ 27609.

(c) All requests for a declaratory ruling must include the following information:

- (1) name and address of petitioner;
- (2) statute or rule to which petition relates;
- (3) concise statement of the manner in which petitioner is aggrieved by the rule or statute or its potential application to him;
- (4) a statement of whether an oral hearing is desired, and if so the reasons for such an oral hearing.

(d) Whenever the Cemetery Commission believes for good cause that the issuance of a declaratory ruling is undesirable, it may refuse to do so. When good cause for refusing to issue a declaratory ruling is deemed to exist, the Cemetery Commission will notify the petitioner of its decision in writing, stating reasons for the denial of a declaratory ruling.

(e) Where a declaratory ruling is deemed appropriate, the Cemetery Commission will issue the ruling within 60 days of receipt of the petition.

(f) A declaratory ruling procedure may consist of written submissions, oral hearings, or such

other procedures as may be appropriate in a particular case.

Statutory Authority G.S. 65-49; 150B-17.

SUBCHAPTER 5C - LICENSING

SECTION .0100 - CEMETERIES

.0101 APPLICATION AND FILING FEE

Any legal entity wishing to establish and operate a cemetery company, as defined in G.S. 65-48(5) must first obtain a license from this commission. The legal entity shall file written application with the commission on the Commission's Application for Certificate of Authority. This form provides a space for the name of the corporation and cemetery, the names of directors and officers of the corporation, the mailing address of the corporation and the address of the cemetery. A filing fee of ~~four hundred dollars (\$400.00)~~ eight hundred dollars (\$800.00) must accompany the application. The application form is available by contacting:

North Carolina Cemetery Commission
~~Post Office Box 25249~~
1100 Navaho Drive, GL-2,
 Raleigh, North Carolina ~~27614~~ 27609.

Statutory Authority G.S. 65-48(5); 65-55.

.0103 CHANGE OF CONTROL

(a) Any entity wishing to purchase or acquire control of an existing cemetery company shall first make written application to the Cemetery Commission on the Commission's Application for Change of Control. This form provides space for the name and address of the present and proposed owner, along with the name of the corporation and the name of the cemetery. This form can be obtained by writing:

North Carolina Cemetery Commission
~~Post Office Box 25249~~
1100 Navaho Drive, GL-2,
 Raleigh, North Carolina ~~27614~~ 27609.

(b) This form must be accompanied by a ~~one hundred dollar (\$100.00)~~ two hundred dollar (\$200.00) filing fee. The Commission also requires the following:

- (1) an examination be made to establish compliance to trust fund requirements;
- (2) a signed certificate assuming liabilities of the existing cemetery company;
- (3) a financial statement of the existing cemetery company showing net worth;

(4) certification by title insurance policy or by certificate of an attorney-at-law that the cemetery land, subject to appropriate acreage requirements, is owned in fee simple, free of all encumbrances;

(5) a financial statement of proposed owner, showing net worth and a statement of the proposed owner's experience in the cemetery business.

(c) No one shall take over the operation of a cemetery company in anticipation of a change of control until all necessary information concerning that change of control has been submitted to the administrator of the Cemetery Commission. No one shall change control of a cemetery company without first obtaining approval of the Cemetery Commission. Once a change of control has been approved by the Cemetery Commission, the change of control must be completed within 90 days of the date of the Cemetery Commission's approval. If the change of control is not completed within 90 days of the date of the Cemetery Commission's approval, then the entity wishing to effect the change of control will be required to make a new application to the Cemetery Commission in accordance with provisions of this Rule. Upon completion of the change of control, the entity requesting the change of control shall notify in writing the Administrator of the Cemetery Commission of the completion. A representative of the buyer and the seller should be present at any meeting when the Commission is going to consider the change of control application.

Statutory Authority G.S. 65-49; 65-53(2); 65-59.

SECTION .0200 - CEMETERY SALES ORGANIZATIONS: MANAGEMENT ORGANIZATIONS AND BROKERS

.0201 APPLICATION AND FILING FEE

(a) Any legal entity wishing to establish and operate a cemetery sales organization, cemetery management organization or a cemetery broker, as each are defined under G. S. 65-48, must first obtain a license from this commission. The legal entity shall file written application with the commission on the Commission's Application for Cemetery Broker, Sales and/or Management Contractor License. This form provides space for applicant's name and address; space is also provided for employment, references and criminal record for an individual, corporate officer or

partner, as the case may be. The application form is available by contacting:

North Carolina Cemetery Commission
~~Post Office Box 25249~~
1100 Navaho Drive, GL-2,
Raleigh, North Carolina ~~27644~~ 27609.

(b) The following documents should accompany this application:

- (1) If individual, officer or partner has not been licensed as a cemetery salesman for a period of two years, the application is to be accompanied by a written request for waiver setting forth at least one year general cemetery experience.
- (2) Corporate applications are to be accompanied by:
 - (A) certified copy of that portion of the minutes of the corporation wherein the officer named on the application was elected an officer,
 - (B) certified copy of that portion of the minutes of the corporation wherein the officer named on the application was authorized to file the application on behalf of the corporation.
- (3) All brokerage, sales or management contracts are subject to approval by the board and any proposed contracts should accompany this application.

(c) Filing fees would be in accordance with G. S. 69-57(c).

Statutory Authority G.S. 65-49; 69-57.

SECTION .0300 - INDIVIDUAL PRE-NEED SALESPeOPLE

.0301 APPLICATION AND FILING FEE

Any person who offers to sell pre-need grave spaces, mausoleum crypts, niches, memorials, vaults or any other pre-need cemetery merchandise or services that are authorized for any cemetery, cemetery sales groups or cemetery management groups must first obtain a license from this commission. Applications for a license must be filed with the Commission on their Application for Persons Selling Pre-need Cemetery Property together with a fee in the amount of twenty-five dollars (\$25.00), fifteen dollars (\$15.00) of which shall constitute an application fee and ten dollars (\$10.00) of which shall constitute annual license fee. The form provides space for applicant's name, past address, previous employment and criminal record. The application form is available

by contacting:

North Carolina Cemetery Commission
~~Post Office Box 25249~~
1100 Navaho Drive, GL-2,
Raleigh, North Carolina ~~27644~~ 27609.

This license has an expiration date of June 30 in each year.

Statutory Authority G.S. 65-49; 65-58.

.0303 DISPLAY

Each salesperson licensed by the Commission is required to display his or her license in the office of each cemetery he or she represents. If extra copies are needed, a fee of one dollar and fifty cents (\$1.50) will be charged for each duplicate license. Duplicate copies can be obtained by contacting:

North Carolina Cemetery Commission
~~Post Office Box 25249~~
1100 Navaho Drive, GL-2,
Raleigh, North Carolina ~~27644~~ 27609.

Statutory Authority G.S. 65-49; 65-58.

SUBCHAPTER 5D - TRUST FUNDS

SECTION .0100 - MAINTENANCE AND CARE FUNDS (PERPETUAL CARE FUNDS)

.0101 REPORT

The Commission requires a report of deposits to the perpetual care fund to be completed and mailed to its office in Raleigh by the last day of each month. The form to be used is the Report of Grave Spaces for the Month of _____. The form provides a space for deed number, date of deed, date of contract, purchaser, lot number, section, number of spaces deeded and amount due trust fund. This form can be obtained and must be returned to:

North Carolina Cemetery Commission
~~Post Office Box 25249~~
1100 Navaho Drive, GL-2,
Raleigh, North Carolina ~~27644~~ 27609.

Statutory Authority G.S. 65-49.

.0107 EXCESS FUNDS

If a cemetery collects Care and Maintenance Trust Funds in excess of the mandatory trust fund amount, the excess must be deposited into the trust fund by the last day of the following month. Excess funds may not be withdrawn from the trust fund or used to offset past or future deposits.

Statutory Authority G.S. 65-49; 65-64.

**SECTION .0200 - PRE-NEED CEMETERY
MERCHANDISE: PRE-CONSTRUCTED
MAUSOLEUMS AND BELOW GROUND
CRYPTS TRUST FUNDS**

.0201 REPORT

The Commission requires a report of deposits to the pre-need cemetery merchandise and pre-constructed mausoleum and below ground crypt trust fund to be completed and mailed to its office in Raleigh by the last day of each month. The form to be used is the "Monthly Report and Deposit Record for Pre-need Cemetery Merchandise, Pre-Constructed Mausoleums and Services Not Delivered." This form provides space for trustee's name, fund account number and the name of the savings institution used. It also provides space for the name of the purchaser, date of the contract, number of the contract, the full sales price, the total amount required, the amount deposited, and the total amount deposited to date. Copies of this form can be obtained from and must be returned to:

North Carolina Cemetery Commission
Post Office Box 25249
1100 Navaho Drive, GL-2,
Raleigh, North Carolina 27614 27609.

Statutory Authority G.S. 65-49.

.0202 DELIVERY

(a) Vaults and crypts shall not be considered delivered unless installed or stored on the cemetery premises or stored off premises by a supplier. If vaults are not to be installed, contract must so state in bold print that purchaser has accepted above ground delivery. If vault is to be installed, then the contract must be broken down into sales cost and installation cost.

(b) Markers, bases and vases shall not be considered delivered unless installed or stored at the cemetery or if stored off premises by a supplier, there shall be no additional charge for delivery or freight, unless specified in bold print in the contract. If vaults, crypts or other merchandise are stored off premises the cemetery company must submit to the Cemetery Commission not less than annually a report by a certified public accountant of each item which has been purchased through a North Carolina cemetery company and which at the date of the report was then in storage and properly designated the property of the cemetery company's customer and

not the property of the supplier. If vaults, crypts or other merchandise are stored at the cemetery the cemetery company must submit to the Cemetery Commission not less than annually a report by a certified or licensed public accountant of each item which has been purchased and which at the date of the report was then in storage and properly designated the property of the cemetery company's customer.

(c) If opening and closing of crypts at the time of interment are not included in the cost of this merchandise, then it must be so stated in bold print on the contract.

Statutory Authority G.S. 65-49.

.0203 TRUST ACCOUNTS

(a) Trust accounts must be established pursuant to an agreement with a financial institution that withdrawals may be made only with the signature of both the cemetery company's designee and the North Carolina Cemetery Commission's authorized designee. Trust accounts must be clearly designated as trust accounts. For the purposes of withdrawal, the Administrator of the North Carolina Cemetery Commission shall be the Cemetery Commission's authorized designee.

(b) These trust accounts are not joint accounts, however, they are restricted accounts that require the Commission's authorized designee to sign before any withdrawal is made.

(c) The cemetery company must file a statement with the North Carolina Cemetery Commission setting out the name and the position or title of anyone who is authorized to sign for withdrawals from the account for the cemetery company.

(d) These withdrawals can be made no more frequent than once a month. The cemetery company must give the North Carolina Cemetery Commission 20 days written notice of any proposed withdrawal, stating the amount to be withdrawn and the justification for withdrawal.

(e) Full disclosure of the amount in the trust account must be made available to the North Carolina Cemetery Commission by the financial institution any time during the financial institution's normal business hours. A copy of each cemetery company's pre-need contract must be on file with the Commission before any withdrawals can be authorized.

(f) Interest earned on trust accounts may be used to offset future deposits or may be withdrawn with the written approval of the Administrator.

Statutory Authority G.S. 65-49; 65-66(b)(4).

.0204 EXCESS FUNDS

(a) ~~If money is escrowed into a trust account for contracts for preneed merchandise and services, excess interest may be withdrawn quarterly so long as the amount on deposit for each contract equals at least 60% of the proceeds received on account of contracts for the sale of such merchandise or 125% of the current wholesale cost of such merchandise as determined by the Commission, whichever is greater.~~

(b) ~~The current wholesale cost as determined by the commission shall be the highest wholesale cost for each category of such merchandise charged in North Carolina by a vendor of such merchandise whose sales to cemeteries in North Carolina exceeded 200 units of such merchandise during the preceding year.~~

Statutory Authority G.S. 65-49.

**TITLE 10 - DEPARTMENT OF
HUMAN RESOURCES**

Notice is hereby given in accordance with G.S. 150B-21.2 that the Medical Care Commission (Division of Facility Services) intends to adopt rules cited as 10 NCAC 3C .2020 - .2033; 10 NCAC 3H .1150 - .1163; amend 10 NCAC 3H .0219, 1204; 10 NCAC 3L .0903, .1110 and .1202.

The proposed effective date of this action is May 3, 1993.

The public hearing will be conducted at 9:30 a.m. on March 12, 1993 at the Council Building, Room 201, 701 Barbour Drive, Raleigh, NC, 27603.

Reason for Proposed Action:

10 NCAC 3C .2020-.2033; 10 NCAC 3H .1150-.1163 - To establish rules for inpatient rehabilitation beds operated by acute care hospitals and nursing facilities.

10 NCAC 3H .0219 - To enable the Department's authorized agents to photocopy pertinent records in a licensed nursing facility where the information is necessary to document non-compliance.

10 NCAC 3H .1204 - To bring the rule into conformance with federal rules, regulations and guidelines and to clarify components of the rule.

10 NCAC 3L .0903, .1110 and .1202 - To make

rule .1202 consistent with other rules governing expiration of license, to make technical change in rule .0903, and to clarify program requirement in .1110.

Comment Procedures: Written comments should be submitted to Jackie Sheppard, 701 Barbour Drive, Raleigh, North Carolina 27603 by March 3, 1993.

CHAPTER 3 - FACILITY SERVICES

**SUBCHAPTER 3C - LICENSING
OF HOSPITALS**

**SECTION .2000 - SPECIALIZED
REHABILITATIVE AND HABILITATIVE
SERVICES**

.2020 DEFINITIONS

The following definitions shall apply to inpatient rehabilitation facilities or units only:

- (1) "Case management" means the coordination of services, for a given patient, between disciplines so that the patient may reach optional rehabilitation through the judicious use of resources.
- (2) "Comprehensive inpatient rehabilitation program" means a program for the treatment of persons with functional limitations or chronic disabling conditions who have the potential to achieve a significant improvement in activities of daily living. A comprehensive rehabilitation program utilizes a coordinated and integrated, interdisciplinary approach, directed by a physician, to assess patient needs and to provide treatment and evaluation of physical, psycho social and cognitive deficits.
- (3) "Inpatient rehabilitation facility or unit" means a free-standing facility or a unit (unit pertains to contiguous dedicated beds and spaces) within an existing licensed health service facility approved in accordance with G.S. 131E, Article 9 to establish inpatient, rehabilitation beds and to provide a comprehensive, inpatient rehabilitation program.
- (4) "Medical consultations" means consultations which the rehabilitation physician or the attending physician determine are necessary to meet the acute medical needs of the patient and do not include routine medical needs.

- (5) "Occupational therapist" means any individual licensed in the State of North Carolina in accordance with the provisions of G.S. 90, Article 18D.
- (6) "Occupational therapist assistant" means any individual licensed in the State of North Carolina in accordance with the provisions of G.S. 90, Article 18D.
- (7) "Psychologist" means a person licensed as a practicing psychologist in accordance with G.S. 90, Article 18A.
- (8) "Physiatrist" means a licensed physician who has completed a physical medicine and rehabilitation residency training program approved by the Accrediting Council of Graduate Medical Education or the American Osteopathic Association.
- (9) "Physical therapist" means any person licensed in the State of North Carolina in accordance with the provisions of G.S. 90, Article 18B.
- (10) "Physical therapist assistant" means any person duly licensed in the State of North Carolina in accordance with the provisions of G.S. 90-270.24, Article 18B.
- (11) "Recreational therapist" means a person certified by the North Carolina State Board of Therapeutic Recreation.
- (12) "Rehabilitation nurse" means a registered nurse licensed in North Carolina, with specialized training and at least one year experience in physical rehabilitation nursing.
- (13) "Rehabilitation nurse aide" is a nurse aide listed on the North Carolina Nurse Aide Registry, who also has therapy training and works under the supervision and direction of a licensed physical therapist in accordance with the provisions of G.S. 90, Article 18B.
- (14) "Rehabilitation physician" means a physiatrist or a physician who specializes in neurology, physical medicine, or orthopaedics and has at least two years experience in physical rehabilitation care.
- (15) "Social worker" means a person certified by the North Carolina Certification Board for Social Work in accordance with G.S. 90B-3.
- (16) "Speech and language pathologist" means any person licensed in the State of North Carolina in accordance with the provisions of G.S. 90-292, Article 22.

Statutory Authority G.S. 131E-79; 143B-165.

.2021 PHYSICIAN REQUIREMENTS/ INPATIENT REHABILITATION FACILITIES OR UNITS

(a) In a rehabilitation facility or unit a physician shall participate in the provision and management of rehabilitation services and in the provision of medical services.

(b) In a rehabilitation facility or unit a rehabilitation physician shall be responsible for a patient's interdisciplinary treatment plan. Each patient's interdisciplinary treatment plan shall be developed and implemented under the supervision of a rehabilitation physician.

(c) The intensity of a comprehensive rehabilitation program requires that there shall be direct patient contact by a physician daily while full interdisciplinary therapy services are being provided. If a rehabilitation physician is not available on a daily basis to the facility, the facility shall provide for the rehabilitation management of the patient by another physician with rehabilitation experience. In addition, oversight for the patient's interdisciplinary treatment plan shall be provided by a rehabilitation physician who visits patients weekly, makes recommendations for and approves the interdisciplinary treatment plan, and provides consultation as requested to the physician who is managing the patient on a daily basis.

(d) An inpatient rehabilitation facility or unit's contract or agreements with a rehabilitation physician shall require that the rehabilitation physician shall actively participate in individual case conferences or care planning sessions and shall review and sign discharge summaries and records. When patients are to be discharged to either another health care facility or a residential setting, the facility shall assure that the patient has been provided with a discharge plan which incorporates optimum utilization of community resources and post discharge continuity of care and services.

(e) The intensity of physician medical services and the frequency of regular contacts for medical care for the patient shall be determined by the patient's pathophysiologic needs.

(f) Where the attending physician of a patient in an inpatient rehabilitation facility or unit orders medical consultations for the patient, such consultations should be provided by qualified physicians within 24 hours of the physician's order. In order to achieve this result, the contracts or agreements between inpatient rehabilitation facilities or units and medical consultants shall require that such consultants render the requested medical consultation within 24 hours.

(g) An inpatient rehabilitation facility or unit

shall have a mechanism for determining the qualifications of the physicians rendering physical rehabilitation services in the facility or unit.

Statutory Authority G.S. 131E-79; 143B-165.

.2022 ADMISSION CRITERIA FOR INPATIENT REHABILITATION FACILITIES OR UNITS

(a) The facility shall have written criteria for admission to the inpatient rehabilitation facility or unit. A description of programs or services for screening the suitability of a given patient for placement shall be available to staff and referral sources.

(b) For patients found unsuitable for admission to the inpatient rehabilitation facility or unit, there shall be documentation of the reasons.

(c) Within 48 hours of admission a preliminary assessment shall be completed by members of the interdisciplinary team to insure the appropriateness of placement and to identify the immediate needs of the patient.

(d) Patients admitted to an inpatient rehabilitation facility or unit must be able to tolerate a minimum of three hours of rehabilitation therapy, five days a week, including at least two of the following rehabilitation services: physical therapy, occupational therapy or speech therapy.

(e) Patients admitted to an inpatient rehabilitation facility or unit must be medically stable, have a prognosis indicating a progressively improved medical condition and have the potential for increased independence.

Statutory Authority G.S. 131E-79; 143B-165.

.2023 COMPREHENSIVE INPATIENT REHABILITATION EVALUATION

(a) A comprehensive, inpatient rehabilitation evaluation is required for each patient admitted to an inpatient rehabilitation facility or unit. At a minimum this evaluation shall include the reason for referral, a summary of the patient's clinical condition, functional strengths and limitations, and indications for specific services. This evaluation shall be completed within three days.

(b) Each patient shall be evaluated by the interdisciplinary team to determine the need for any of the following services: medical, dietary, occupational therapy, physical therapy, prosthetics and orthotics, psychological assessment and therapy, therapeutic recreation, rehabilitation medicine, rehabilitation nursing, therapeutic counseling or social work, vocational rehabilitation evaluation

and speech-language pathology.

Statutory Authority G.S. 131E-79; 143B-165.

.2024 COMPREHENSIVE INPATIENT REHABILITATION INTERDISCIPLINARY TREAT/PLAN

(a) The interdisciplinary treatment team shall develop an individual treatment plan for each patient within seven days after admission. The plan shall include evaluation findings and information about the following:

- (1) prior level of function;
- (2) current functional limitations;
- (3) specific service needs;
- (4) treatment, supports and adaptations to be provided;
- (5) specified treatment goals;
- (6) disciplines responsible for implementation of separate parts of the plan; and
- (7) anticipated time frames for the accomplishment of specified long-term and short-term goals.

(b) The treatment plan shall be reviewed by the team at least every other week. Documentation of each review shall include progress toward defined goals and identification of any changes in the treatment plan.

(c) The treatment plan shall include provisions for all of the services identified as needed for the patient in the comprehensive, inpatient rehabilitation evaluation completed in accordance with Rule .2203 of this Subchapter.

(d) Each patient shall have a designated case manager who is responsible for the coordination of the patient's individualized treatment plan. The case manager is responsible for promoting the program's responsiveness to the needs of the patient and should participate in all team conferences concerning the patient's progress toward the accomplishment of specified goals. Any of the professional staff involved in the patient's care may be the designated case manager for one or more cases, or the director of nursing or social worker may accept the coordination responsibility for the patients.

Statutory Authority G.S. 131E-79; 143B-165.

.2025 DISCHARGE CRITERIA FOR INPATIENT REHABILITATION FACILITIES OR UNITS

(a) Discharge planning shall be an integral part of the patient's treatment plan and shall begin upon

admission to the facility. After established goals have been reached, or a determination has been made that care in a less intensive setting would be appropriate, or that further progress is unlikely, the patient shall be discharged to an appropriate setting. Other reasons for discharge may include an inability or unwillingness of patient or family to cooperate with the planned therapeutic program or medical complications that preclude a further intensive rehabilitative effort. The facility shall involve the patient, family, staff members and referral sources in discharge planning.

(b) The case manager shall facilitate the discharge or transfer process in coordination with the facility social workers.

(c) If a patient is being referred to another facility for further care, appropriate documentation of the patient's current status shall be forwarded with the patient. A formal discharge summary shall be forwarded within 48 hours following discharge and shall include the reasons for referral, the diagnosis, functional limitations, services provided, the results of services, referral action recommendations and activities and procedures used by the patient to maintain and improve functioning.

Statutory Authority G.S. 131E-79; 143B-165.

.2026 COMPREHENSIVE REHABILITATION PERSONNEL ADMINISTRATION

(a) The facility shall have qualified staff members, consultants and contract personnel to provide services to the patients admitted to the inpatient rehabilitation facility or unit.

(b) Personnel shall be employed or provided by contractual agreement in sufficient types and numbers to meet the needs of all patients admitted for comprehensive rehabilitation.

(c) Written agreements shall be maintained by the facility when services are provided by contract on an ongoing basis.

Statutory Authority G.S. 131E-79; 143B-165.

.2027 COMPREHENSIVE INPATIENT REHABILITATION PROGRAM STAFFING REQS.

(a) The staff of the inpatient rehabilitation facility or unit shall include at a minimum:

- (1) The inpatient rehabilitation facility or unit shall be supervised by a rehabilitation nurse. The facility shall identify the nursing skills necessary to meet the

needs of the rehabilitation patients in the unit and assign staff qualified to meet those needs.

- (2) The minimum nursing hours per patient in the rehabilitation unit shall be 5.5 nursing hours per patient day. At no time shall direct care nursing staff be less than two full-time equivalents, one of which must be a registered nurse.

- (3) The inpatient rehabilitation unit shall employ or provide by contractual agreements sufficient therapists, licensed in North Carolina, to provide a minimum of three hours of specific or combined rehabilitation therapy services per patient day.

- (4) Physical therapy assistants and occupational therapy assistants shall be licensed or certified and shall be supervised on-site by licensed physical therapists or licensed occupational therapists.

- (5) Rehabilitation aides shall have documented therapy training, be supervised on-site by licensed physical therapists or licensed occupational therapists, and be regularly assigned to the unit.

- (6) Hours of service by rehabilitation nurse aides shall be counted toward nursing hours and not toward required therapy hours unless the rehabilitation nurse aide is working under the direct supervision of a licensed therapist and the rehabilitation nurse aide has had training as defined in Rule .2028 of this Section. Rehabilitation nurse aide hours counted toward required therapy hours shall not also be counted as required nursing hours. Hours of service by rehabilitation nurse aides in areas of the facility other than the rehabilitation unit shall not be counted toward the 5.5 hour minimum nursing requirements described for the rehabilitation unit.

(b) Additional personnel shall be provided as required to meet the needs of the patient, as defined in the comprehensive, inpatient rehabilitation evaluation.

Statutory Authority G.S. 131E-79; 143B-165.

.2028 STAFF TRAINING FOR INPATIENT REHABILITATION

FACILITIES OR UNIT

Prior to the provision of care, all rehabilitation personnel, excluding physicians, assigned to the rehabilitation unit shall be provided training or shall provide documentation of training, that includes at a minimum the following:

- (1) active and passive range of motion;
- (2) assistance with ambulation;
- (3) transfers;
- (4) maximizing functional independence;
- (5) the psycho-social needs of the rehabilitation patient;
- (6) the increased safety risks of rehabilitation training (including falls and the use of restraints);
- (7) proper body mechanics;
- (8) nutrition, including dysphagia and restorative eating;
- (9) communication with the aphasic and hearing impaired patient;
- (10) behavior modification; and
- (11) bowel and bladder training.

Statutory Authority G.S. 131E-79; 143B-165.

.2029 EQUIPMENT REQS/ COMPREHENSIVE INPATIENT REHABILITATION PROGRAMS

(a) Each discipline must be provided the necessary equipment and treatment methods to achieve the short and long-term goals specified in the comprehensive inpatient rehabilitation interdisciplinary treatment plans for patients admitted to these facilities or units.

(b) Each patient's needs for a standard wheelchair or a specially designed wheelchair or additional devices to allow safe and independent mobility within the facility shall be met.

(c) Special physical therapy and occupational therapy equipment for use in fabricating positioning devices for beds and wheelchairs shall be provided, including splints, casts, cushions, wedges and bolsters.

(d) Physical therapy devices, including a mat table, parallel bars and sliding boards and special adaptive bathroom equipment shall be provided.

Statutory Authority G.S. 131E-79; 143B-165.

.2030 PHYSICAL FACILITY REQS/ INPATIENT REHABILITATION FACILITIES OR UNITS

(a) The inpatient rehabilitation facility or unit shall be in a designated area and shall be used for the specific purpose of providing a comprehensive,

inpatient rehabilitation program.

(b) The floor area of a single bedroom shall be sufficient for the patient or the staff to easily transfer the patient from the bed to a wheelchair and to maneuver a 180-degree turn with a wheelchair on at least one side of the bed.

(c) The floor area of a multi-bed bedroom shall be sufficient for the patient or the staff to easily transfer the patient from the bed to a wheelchair and to maneuver a 180-degree turn with a wheelchair between beds.

(d) Each patient room shall meet the following requirements:

- (1) Maximum room capacity of no more than four patients;
- (2) Windows operable without the use of tools;
- (3) A nurse call system designed to meet the special needs of rehabilitation patients;
- (4) In single and two-bed rooms with private toilet room, the lavatory may be located in the toilet room;
- (5) A wardrobe or closet for each patient which is wheelchair accessible and arranged to allow the patient to access the contents;
- (6) A chest of drawers or built-in drawer storage with mirror above, which is wheelchair accessible; and
- (7) A bedside table for toilet articles and personal belongings.

(e) Space for emergency equipment such as resuscitation carts shall be provided and shall be under direct control of the nursing staff, in close proximity to the nurse's station and out of traffic.

(f) Patients' bathing facilities shall meet the following specifications:

- (1) There shall be at least one shower stall or one bathtub for each 15 beds not individually served. Each tub or shower shall be in an individual room or privacy enclosure which provides space for the private use of the bathing fixture, for drying and dressing and for a wheelchair and an assisting attendant.
- (2) Showers in central bathing facilities shall be at least four foot square without curbs and designed to permit use by a wheelchair patient.

(g) Patients' toilet rooms and lavatories shall meet the following specifications:

- (1) The size of toilets shall permit a wheelchair, a staff person and appropriate wheel-to-water closet

transfers.

- (2) A lavatory in the room must permit wheelchair access.
- (3) Lavatories serving patients shall:
 - (A) allow wheelchairs to extend under the lavatory; and
 - (B) have water supply spout mounted so that its discharge point is a minimum of five inches above the rim of the fixture.
- (4) Lavatories used by patients and by staff shall be equipped with blade-operated supply valves.
- (h) The space provided for physical therapy, occupational therapy and speech therapy by all inpatient rehabilitation facilities or units may be shared but must, at a minimum, include:
 - (1) office space for staff;
 - (2) office space for speech therapy evaluation and treatment;
 - (3) waiting space;
 - (4) training bathroom which includes toilet, lavatory and bathtub;
 - (5) gymnasium or exercise area;
 - (6) work area such as tables or counters suitable for wheelchair access;
 - (7) treatment areas with available privacy curtains or screens;
 - (8) an activities of daily living training kitchen with sink, cooking top, refrigerator and counter surface for meal preparation;
 - (9) storage for clean linens, supplies and equipment;
 - (10) janitor's closet accessible to the therapy area with floor receptor or service sink and storage space for housekeeping supplies and equipment, one closet or space may serve more than one area of the inpatient rehabilitation facility or unit; and
 - (11) hand washing facilities.
- (i) For social work and psychological services the following shall be provided:
 - (1) office space for staff;
 - (2) office space for private interviewing and counseling for all family members; and
 - (3) workspace for testing, evaluation and counseling.
- (j) If prosthetics and orthotics services are provided, the following space shall be made available as necessary:
 - (1) work space for technician; and
 - (2) space for evaluation and fittings (with

provisions for privacy).

(k) If vocational therapy services are provided, the following space shall be made available as necessary:

- (1) office space for staff;
- (2) workspace for vocational services activities such as prevocational and vocational evaluation;
- (3) training space;
- (4) storage for equipment; and
- (5) counseling and placement space.
- (l) Recreational therapy space requirements include the following:
 - (1) activities space;
 - (2) storage for equipment and supplies;
 - (3) office space for staff; and
 - (4) access to male and female toilets.
- (m) The following space shall be provided for patient's dining, recreation and day areas:
 - (1) sufficient room for wheelchair movement and wheelchair dining seating;
 - (2) if food service is cafeteria type, adequate width for wheelchair maneuvers, queue space within the dining area (and not in a corridor) and a serving counter low enough to view food;
 - (3) for inpatients, a minimum of 25 square feet per bed;
 - (4) for outpatients participating in a day program or partial day program, 20 square feet when dining is a part of the program and 10 square feet when dining is not a part of the program;
 - (5) storage for recreational equipment and supplies, tables and chairs; and
 - (6) dining and activity areas with windows that are operable without the use of tools.
- (n) The patient dining, recreation and day area spaces must be provided with outdoor exposure.
- (o) A laundry shall be available and accessible for patients.

Statutory Authority G.S. 131E-79; 143B-165.

.2031 ADDITIONAL REQUIREMENTS FOR TRAUMATIC BRAIN INJURY PATIENTS

Inpatient rehabilitation facilities providing services to persons with traumatic brain injuries shall meet the requirements in this Subsection in addition to those identified in this Section.

- (1) Direct care nursing personnel staffing ratios established in Rule .2027 of this Section shall not be applied to nursing

services for traumatic brain injury patients in the inpatient rehabilitation facility or unit. The minimum nursing hours per traumatic brain injury patient in the unit shall be 6.5 nursing hours per patient day. At no time shall direct care nursing staff be less than two full time equivalents, one of which must be a registered nurse.

- (2) The inpatient rehabilitation facility or unit shall employ or provide by contractual agreements sufficient therapists licensed in North Carolina to provide a minimum of 4.5 hours of specific or combined rehabilitation therapy services per traumatic brain injury patient day.
- (3) Special facility or equipment needs for patients with traumatic brain injury, including a quiet room for therapy, specially designed wheelchairs, standing tables and computers with cognitive retraining software.

Statutory Authority G.S. 131E-79; 143B-165.

.2032 ADDITIONAL REQUIREMENTS FOR SPINAL CORD INJURY PATIENTS

Inpatient rehabilitation facilities providing services to persons with spinal cord injuries shall meet the requirements in this subsection in addition to those identified in this Section.

- (1) Direct care nursing personnel staffing ratios established in Rule .2027 of this Section shall not be applied to nursing services for spinal cord injury patients in the inpatient rehabilitation facility or unit. The minimum nursing hours per spinal cord injury patient in the unit shall be 6.0 nursing hours per patient day. At no time shall direct care nursing staff be less than two full time equivalents, one of which must be a registered nurse.
- (2) The inpatient rehabilitation facility or unit shall employ or provide by contractual agreements sufficient therapists licensed in North Carolina to provide a minimum of 4.0 hours of specific or combined rehabilitation therapy services per spinal cord injury patient day.
- (3) Special facility or special equipment needs of patients with spinal cord injury, including specially designed wheelchairs, tilt tables and standing tables.

Statutory Authority G.S. 131E-79; 143B-165.

.2033 DEEMED STATUS FOR INPATIENT REHABILITATION FACILITIES OR UNITS

(a) If an inpatient rehabilitation facility or unit with a comprehensive inpatient rehabilitation program is surveyed and accredited by the Joint Commission for the Accreditation of Health Care Organizations (JCAHO) or the Commission on Accreditation of Rehabilitation Facilities (CARF) and has been approved by the Department in accordance with Article 9 Chapter 131E of the North Carolina General Statutes, the Department deems the facility to be in compliance with Rules .2020 through .2033 of this Section.

(b) Deemed status may be provided only if the facility provides copies of survey reports to the Division. The JCAHO report must show that the facility was surveyed for rehabilitation services. The CARF report must show that the facility was surveyed for comprehensive rehabilitation services. The facility must sign an agreement (Memorandum of Understanding) specifying these terms.

(c) If an inpatient rehabilitation facility or unit with a comprehensive inpatient rehabilitation program is surveyed and accredited by the Commission on Accreditation of Rehabilitation Facilities for a traumatic brain injury program or a spinal cord injury program, the Department deems the facility to be in compliance with Rules .2031 and .2032 of this Section respectively.

(d) The facility shall be subject to inspection by representatives of the Department at any time to determine compliance with the rules.

(e) If the facility loses or does not renew its accreditation the Division must be notified in writing within 30 days.

Statutory Authority G.S. 131E-79.

SUBCHAPTER 3H - RULES FOR THE LICENSING OF NURSING HOMES

SECTION .0200 - LICENSURE

.0219 INSPECTIONS

(a) Any nursing home licensed by the Department may be inspected by an authorized representative of the Department at any time. Generally, inspections will be conducted between the hours of 8:00 a.m. and 6:00 p.m., Monday through Friday. However, complaint investigations shall be conducted at the most appropriate time for investigation.

ing allegations of the complaint.

(b) At the time of inspection, any authorized representative of the Department shall make his presence known to the Administrator or other person in charge who shall cooperate with the representative(s) and facilitate the inspection.

(c) ~~Inspections of medical records will be carried out in accordance with G.S. 131E-105.~~ Any nursing home licensed by the Department shall permit the Department's authorized agent to photocopy any writing or record in any recording medium which the agents have reviewed pursuant to G.S. 131E-105 and G.S. 131E-124, provided that the Department's authorized agents shall photocopy only those records necessary to document apparent possible non-compliance with federal or state nursing home laws, rules or regulations observed by the Department's authorized agent during an examination conducted pursuant to Paragraph (a) of this Rule.

(d) The facility Administrator shall provide and make available to representatives of the Department financial and statistical records required to verify compliance with G.S. 131E-111 and all rules contained in this Subchapter.

(e) Personnel records shall also be made available to the Department's authorized agent for the purpose of verifying employee credentials, qualifications, training and orientation. Other specific personnel records shall be made available to the Department's authorized agent for employees who may be the subject of an investigation of potential abuse or neglect of a patient or misappropriation of patient funds. These records will only be used to determine the validity of the allegation. No personnel records shall be made available that would violate an employee's confidentiality as determined by federal or state law.

(f) The Department shall mail a written report of the licensure survey or complaint investigation which shall include statements of any deficiencies cited to the facility within 10 working days from the date of the licensure survey or complaint investigation exit conference.

(g) The facility Administrator shall prepare a written plan of correction and mail it to the Department within 10 working days following receipt of any statement of deficiencies. The plan of correction shall be reviewed and accepted or rejected with written notice given to the Administrator within 10 working days of receipt by the Department.

Statutory Authority G.S. 131E-104.

SECTION .1100 - SPECIALIZED REHABILITATIVE AND HABILITATIVE SERVICES

.1150 DEFINITIONS

The following definitions shall apply to inpatient rehabilitation facilities or units only:

- (1) "Case management" means the coordination of services, for a given patient, between disciplines so that the patient may reach optional rehabilitation through the judicious use of resources.
- (2) "Comprehensive inpatient rehabilitation program" means a program for the treatment of persons with functional limitations or chronic disabling conditions who have the potential to achieve a significant improvement in activities of daily living. A comprehensive rehabilitation program utilizes a coordinated and integrated, interdisciplinary approach, directed by a physician, to assess patient needs and to provide treatment and evaluation of physical, psycho social and cognitive deficits.
- (3) "Inpatient rehabilitation facility or unit" means a free-standing facility or a unit (unit pertains to contiguous dedicated beds and spaced) within an existing licensed health service facility approved in accordance with G.S. 131E, Article 9 to establish inpatient, rehabilitation beds and to provide a comprehensive, inpatient rehabilitation program.
- (4) "Medical consultations" means consultations which the rehabilitation physician or the attending physician determine are necessary to meet the acute medical needs of the patient and do not include routine medical needs.
- (5) "Occupational therapist" means any individual licensed in the State of North Carolina in accordance with the provisions of G.S. 90, Article 18D.
- (6) "Occupational therapist assistant" means any individual licensed in the State of North Carolina in accordance with the provisions of G.S. 90, Article 18D.
- (7) "Psychologist" means a person licensed as a practicing psychologist in accordance with G.S. 90, Article 18A.
- (8) "Physiatrist" means a licensed physician who has completed a physical medicine and rehabilitation residency training

- program approved by the Accrediting Council of Graduate Medical Education or the American Osteopathic Association.
- (9) "Physical therapist" means any person licensed in the State of North Carolina in accordance with the provisions of G.S. 90, Article 18B.
 - (10) "Physical therapist assistant" means any person licensed in the State of North Carolina in accordance with the provisions of G.S. 90-270.24, Article 18B.
 - (11) "Recreational therapist" means a person certified by the North Carolina State Board of Therapeutic Recreation.
 - (12) "Rehabilitation nurse" means a registered nurse licensed in North Carolina, with specialized training and at least one year experience in physical rehabilitation nursing.
 - (13) "Rehabilitation nurse aide" is a nurse aide listed on the North Carolina Nurse Aide Registry, who also has therapy training and works under the supervision and direction of a licensed physical therapist in accordance with the provisions of G.S. 90, Article 18B.
 - (14) "Rehabilitation physician" means a physiatrist or a physician who specializes in neurology, physical medicine, or orthopaedics and has at least two years experience in physical rehabilitation care.
 - (15) "Social worker" means a person certified by the North Carolina Certification Board for Social Work in accordance with G.S. 90B-3.
 - (16) "Speech and language pathologist" means any person licensed in the State of North Carolina in accordance with the provisions of G.S. 90-292, Article 22.

Statutory Authority G.S. 131E-104.

.1151 PHYSICIAN REQUIREMENTS/ INPATIENT REHABILITATION FACILITIES OR UNITS

(a) In a rehabilitation facility or unit a physician shall participate in the provision and management of rehabilitation services and in the provision of medical services.

(b) In a rehabilitation facility or unit a rehabilitation physician shall be responsible for a patient's interdisciplinary treatment plan. Each patient's interdisciplinary treatment plan shall be developed and implemented under the supervision

of a rehabilitation physician.

(c) The intensity of a comprehensive rehabilitation program requires that there shall be direct patient contact by a physician daily while full interdisciplinary therapy services are being provided. If a rehabilitation physician is not available on a daily basis to the facility, the facility shall provide for the rehabilitation management of the patient by another physician with rehabilitation experience. In addition, oversight for the patient's interdisciplinary treatment plan shall be provided by a rehabilitation physician who visits patients weekly, makes recommendations for and approves the interdisciplinary treatment plan, and provides consultation as requested to the physician who is managing the patient on a daily basis.

(d) An inpatient rehabilitation facility or unit's contract or agreements with a rehabilitation physician shall require that the rehabilitation physician shall actively participate in individual case conferences or care planning sessions and shall review and sign discharge summaries and records. When patients are to be discharged to either another health care facility or a residential setting, the facility shall assure that the patient has been provided with a discharge plan which incorporates optimum utilization of community resources and post discharge continuity of care and services.

(e) The intensity of physician medical services and the frequency of regular contacts for medical care for the patient shall be determined by the patient's pathophysiologic needs.

(f) Where the attending physician of a patient in an inpatient rehabilitation facility or unit orders medical consultations for the patient, such consultations should be provided by qualified physicians within 24 hours of the physician's order. In order to achieve this result, the contracts or agreements between inpatient rehabilitation facilities or units and medical consultants shall require that such consultants render the requested medical consultation within 24 hours.

(g) An inpatient rehabilitation facility or unit shall have a mechanism for determining the qualifications of the physicians rendering physical rehabilitation services in the facility or unit.

Statutory Authority G.S. 131E-104.

.1152 ADMISSION CRITERIA FOR INPATIENT REHABILITATION FACILITIES OR UNITS

(a) The facility shall have written criteria for admission to the inpatient rehabilitation facility or

unit. A description of programs or services for screening the suitability of a given patient for placement shall be available to staff and referral sources.

(b) For patients found unsuitable for admission to the inpatient rehabilitation facility or unit, there shall be documentation of the reasons.

(c) Within 48 hours of admission a preliminary assessment shall be completed by members of the interdisciplinary team to insure the appropriateness of placement and to identify the immediate needs of the patient.

(d) Patients admitted to an inpatient rehabilitation facility or unit must be able to tolerate a minimum of three hours of rehabilitation therapy, five days a week, including at least two of the following rehabilitation services: physical therapy, occupational therapy or speech therapy.

(e) Patients admitted to an inpatient rehabilitation facility or unit must be medically stable, have a prognosis indicating a progressively improved medical condition and have the potential for increased independence.

Statutory Authority G.S. 131E-104.

.1153 COMPREHENSIVE INPATIENT REHABILITATION EVALUATION

(a) A comprehensive, inpatient rehabilitation evaluation is required for each patient admitted to an inpatient rehabilitation facility or unit. At a minimum this evaluation shall include the reason for referral, a summary of the patient's clinical condition, functional strengths and limitations, and indications for specific services. This evaluation shall be completed within three days.

(b) Each patient shall be evaluated by the interdisciplinary team to determine the need for any of the following services: medical, dietary, occupational therapy, physical therapy, prosthetics and orthotics, psychological assessment and therapy, therapeutic recreation, rehabilitation medicine, rehabilitation nursing, therapeutic counseling or social work, vocational rehabilitation evaluation and speech-language pathology.

Statutory Authority G.S. 131E-104.

.1154 COMPREHENSIVE INPATIENT REHABILITATION INTERDISCIPLINARY TREAT/ PLAN

(a) The interdisciplinary treatment team shall develop an individual treatment plan for each patient within seven days after admission. The

plan shall include evaluation findings and information about the following:

- (1) prior level of function;
- (2) current functional limitations;
- (3) specific service needs;
- (4) treatment, supports and adaptations to be provided;
- (5) specified treatment goals;
- (6) disciplines responsible for implementation of separate parts of the plan; and
- (7) anticipated time frames for the accomplishment of specified long-term and short-term goals.

(b) The treatment plan shall be reviewed by the team at least every other week. Documentation of each review shall include progress toward defined goals and identification of any changes in the treatment plan.

(c) The treatment plan shall include provisions for all of the services identified as needed for the patient in the comprehensive inpatient, rehabilitation evaluation completed in accordance with Rule .2203 of this Subchapter.

(d) Each patient shall have a designated case manager who is responsible for the coordination of the patient's individualized treatment plan. The case manager is responsible for promoting the program's responsiveness to the needs of the patient and should participate in all team conferences concerning the patient's progress toward the accomplishment of specified goals. Any of the professional staff involved in the patient's care may be the designated case manager for one or more cases, or the director of nursing or social worker may accept the coordination responsibility for the patients.

Statutory Authority G.S. 131E-104.

.1155 DISCHARGE CRITERIA FOR INPATIENT REHABILITATION FACILITIES OR UNITS

(a) Discharge planning shall be an integral part of the patient's treatment plan and shall begin upon admission to the facility. After established goals have been reached, or a determination has been made that care in a less intensive setting would be appropriate, or that further progress is unlikely, the patient shall be discharged to an appropriate setting. Other reasons for discharge may include an inability or unwillingness of patient or family to cooperate with the planned therapeutic program or medical complications that preclude a further intensive rehabilitative effort. The facility shall

involve the patient, family, staff members and referral sources in discharge planning.

(b) The case manager shall facilitate the discharge or transfer process in coordination with the facility social workers.

(c) If a patient is being referred to another facility for further care, appropriate documentation of the patient's current status shall be forwarded with the patient. A formal discharge summary shall be forwarded within 48 hours following discharge and shall include the reasons for referral, the diagnosis, functional limitations, services provided, the results of services, referral action recommendations and activities and procedures used by the patient to maintain and improve functioning.

Statutory Authority G.S. 131E-104.

.1156 COMPREHENSIVE REHABILITATION PERSONNEL ADMINISTRATION

(a) The facility shall have qualified staff members, consultants and contract personnel to provide services to the patients admitted to the inpatient rehabilitation facility or unit.

(b) Personnel shall be employed or provided by contractual agreement in sufficient types and numbers to meet the needs of all patients admitted for comprehensive rehabilitation.

(c) Written agreements shall be maintained by the facility when services are provided by contract on an ongoing basis.

Statutory Authority G.S. 131E-104.

.1157 COMPREHENSIVE INPATIENT REHABILITATION PROGRAM STAFFING REQS.

(a) The staff of the inpatient rehabilitation facility or unit shall include at a minimum:

(1) The inpatient rehabilitation facility or unit shall be supervised by a rehabilitation nurse. The facility shall identify the nursing skills necessary to meet the needs of the rehabilitation patients in the unit and assign staff qualified to meet those needs.

(2) The minimum nursing hours per patient in the rehabilitation unit shall be 5.5 nursing hours per patient day. At no time shall direct care nursing staff be less than two-full time equivalents, one of which must be a registered nurse.

(3) The inpatient rehabilitation unit shall

employ or provide by contractual agreements sufficient therapists, licensed in North Carolina, to provide a minimum of three hours of specific or combined rehabilitation therapy services per patient day.

(4) Physical therapy assistants and occupational therapy assistants shall be licensed or certified and shall be supervised on-site by licensed physical therapists or licensed occupational therapists.

(5) Rehabilitation aides shall have documented therapy training, be supervised on-site by licensed physical therapists or licensed occupational therapists, and be regularly assigned to the unit.

(6) Hours of service by rehabilitation nurse aides shall be counted toward nursing hours and not toward required therapy hours unless the rehabilitation nurse aide is working under the direct supervision of a licensed therapist and the rehabilitation nurse aide has had training as defined in Rule .1158 of this Section. Rehabilitation nurse aide hours counted toward required therapy hours shall not also be counted as required nursing hours. Hours of service by rehabilitation nurse aides in areas of the facility other than the rehabilitation unit shall not be counted toward the 5.5 hour minimum nursing requirements described for the rehabilitation unit.

(b) Additional personnel shall be provided as required to meet the needs of the patient, as defined in the comprehensive, inpatient rehabilitation evaluation.

Statutory Authority G.S. 131E-104.

.1158 STAFF TRAINING FOR INPATIENT REHABILITATION FACILITIES OR UNIT

Prior to the provision of care, all rehabilitation personnel, excluding physicians, assigned to the rehabilitation unit shall be provided training or shall provide documentation of training that includes at a minimum the following:

- (1) active and passive range of motion;
- (2) assistance with ambulation;
- (3) transfers;
- (4) maximizing functional independence;

- (5) the psycho-social needs of the rehabilitation patient;
- (6) the increased safety risks of rehabilitation training (including falls and the use of restraints);
- (7) proper body mechanics;
- (8) nutrition, including dysphagia and restorative eating;
- (9) communication with the aphasic and hearing impaired patient;
- (10) behavior modification; and
- (11) bowel and bladder training.

Statutory Authority G.S. 131E-104.

**.1159 EQUIPMENT REQS/
COMPREHENSIVE INPATIENT
REHABILITATION PROGRAMS**

(a) Each discipline must be provided the necessary equipment and treatment methods to achieve the short and long-term goals specified in the comprehensive inpatient rehabilitation interdisciplinary treatment plans for patients admitted to these facilities or units.

(b) Each patient's needs for a standard wheelchair or a specially designed wheelchair or additional devices to allow safe and independent mobility within the facility shall be met.

(c) Special physical therapy and occupational therapy equipment for use in fabricating positioning devices for beds and wheelchairs shall be provided, including splints, casts, cushions, wedges and bolsters.

(d) Physical therapy devices shall be provided, including a mat table, parallel bars and sliding boards and special adaptive bathroom equipment.

Statutory Authority G.S. 131E-104.

**.1160 PHYSICAL FACILITY REQS/
INPATIENT REHABILITATION
FACILITIES OR UNITS**

(a) The inpatient rehabilitation facility or unit shall be in a designated area and shall be used for the specific purpose of providing a comprehensive, inpatient rehabilitation program.

(b) The floor area of a single bedroom shall be sufficient for the patient or the staff to easily transfer the patient from the bed to a wheelchair and to maneuver a 180-degree turn with a wheelchair on at least one side of the bed.

(c) The floor area of a multi-bed bedroom shall be sufficient for the patient or the staff to easily transfer the patient from the bed to a wheelchair and to maneuver a 180-degree turn with a

wheelchair between beds.

(d) Each patient room shall meet the following requirements:

- (1) Maximum room capacity of no more than four patients;
- (2) Windows operable without the use of tools;
- (3) A nurse call system designed to meet the special needs of rehabilitation patients;
- (4) In single and two-bed rooms with private toilet room, the lavatory may be located in the toilet room;
- (5) A wardrobe or closet for each patient which is wheelchair accessible and arranged to allow the patient to access the contents;
- (6) A chest of drawers or built-in drawer storage with mirror above, which is wheelchair accessible; and
- (7) A bedside table for toilet articles and personal belongings.

(e) Space for emergency equipment such as resuscitation carts shall be provided and shall be under direct control of the nursing staff, in close proximity to the nurse's station and out of traffic.

(f) Patients' bathing facilities shall meet the following specifications:

- (1) There shall be at least one shower stall or one bathtub for each 15 beds not individually served. Each tub or shower shall be in an individual room or privacy enclosure which provides space for the private use of the bathing fixture, for drying and dressing and for a wheelchair and an assisting attendant.
- (2) Showers in central bathing facilities shall be at least four foot square without curbs and designed to permit use by a wheelchair patient.

(g) Patients' toilet rooms and lavatories shall meet the following specifications:

- (1) The size of toilets shall permit a wheelchair, a staff person and appropriate wheel-to-water closet transfers.
- (2) A lavatory in the room must permit wheelchair access.
- (3) Lavatories serving patients shall:
 - (A) allow wheelchairs to extend under the lavatory; and
 - (B) have water supply spout mounted so that its discharge point is a minimum of five inches above the rim of the fixture.

- (4) Lavatories used by patients and by staff shall be equipped with blade-operated supply valves.

(h) The space provided for physical therapy, occupational therapy and speech therapy by all inpatient rehabilitation facilities or units may be shared but must, at a minimum, include:

- (1) office space for staff;
- (2) office space for speech therapy evaluation and treatment;
- (3) waiting space;
- (4) training bathroom which includes toilet, lavatory and bathtub;
- (5) gymnasium or exercise area;
- (6) work area such as tables or counters suitable for wheelchair access;
- (7) treatment areas with available privacy curtains or screens;
- (8) an activities of daily living training kitchen with sink, cooking top, refrigerator and counter surface for meal preparation;
- (9) storage for clean linens, supplies and equipment;
- (10) janitor's closet accessible to the therapy area with floor receptor or service sink and storage space for housekeeping supplies and equipment, one closet or space may serve more than one area of the inpatient rehabilitation facility or unit; and
- (11) hand washing facilities.

(i) For social work and psychological services the following shall be provided:

- (1) office space for staff;
- (2) office space for private interviewing and counseling for all family members; and
- (3) workspace for testing, evaluation and counseling.

(j) If prosthetics and orthotics services are provided, the following space shall be made available as necessary:

- (1) work space for technician; and
- (2) space for evaluation and fittings (with provisions for privacy).

(k) If vocational therapy services are provided, the following space shall be made available as necessary:

- (1) office space for staff;
- (2) workspace for vocational services activities such as prevocational and vocational evaluation;
- (3) training space;
- (4) storage for equipment; and

- (5) counseling and placement space.

(l) Recreational therapy space requirements include the following:

- (1) activities space;
- (2) storage for equipment and supplies;
- (3) office space for staff; and
- (4) access to male and female toilets.

(m) The following space shall be provided for patient's dining, recreation and day areas:

- (1) sufficient room for wheelchair movement and wheelchair dining seating;
- (2) if food service is cafeteria type, adequate width for wheelchair maneuvers, queue space within the dining area (and not in a corridor) and a serving counter low enough to view food;
- (3) for inpatients, a minimum of 25 square feet per bed;
- (4) for outpatients participating in a day program or partial day program, 20 square feet when dining is a part of the program and 10 square feet when dining is not a part of the program;
- (5) storage for recreational equipment and supplies, tables and chairs; and
- (6) dining and activity areas with windows that are operable without the use of tools.

(n) The patient dining, recreation and day area spaces must be provided with outdoor exposure.

(o) A laundry shall be available and accessible for patients.

Statutory Authority G.S. 131E-104.

.1161 ADDITIONAL REQUIREMENTS FOR TRAUMATIC BRAIN INJURY PATIENTS

Inpatient rehabilitation facilities providing services to persons with traumatic brain injuries shall meet the requirements in this Rule in addition to those identified in this Section.

- (1) Direct care nursing personnel staffing ratios established in Rule .1157 of this Section shall not be applied to nursing services for traumatic brain injury patients in the inpatient rehabilitation facility or unit. The minimum nursing hours per traumatic brain injury patient in the unit shall be 6.5 nursing hours per patient day. At no time shall direct care nursing staff be less than two full time equivalents, one of which must be a

- registered nurse.
- (2) The inpatient rehabilitation facility or unit shall employ or provide by contractual agreements sufficient therapists licensed in North Carolina to provide a minimum of 4.5 hours of specific or combined rehabilitation therapy services per traumatic brain injury patient day.
- (3) Special facility or equipment needs of patients with traumatic brain injury, including a quiet room for therapy, specially designed wheelchairs, standing tables and computers with cognitive retraining software.

Statutory Authority G.S. 131E-104.

.1162 ADDITIONAL REQUIREMENTS FOR SPINAL CORD INJURY PATIENTS

Inpatient rehabilitation facilities providing services to persons with spinal cord injuries shall meet the requirements in this Rule in addition to those identified in this Section.

- (1) Direct care nursing personnel staffing ratios established in Rule .1157 of this Section shall not be applied to nursing services for spinal cord injury patients in the inpatient rehabilitation facility or unit. The minimum nursing hours per spinal cord injury patient in the unit shall be 6.0 nursing hours per patient day. At no time shall direct care nursing staff be less than two full time equivalents, one of which must be a registered nurse.
- (2) The inpatient rehabilitation facility or unit shall employ or provide by contractual agreements sufficient therapists licensed in North Carolina to provide a minimum of 4.0 hours of specific or combined rehabilitation therapy services per spinal cord injury patient day.
- (3) Special facility or equipment needs of patients with spinal cord injury, including specially designed wheelchairs, tilt tables and standing tables.

Statutory Authority G.S. 131E-104.

.1163 DEEMED STATUS FOR INPATIENT REHABILITATION FACILITIES OR UNITS

(a) If an inpatient rehabilitation facility or unit with a comprehensive inpatient rehabilitation program is surveyed and accredited by the Joint

Commission for the Accreditation of Health Care Organizations (JCAHO) or the Commission on Accreditation of Rehabilitation Facilities (CARF), and has been approved by the Department in accordance with G.S. 131E, Article 9, the department deems the facility to be in compliance with Rules .1150 through .1163 of this Section.

(b) Deemed status may be provided only if the facility provides copies of survey reports to the Division. The JCAHO report must show that the facility was surveyed for rehabilitation services. The CARF report must show that the facility was surveyed for comprehensive rehabilitation services. The facility must sign an agreement (Memorandum of Understanding) specifying these terms.

(c) If an inpatient rehabilitation facility or unit with a comprehensive inpatient rehabilitation program is surveyed and accredited by the Commission on Accreditation of Rehabilitation Facilities for a traumatic brain injury program or a spinal cord injury program, the Department deems the facility to be in compliance with Rules .1161 and .1162 of this Section respectively.

(d) The facility shall be subject to inspection by representatives of the Department at any time to determine compliance with the rules.

(e) If the facility loses or does not renew its accreditation the Division must be notified in writing within 30 days.

Statutory Authority G.S. 131E-104.

SECTION .1200 - ACTIVITIES AND RECREATION

.1204 DESIGNATED PERSON

The facility administrator shall designate an activities and recreation services director who shall be under the administrative supervision of the administrator, ~~be and~~ responsible for the activities and recreation services for all patients and who shall have appropriate management authority residents. ~~The director shall be an individual eligible for a N. C. license as an occupational therapist or assistant therapist under G.S. 90-270, or eligible for N.C. certification as a recreation therapist or assistant therapist under G.S. 90C-9, or someone who has completed an approved 36 hour or longer course in activities program management, or an individual receiving at least four hours of consultation per month from a qualified occupational therapist or recreation therapist. Any director hired on or after the effective amended date of this Rule shall be a qualified professional who:~~

- (1) Is a therapeutic recreation specialist or therapeutic recreation assistant certified by the North Carolina State Board of Therapeutic Recreation Certification pursuant to G.S. 90C-9 or is eligible for certification as a therapeutic recreation specialist by a recognized accrediting body; or
- (2) Has two years of experience in a social or recreation program within the last five years, one of which was full-time in a resident activities program in a health care setting; or
- (3) Is a qualified occupational therapist or occupational therapy assistant licensed as such by the North Carolina Board of Occupational Therapy pursuant to G.S. 90-270.70; or
- (4) Is certified by the National Certification Council for Activity Professionals; or
- (5) Has completed an activities training course approved by the State.

Authority G.S. 131E-104; G.S. 143B-165(10); 42 U.S.C. 1396; 42 C.F.R. 483.15 (f).

SUBCHAPTER 3L - THE LICENSING OF HOME CARE AGENCIES

SECTION .0900 - GENERAL

.0903 APPLICATION FOR AND ISSUANCE OF LICENSE

(a) An application for the operation of a home care agency shall be submitted to the Department prior to a license being issued. The home care agency shall establish, maintain and make available for inspection such documents, records and policies as required in this Section and statistical data sufficient to complete the licensure application and upon request of the Department, to submit an annual data report, including all information required by the Department.

(b) The Department shall issue a license to each home care agency. Whether initial and ongoing licensure inspections include all premises of a home care agency and whether they include on-site inspections shall be at the discretion of the Department. Initial licensure shall be for a period of not more than one year. Unless the Department takes adverse action on a license as outlined in G.S. 131E-139, subsequent licensure shall extend for a minimum of one year and a maximum of three years, at the discretion of the Department. Each license shall expire at midnight on the expi-

ration date on the license and is renewable upon application.

(c) The license shall be posted in a prominent location accessible to public view within the premises.

(d) The license shall be issued for the premises and persons named in the application and shall not be transferable. The name and street address under which the agency operates shall appear on the license. The license shall reflect the services provided by the home care agency. For a home health agency, the license shall also reflect the counties in which the agency is authorized to provide home health services.

(e) Prior to change of ownership or the establishment of a new home health agency, the agency must be in compliance with all the applicable statutes, rules and policies established under G.S. 131E, Article 9.

(f) Prior to change of ownership of a home care agency, the agency must notify the department.

(g) Any agency adding a new service category as outlined in G.S. 131E-136 (3)(a)-(f) shall notify the department in writing prior to the provision of that service to any clients. The Department shall approve the added service prior to its implementation.

(h) A home care agency shall notify the Department in writing if it discontinues or is unable to provide for a period of six continuous months any service category as outlined in G.S. 131E-136(3)(a)-(f) that is listed on the agency's license.

Statutory Authority G.S. 131E-140.

SECTION .1100 - SCOPE OF SERVICES

.1110 SUPERVISION AND COMPETENCY OF IN-HOME AIDES OR OTHER PERSONNEL

(a) In-home aides or other allied health personnel subject to occupational licensing laws shall meet competency testing requirements consistent with the appropriate occupational licensing laws and regulations. These individuals shall be supervised by an appropriate health care professional.

(b) In-home aides or other allied health personnel who are not subject to occupational licensing laws shall only be assigned duties for which they have demonstrated competency. These individuals shall be supervised by an appropriate professional or a competent, appropriately trained paraprofessional who is supervised by an appropri-

ate professional.

(c) The appropriate supervisor as specified in Paragraphs (a) or (b) in this Rule shall supervise an in-home aide or other allied health personnel by making a supervisory visit to each client's place of residence at least every three months, with or without the in-home aide's or other allied health personnel's presence, and at least annually, while the in-home aide or other allied health personnel is providing care to each client ~~to access the care and services being provided.~~

(d) A quarterly visit to the home of each client, by the appropriate professional supervisor as specified in Paragraphs (a) and (b) in this Rule will meet the minimum requirement for supervision of any and all in-home aides and any and all other allied health personnel who have provided service to the client within the quarter. The supervisory visit will include review of the client's general condition, progress and response to the services provided by the in-home aide or other allied health personnel. When follow-up supervisory activity is needed with the in-home aide or other allied health personnel to address any problems identified during the supervisory visit, follow-up will be provided directly by the supervising professional or referred to an appropriate professional or paraprofessional supervisor as specified in Paragraphs (a) and (b) in this Rule.

(e) An appropriate professional conducting supervisory visits for the in-home aide or other allied health personnel may simultaneously conduct the quarterly case review as required in Rule .1201 (c) of this Subchapter.

~~(d)(f)~~ Documentation of supervisory visits shall be maintained in the agency's records.

~~(e)(g)~~ The home care agency must have continuous supervision available, on-site where services are provided when necessary, during the hours that in-home aide or other allied health services are provided.

Statutory Authority G.S. 131E-140.

SECTION .1200 - CASE REVIEW AND PLAN OF CARE

.1202 CASE REVIEW AND PLAN OF CARE

(a) The plan of care is established in collaboration with the client and incorporated in the service record. The plan of care must be reviewed at least every three months by the appropriate agency professional and revised as needed based on the client's needs. If physician orders are needed for

the services, a home care health professional shall notify the physician of changes in the client's condition which indicate the need for altering the plan of care or for terminating services. Based upon the findings of the client assessment, the plan of care shall include as a minimum:

- (1) type of service(s) required;
- (2) frequency of visits or hours of service;
- (3) activity restrictions;
- (4) safety measures; and
- (5) service objectives and goals.

(b) Where applicable, the plan of care includes, but is not limited to:

- (1) equipment required;
- (2) functional limitations;
- (3) rehabilitation potential;
- (4) diet and nutritional needs;
- (5) medications and treatments;
- (6) specific therapies;
- (7) pertinent diagnoses; and
- (8) prognosis.

(c) So long as ongoing hands-on care is being provided to a client, a registered nurse, social worker or other appropriate professional shall visit the client in his residence at least quarterly to ~~access~~ assess the client's general condition, progress and response to services provided. Documentation of these visits shall be maintained in the client's service record.

(d) If the same professional is assigned responsibility for two or more of the following, these functions may be conducted during the same home visit:

- (1) quarterly assessment of client's condition and response;
- (2) provision of regularly scheduled professional services; or
- (3) supervision of in-home aide or other allied health personnel.

Statutory Authority G.S. 131E-140.

Notice is hereby given in accordance with G.S. 150B-21.2 that the Social Services Commission intends to amend rules cited as 10 NCAC 3J .3302, 3420, .3425.

The proposed effective date of this action is June 1, 1993.

The public hearing will be conducted at 10:00

a.m. on March 3, 1993 at the Albemarle Building, Room 943-J, 325 N. Salisbury Street, Raleigh, NC 27603.

Reason for Proposed Action: To amend rules to incorporate changes recommended by the Jail Standards Task Force.

Comment Procedures: Comments may be presented in writing any time before or at the public hearing or orally at the hearing. Time limits for oral remarks may be imposed by the Commission Chairman. Any person may request copies of these Rules by calling or writing to Don Bowen, Division of Social Services, 325 N. Salisbury St., Raleigh, NC 27603 (919) 733-3055.

CHAPTER 3 - FACILITY SERVICES

SUBCHAPTER 3J - THE OPERATION OF LOCAL CONFINEMENT FACILITIES

SECTION .3300 - REPORTS

.3302 REPORT OF DEATH

The report of an inmate death required by G.S. 153A-225 shall be submitted to the Branch within five days.

Statutory Authority G.S. 153A-221.

SECTION .3400 - STANDARDS FOR NEW JAIL DESIGN AND CONSTRUCTION

.3420 ADDITIONAL SECURITY REQ/"INST OCCUPANCY-RESTRAINED" JAILS

Each jail that is required to meet the "Institutional Occupancy - Restrained" requirements of the North Carolina State Building Code shall also meet the following security requirements:

- (1) Each jail shall have a separate entrance for inmates, and all entrances to the jail shall be controlled and visually and audibly monitored.
- (2) Each jail shall have security perimeter walls that are provided with a separate and complete security vestibule, sally port, security window, security door, or other security device at each wall opening.
- (3) Clothing or towel hooks shall not be used.

Statutory Authority G.S. 153A-221.

.3425 STANDARDS FOR DAYROOMS

Each dayroom shall have:

- (1) a separate and complete security vestibule at its entrance;
- (2) a minimum floor space of 105 square feet or 35 square feet per inmate, whichever is greater;
- (3) sufficient seating ~~and tables for each inmate for the capacity of the unit;~~
- (4) sufficient table space for the capacity of the unit unless each inmate has unrestricted access to a cell with a table and chair, in which case the dayroom shall have sufficient table space for 70 percent of the capacity of the unit;
- (5) ~~(4)~~ a telephone jack or other telephone arrangement provided within the dayroom;
- (6) ~~(5)~~ a way for officers to observe the entire area; and
- (7) ~~(6)~~ one toilet per eight inmates unless the inmates have unrestricted access to a cell with a toilet, sink, drinking fountain and security mirror.

Statutory Authority G.S. 153A-221.

Notice is hereby given in accordance with G.S. 150B-21.2 that the Social Services Commission/Division of Social Services intends to amend rules cited as 10 NCAC 41E .0504, .0506, .0511, .0514, .0603; 41G .0507, .0705, .0707; 41I .0102 - .0103, .0303 - .0308, .0401 - .0402, .0409 - .0410; 41Q .0201; and repeal rules cited as 10 NCAC 41I .0201 - .0202, .0204.

The proposed effective date of this action is July 1, 1993.

The public hearing will be conducted at 10:00 a.m. on March 3, 1993 at the Albemarle Building, Room 943-J, 325 N. Salisbury Street, Raleigh, N.C.

Reason for Proposed Action:

10 NCAC 41E .0504, .0506, .0511, .0514, .0603; 41G .0507, .0705, .0707; 41Q .0201 - These Rules

are being proposed for amendment to be in compliance with Title VI of the Civil Rights Act, Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990 to prohibit discrimination in hiring staff with communicable diseases. Additionally, facilities would be required to routinely apply infection control procedures which include universal precautions specified by the Centers for Disease Control.

10 NCAC 411 .0102 - .0103, .0303 - .0308, .0401 - .0402, .0409 - .0410 - These Rules are being proposed for amendment in order to enhance the quality and consistency of child protective services throughout the State. The amended rules specify that reports of dependency shall be accepted and investigated. Requirements for the completion of a thorough investigation and for the provisional services are strengthened. A structured risk assessment is required for substantiated cases. Portions of some existing rules are moved and rearranged so that the content is better organized.

10 NCAC 411 .0201 - .0202, .0204 - These Rules are being proposed for repeal because they do not pertain to screening, investigation, and treatment in child protective services. Similar requirements are contained in child care licensing regulations, and these requirements do not impact on the provision of child protective services.

Comment Procedures: Comments may be presented in writing anytime before or at the public hearing or orally at the hearing. Time limits for oral remarks may be imposed by the Commission Chairman. Any person may request copies of these Rules by calling or writing to Don Bowen, Division of Social Services, 325 N. Salisbury St., Raleigh, NC 27603, (919) 733-3055.

Editor's Note: The italic text shown in 10 NCAC 41E .0514 are amendments proposed in the Register, Volume 7, Issue 15. The Social Services Commission took action on this Rule at their December 1992 meeting; however, the rule will not be before the Rules Review Commission until January 1993.

CHAPTER 41 - CHILDREN'S SERVICES

SUBCHAPTER 41E - LICENSING OF GROUP HOMES FOR CHILDREN

SECTION .0500 - MINIMUM STANDARDS FOR PRIVATE AND PUBLIC GROUP HOMES

.0504 STAFF

(a) Executive Director.

(1) Qualifications

- (A) The executive director shall have ability as an administrator and the training and experience that qualifies him for his job responsibilities;
- (B) The executive director shall be at least 21 years of age.

(2) Functions. The executive director shall be responsible for the general management and administration of the agency in accordance with licensing requirements and policies of the governing body. The functions of the Director or his designee shall include but not be limited to the following:

- (A) Interpretation of licensing standards and established child care standards to the board;
- (B) Initiating and carrying out a sound program of residential child care in accordance with established standards and as approved by the board of directors;
- (C) Preparing the group home budget with the assistance of those of his staff whose responsibilities or abilities qualify them to help;
- (D) Presenting the budget to the board or governing authority for approval;
- (E) Employing and discharging all members of his staff;
- (F) Holding staff meetings at regular intervals and discussing plans and policies with his staff;
- (G) Organizing and promoting a program of education for the continued training and development of the staff;
- (H) Supervision of the group home staff;
- (I) Conducting with each staff member an annual evaluation regarding his job performance. A written copy of each evaluation shall be kept on file;
- (J) Establishing and maintaining good working relationships with other social services agencies in the community, and assuming responsibility for the interpretation of the home's program;

- (K) Administration, admissions and discharges of children and the child care program with such delegation of actual work in these areas as is appropriate.
- (b) Professional Services Staff.
 - (1) Each group home shall have available those professional services which assure quality care for children and provide planning services with their families, including the following:
 - (A) doctors,
 - (B) dentists,
 - (C) nurses,
 - (D) social workers,
 - (E) psychologists,
 - (F) psychiatrists,
 - (G) nutritionists,
 - (H) recreation workers,
 - (I) teachers.
 - (2) Services may be purchased on an individual basis or provided by members of the home staff, or obtained through public or private programs.
 - (3) Professional workers shall have those special qualifications that enable them to work with children.
- (c) Child Care Staff, Counselors, Teaching Parents or Houseparents.
 - (1) Qualifications
 - (A) shall be at least 18 years old;
 - (B) shall be mentally and physically fit as evidenced by the following:
 - (i) a physical examination completed by a physician, physician's assistant, or nurse practitioner, hereafter referred to as "licensed medical provider", prior to assuming the position and every other year thereafter, ~~at the time of relicensing~~; The ~~cost~~ costs of physical examinations which are required for continuing employment are to be paid by the group home;
 - (ii) a health questionnaire completed by the individual staff on each year when a physical examination is not required;
 - (iii) a TB skin test prior to assuming the position, and annually thereafter ~~at the time of relicensing~~, except when the ~~physician, physician's assistant or nurse practitioner~~ licensed medical provider advises against it;

- (C) shall have education, training and experience sufficient to equip them for the duties assigned;
- (D) shall not be persons who have been found to have neglected or abused a child by any agency duly authorized by law to investigate allegations of abuse or neglect.
- (2) Duties
 - (A) shall have responsibility for the day to day activities of the home and care of the children.
 - (B) shall assume those duties assigned them in accordance with any specialized program of the home.
- (d) Clerical Staff. Each home shall have adequate clerical services to keep correspondence, records, bookkeeping and files current and in good order.

Statutory Authority G.S. 131D-10.5; 143B-153.

.0506 SOCIAL SERVICES: ADMISSIONS: POLICIES: PROCEDURES

- (a) Admission policies shall be clearly defined in writing and shall be reviewed annually and changed as needs and conditions in the community change.
- (b) Admission procedures shall be in keeping with the stated policies of the group home, and admissions shall be limited to those children for whom the home is qualified by staff, program, facilities, and services to give adequate care.
- (c) In group homes other than shelter homes, the following information and materials shall be obtained prior to admission:
 - (1) Verification that the person making application for placement has the authority to do so;
 - (2) A completed application for services signed by the parents, legal custodian or agency with the authority to place the child;
 - (3) A social summary which includes background information on the child, his family, his presenting problems and current circumstances which will enable the group home staff to determine if the child's needs are consistent with the home's program of care;
 - (4) A written placement agreement signed by authorized persons which includes the services to be provided by the group home, and the responsibilities of the parents and legal custodian.

indicating who will be responsible for the child's financial and medical needs, fees to be paid, consent for emergency medical treatment, length of stay, visitation expectations and limitations between the child and his family, and the schedule of review conferences;

- (5) Documentation of a physical examination as specified in Rule .0514(a)(1) of this Subchapter.

(d) In a group home that has a written agreement with a department of social services to provide residential child care exclusively for children for whom that department of social services has placement authority, the group home or department of social services must comply with all provisions of Paragraph (c) of this Rule. Specific responsibilities for social services in Paragraph (c) of this Rule shall be defined in the written agreement.

(e) In shelter homes the following information and materials shall be obtained;

- (1) Determination of custody within 72 hours of admission with the legal custodian participating in the admission procedure;
- (2) A written consent for placement signed by the legal custodian within 72 hours after admission;
- (3) A social summary which includes background information on the child, his family, his presenting problems, and current circumstances within two weeks of admission;
- (4) Documentation of a physical as specified in Rule .0514(a)(1) of this Subchapter within ~~one week~~ two weeks of admission.

(f) In a shelter home that has a written agreement with a department of social services to provide residential child care exclusively for children for whom the Department of social services has placement authority, the shelter home or department of social services must comply with all provisions of Paragraph (e) of this Rule. Specific responsibilities for social services in Paragraph (e) of this Rule shall be defined in the written agreement.

(g) In group homes other than shelter homes, a written plan of care for each child shall be developed at the time of admission, and reviewed at least semiannually by the group home staff, parents, and legal custodian and the child, when appropriate. In shelter homes the written plan of care shall be developed within 72 hours of

admission and reviewed every other week by the group home staff, parents and legal custodian, and the child, when appropriate. This plan of care shall include:

- (1) The expectations and goals to be reached by the child while in care;
- (2) The tasks and activities of the group home staff to meet the needs of the child while in care;
- (3) The tasks and activities of the parents and legal custodian to meet the needs of the child while in care.

Statutory Authority G.S. 131D-10.5; 143B-153.

.0511 SOCIAL SERVICES: RECORDS AND REPORTS

(a) Child's Case Record.

- (1) In group homes other than shelter homes a complete and confidential case record shall be maintained which shall contain the following:

- (A) Documentation of placement authority;
- (B) Social summary;
- (C) Completed application for services;
- (D) Written placement agreement;
- (E) Written plan of care including the semiannual reviews;
- (F) Documentation that verifies the child's birth;
- (G) Preadmission physical examination, and any subsequent medical information such as hospitalizations, significant illnesses, dental examinations, etc.;
- (H) Immunization record (this record must be obtained within 30 days of a child's admission to the home);
- (I) A discharge summary with the date and circumstances of discharge.

- (2) In a group home that has a written agreement with a department of social services to provide residential child care exclusively for children for whom the Department of social services has placement authority, specific responsibilities for children's records in Subparagraph (a)(1) of this Rule must be identified in the written agreement.

- (3) In shelter homes, a confidential case record shall be maintained which shall contain the following:

- (A) A written plan of care developed within 72 hours of admission;

- (B) Placement consent, signed by the person or agency with placement authority within 72 hours of a child's admission;
- (C) Report of the medical examination if a child remains in care longer than ~~one week~~ two weeks;
- (D) Social summary, with information indicating that the group home's program of care is appropriate if the child remains in care longer than two weeks.

(4) In a shelter home that has a written agreement with a department of social services to provide residential child care exclusively for children for whom the Department of social services has placement authority specific responsibilities for children's records in Subparagraph (a)(3) of this Rule must be identified in the written agreement.

(b) Shelter Log. In shelter homes, a log shall be maintained that lists at a minimum the following:

- (1) child's name, age, sex, and race;
- (2) legally responsible parent, relative, or agency representative's name and telephone number;
- (3) date of admission;
- (4) date of discharge.

(c) Staff Medical Reports. ~~(4)~~ A medical report shall be completed bi-annually prior to employment and every other year thereafter and maintained on each full and part-time child caring staff, any relatives residing in the home, and any person responsible for preparing or serving food in the home.

~~(2) Staff hired shall have a physical examination completed by a physician, physician's assistant or nurse practitioner prior to employment and a new examination biannually thereafter. A copy of the physical examination shall be submitted to the licensing authority when the staff change or addition takes place, and bi-annually thereafter, at the time of relicensing.~~

~~(3) Health questionnaire shall be submitted to the licensing authority each year when the physical examination is not required.~~

(d) Annual Report. Each group home shall submit an annual statistical report as required by the Department to the licensing authority within 60 days after the end of the program's fiscal year.

Statutory Authority G.S. 131D-10.5; 143B-153.

.0514 CHILD CARE AND DEVELOPMENT: HEALTH

(a) Medical Program. Every group home shall have a planned program of medical care.

(1) Medical Requirements for Admission.

(A) No child shall be accepted into a group home without having had a physical examination within 90 days prior to admission, which shall include a signed statement ~~by a physician, physician's assistant or nurse practitioner that the child appears to be free of communicable diseases, and specifying any medical conditions and defects the child might have.~~ from a licensed medical provider specifying the child's current medical condition and medications prescribed and indicating the presence of any communicable disease or medical condition which may pose a significant risk of transmission in the facility. If a child is in the custody of a department of social services, is already scheduled to have and is having a physical completed annually, and is entering a private group home, the schedule of annual physicals shall not be changed. However a copy of the most recent physical shall be sent by the responsible department of social services to the private group home for the child's record there except that in shelter homes, the physical examination and statement shall be obtained within one week two weeks of a child's admission.

~~(A) The medical examination shall include a tuberculin test (or x-ray if there has been a history of contacts), an examination for intestinal parasites, and a blood test for venereal disease if indicated.~~

~~(B) If these tests prove positive, treatment shall be given immediately, and admission to the home delayed until further tests show the child to be noninfectious.~~

(B) (C) A child admitted to a group home shall be immunized against diphtheria, tetanus, whooping cough, poliomyelitis, red measles (rubeola), and rubella, mumps, and any other

- disease as required by 15A NCAC 19A .0400, prior to admission, or as soon after as practical. Documentation of these immunizations shall be obtained within 30 days of a child's admission. A copy of 15A NCAC 19A .0400 may be obtained from the Office of Administrative Hearings, P.O. Drawer 27447, Raleigh, North Carolina, (919) 733-2678, at a cost of two dollars and fifty cents (\$2.50) at the time of adoption of this Rule.
- (2) Medical Care. Arrangements shall be made with at least one licensed physician and one dentist for the care of children in the home.
 - (3) Hospital Care. Arrangements shall be made with a hospital for the admission of children from the group home in the event of serious illness or in an emergency.
 - (4) First Aid.
 - (A) Houseparents shall receive training and be able to administer first aid.
 - (B) First aid kits shall be available for instant use.
 - (5) Home Medical Care Practices.
 - (A) Group homes shall not engage in any medical care practices that conflict with the control measures for communicable diseases in 15A NCAC 19A .0200. A copy of 15A NCAC 19A .0200 may be obtained from the Office of Administrative Hearings, P.O. Drawer 27447, Raleigh, North Carolina, (919) 733-2678, at a cost of two dollars and fifty cents (\$2.50) at the time of adoption of this Rule.
 - (B) ~~(A)~~ Houseparents shall be able to recognize the common symptoms of illnesses of children and to note any marked physical or emotional handicaps of children.
 - (C) ~~(B)~~ A sterile clinical thermometer shall be kept available for use.
 - (C) ~~No medication shall be given except under the direction of a physician.~~
 - (D) Medicine supply cabinets shall be kept locked when not in immediate use.
 - (6) Medical Records. Each child shall have a personal medical record available which shall include:
 - (A) the statement of the physician who examined him at the time of admission to the home;
 - (B) a record of his immunizations; this record shall be obtained within 30 days of a child's admission to the home;
 - (C) consent of parents or guardians for medical care;
 - (D) a record of the medical care and examinations given while in care, including a record of hospitalizations, significant illnesses or accidents, and treatment given.
 - (7) Dental Records. Included in a child's medical record shall be a dental record, showing dates of examinations and by whom given.
 - (b) Routine Aspects of Health, Personal Hygiene, and Safety.
 - (1) Staff shall routinely apply general infection control procedures which shall include but not be limited to universal precautions specified by the Centers for Disease Control, U.S. Department of Health and Human Services, Public Health Services, Atlanta, Georgia. A copy of general infection control procedures may be obtained from National Technical Information Services, 5285 Part Royal Road, Springfield, Virginia 22161, (703) 487-4650, at a cost of seven dollars (\$7.00) at the time of the adoption of this Rule.
 - (2) ~~(1)~~ Sleep. Each child in a group home shall have enough sleep for his age at regular and reasonable hours and under conditions conducive to rest. While children are asleep, at least one staff member shall be near enough to hear calls.
 - (3) ~~(2)~~ Hygiene. Children shall be taught and helped to keep themselves clean. They shall receive training in all aspects of personal hygiene. Bathing and toilet facilities shall be in working order and kept clean.
 - (4) ~~(3)~~ Toilet Articles.
 - (A) Each child shall have his own clearly identified toothbrush, comb, towel and wash cloth and his own separate place for keeping these personal articles.
 - (B) Towels, wash cloths, and bed linens shall be changed weekly or more often as required by good hygiene.

- (5) (4) Safety. Any child care staff transporting a child less than two years of age shall have such child properly secured in a child passenger restraint system which is of a type and which is installed in a manner approved by the Commissioner of Motor Vehicles.

(c) Nutrition.

- (1) Meals served to all children shall provide for their nutritional requirements as advised by the National Research Council (Recommended Daily Dietary Allowances).
- (2) Any modified food needs of an individual child shall be provided under the direction of a ~~physician~~ licensed medical provider.
- (3) The menus shall be planned by or in consultation with a registered nutritionist or dietitian.

Statutory Authority G.S. 131D-10.5; 143B-153.

**SECTION .0600 - MINIMUM STANDARDS
FOR PRIVATE AND PUBLIC AGENCY
GROUP HOMES**

.0603 STAFF

(a) There shall be a responsible staff person designated as supervisor of the group home staff and operation.

(b) Child Care Staff, Counselors, Teaching Parents, or Houseparents.

(1) Qualifications

- (A) shall be at least 18 years of age;
- (B) shall be mentally and physically fit as evidenced by the following:
- (i) a physical examination completed by a ~~physician, physician's assistant or nurse practitioner~~ licensed medical provider, prior to assuming the position and every other year thereafter, ~~at the time of relicensing; The cost the~~ costs of physical examinations which are required for continuing employment are to be paid by the group home;
- (ii) a health questionnaire completed by the individual staff on each year when a physical examination is not required;
- (iii) a TB skin test prior to assuming the position, and annually thereafter ~~at the time of~~

~~relicensing,~~ except when the ~~physician, physician's assistant or nurse practitioner~~ licensed medical provider advises against it;

- (C) shall have education, training and experience sufficient to equip them for the duties assigned;
- (D) shall not be persons who have been found to have neglected or abused a child by any agency duly authorized by law to investigate allegations of abuse or neglect.

(2) Duties

- (A) shall have responsibility for the day to day activities of the home and care of the children;
- (B) shall assume those duties assigned them in accordance with any specialized program of the home;

Statutory Authority G.S. 131D-10.5; 143B-153.

**SUBCHAPTER 41G - MINIMUM
STANDARDS FOR CHILD CARING
INSTITUTIONS**

**SECTION .0500 - PRIVATE INSTITUTION
ORGANIZATION AND ADMINISTRATION**

.0507 STAFF: GENERAL

The institution shall provide the staff and services necessary to insure the proper care and safety of children in care ~~of the institution~~. Staff members who ~~live with~~ provide direct care for children in ~~care of~~ the institution or prepare their food shall have a ~~health~~ physical examination completed by a physician, physician's assistant, or nurse practitioner, hereafter referred to as "licensed medical provider", within at least six months before beginning work and biennially thereafter. A TB skin test is required prior to assuming the position and annually thereafter, except when the licensed medical provider advises against it. Such examinations Examinations shall include tests necessary to determine that the staff member is ~~free from communicable diseases and~~ able to carry out assigned duties and does not have any communicable disease or condition which poses significant risk of transmission in the facility.

Statutory Authority G.S. 131D-10.5; 143B-153.

**SECTION .0700 - PRIVATE INSTITUTION
CHILD CARE AND DEVELOPMENT**

.0705 MEDICAL PROGRAM

The institution shall have a planned program of medical care which shall be implemented and include each child in care:

- (1) Admission Requirement. Each child shall have had a medical examination prior to admission. The examination shall be reported in writing and specify any condition, ~~or defect~~ the child might have and any medications prescribed.
- (2) Medical Care
 - (a) Arrangements shall be made with one or more licensed medical physicians or medical clinics for the medical care of the children.
 - (b) Each child shall have a physical examination at least once a year and more often as needed. A child shall not be allowed to participate in activities injurious to his health. Any illness, disease or ~~defect~~ medical condition of a child shall be identified and treated promptly through proper medical care. Children shall have psychiatric or psychological examination or both when indicated and treatment when indicated.
 - (c) The child care staff shall be instructed as to what medical care may be given by them without specific orders from a licensed medical ~~physician~~ provider. They shall be instructed as to how and when to obtain further care and how to handle emergencies.
- (3) Hospital Care. Arrangements shall be made with a hospital for the admission of children from the institution in the event of serious illness or emergency.
- (4) First Aid. At least one member of the child care staff on duty at any given time shall have taken a course in first aid given by a qualified instructor and be able to administer first aid. First aid kits shall be available.
- (5) Home Health Care
 - (a) The institution shall not engage in any home health care practices that conflict with the control measures for communicable diseases in 15A NCAC 19A .0200. A copy of 15A NCAC 19A .0200 may be obtained from the Office of Administrative Hearings, P.O. Drawer 27447, Raleigh, North Carolina, (919) 733-2678, at a cost of two dollars and fifty cents (\$2.50) at

the time of adoption of this Rule.

- (b) ~~(a)~~ Each member of the child care staff shall be able to recognize common symptoms of illnesses ~~and disturbances~~ in children ~~and to note any defects~~. The child care staff shall be alert to any infectious condition of the children and shall take proper precautions to prevent the spread of such condition.
- (c) ~~(b)~~ The child care staff shall be able to provide home nursing care. A sterile clinical thermometer shall be kept available for use. Arrangements When appropriate, arrangements shall be made for isolation and ~~appropriate~~ attendant care of a child with a communicable disease.
- (d) ~~(e)~~ Prescription drugs shall only be administered when approved by a licensed medical physician. Medicines shall be stored in a separate cabinet, closet or box not accessible to children.
- (6) Medical Records. Each child shall have a personal medical record which shall include the report of the physician who examined him prior to admission to the institution, a record of his immunizations, consent for medical care signed by the person or representative of the agency having legal custody of the child, a record of each physical examination and of medical care given while the child is in care. The latter shall include a record of hospitalizations, allergies, significant illnesses or accidents and treatment given.

Statutory Authority G.S. 131D-10.5; 143B-153.

.0707 ROUTINE HEALTH CARE AND PERSONAL HYGIENE

- (a) Staff shall routinely apply general infection control procedures which shall include but not be limited to universal precautions specified by the Centers for Disease Control, U.S. Department of Health and Human Services, Public Health Services, Atlanta, Georgia.
- (b) ~~(a)~~ Children shall be taught and helped to develop good health care. Each child shall have enough sleep for his age at regular and reasonable hours and under conditions conducive to rest.
- (c) ~~(b)~~ Children shall receive training in all aspects of personal hygiene. They shall be taught and helped to keep themselves.
- (d) ~~(e)~~ Each child shall have his own clearly

identified toothbrush, comb, towel and wash cloth and his own separate place for keeping these personal articles. Towels, face cloths, and bed linens shall be changed as frequently as necessary to be clean.

Statutory Authority G.S. 131D, Art. 1A; 143B-153.

SUBCHAPTER 4II - PROTECTIVE SERVICES

SECTION .0100 - GENERAL

.0102 CONFIDENTIALITY: CENTRAL REGISTRY: ABUSE AND NEGLECT CASES

(a) Information submitted by county departments of social services to the central registry of abuse and neglect cases is confidential. Non-identifying statistical information and general information about the scope, nature and extent of the child abuse and neglect problem in North Carolina is not subject to this Rule of confidentiality.

(b) Access to the central registry of child abuse and neglect cases is restricted to:

- (1) staff of the Division of Social Services and staff of the Office of the Secretary of the Department of Human Resources who require access in the course of performing duties pertinent to management, maintenance and evaluation of the central registry and evaluation of and research into abuse and neglect cases reported in accordance with G.S. Chapter 7A, Article 44. Management of the central registry includes the provision of information on a case by division staff to a North Carolina county department of social services or to an out-of-state social services agency to assure that protective services will be made available to such child and the child's family as quickly as possible to the end that such child will be protected and that further abuse or neglect will be prevented.

- (A) Individuals may receive approval to conduct studies of cases in the central registry. Such approval must be requested in writing to the Director, Division of Social Services. The written request will specify and be approved on the basis of:

- (i) an explanation of how the findings

of the study have potential for expanding knowledge and improving professional practices in the area of prevention, identification and treatment of child abuse and neglect;

- (ii) a description of how the study will be conducted and how the findings will be used;
 - (iii) a presentation of the individual's credentials in the area of critical investigation; and
 - (iv) a description of how the individual will safeguard information.
- (B) Access will be denied when in the judgment of the Director the study will have minimal impact on either knowledge or practice.
- (2) the county director in order to identify whether a child who is the subject of an abuse, ~~or~~ neglect or dependency investigation has been previously reported as abused or neglected, or whether a child is a member of a family in which a child fatality due to suspected abuse or neglect during the CPS investigative period has occurred in any county in the state. Information from the central registry shall be shared with law enforcement or licensed physicians or licensed physician extenders when needed to assist the county director in facilitating the provision of child protective services to assure that the child and the child's family will receive protective services as quickly as possible so that such child can be protected and further abuse, ~~or~~ neglect or dependency prevented. Information shared from the central registry for child abuse and neglect will be limited to:
 - (A) the child's name, date of birth, sex, race;
 - (B) the county that investigated the report;
 - (C) the type of maltreatment that was reported;
 - (D) the case decision;
 - (E) the date of the case decision;
 - (F) the type of maltreatment found; and
 - (G) the relationship of the perpetrator to the victim child.
 - (3) the Chief Medical Examiner's office and law enforcement in the event of

child fatality and there is a need to determine if their investigation or evaluation should consider child abuse, or neglect or dependency as a factor in the death. Information will be limited to that outlined in Subparagraphs (b)(2)(A) - (G) of this Rule.

Statutory Authority G.S. 7A-544; 7A-552; 7A-675; 143B-10; 143B-153.

.0103 REPORTS OF NEGLECT, ABUSE OR DEPENDENCY

Reports of neglect, and abuse or dependency allegedly caused by staff of one county department of social services shall be referred to another department of social services for investigation.

Statutory Authority G.S. 143B-153.

SECTION .0200 - EMERGENCY SHELTER

.0201 NATURE AND PURPOSE

Emergency shelter is the provision of short term (i.e., no more than 30 days of care for any child in any 12 month period), 24 hour care for a child, in clear and present danger from neglect, abuse or exploitation, when separation from the child's own family is essential and emergency shelter is integral to the child's own need for protection. Emergency shelter may also be provided to runaways harmed or threatened with harm by virtue of their status as runaways.

Statutory Authority G.S. 7A, Article 46; 143B-153.

.0202 PROCEDURES FOR THE USE OF EMERGENCY SHELTER

(a) Admissions

- (1) The specific need for emergency shelter as a part of the provision of protective services must be described in the child's case record by the county department of social services. The case record shall describe the circumstances which lead the protective services worker to believe that the child is in clear and present danger from neglect, abuse, or exploitation as well as the legal authority through which use of emergency shelter is made. The need for and circumstances surrounding emergency shelter must be described in the child's case record prior to or immediately following beginning use of

emergency shelter.

- (2) ~~Criteria in determining when emergency shelter is an appropriate service:~~

- (A) ~~when a child's physical or emotional health are in clear and present danger of harm and no other plan of service is more appropriate for his protection;~~
- (B) ~~when a child has been abandoned by his parents and no other family members are able to provide the temporary care needed while a plan of service is being developed;~~
- (C) ~~when family crisis such as death, desertion or serious illness necessitates immediate, temporary care of the child outside of his home for his protection;~~
- (D) ~~when homemaker, day care, or other services to maintain a child in his own home are unavailable or inappropriate and the child needs protection.~~

(b) ~~Services to the Child and Family.~~ Social work services for the child and his family must be provided by the county department of social services responsible for protective services to the child. Even when emergency shelter is purchased by the Department from another agency, the county department with responsibility for protective services to the child shall maintain responsibility for ongoing case management, ensuring that the objectives agreed upon in the service plan are met, and services coordination. The county department of social services providing protective services to the child shall assume responsibility to petition the court.

(c) Type of Facility:

- (1) ~~A family foster home, group home or child caring institution which is licensed or approved as meeting licensing standards adopted by the Social Services Commission, 10 NCAC, 41E through 41G, may be used for emergency shelter.~~
- (2) ~~A family foster home, group home or child caring institution used for emergency shelter must be fully approved as meeting standards specified in Rule .0204 of this Subchapter.~~

(d) Methods of Service Provision:

- (1) ~~Emergency shelter can be provided directly by a county department of social services in an emergency shelter facility it operates; or be purchased from an emergency shelter facility~~

supervised by a county department of social services; or be purchased from another public or private provider of emergency shelter.

- (2) The provision of emergency shelter includes the provision of room and board.
- (3) The Social Services Commission has established a maximum rate for emergency shelter. Information regarding the maximum rate is contained in policy material issued by the Division and is available in accordance with 10 NCAC 35A .0003.

Statutory Authority G.S. 7A, Article 46; 33-1.1; 131D, Article 1A; 143B-153.

.0204 STANDARDS FOR ADMINISTRATION AND ORGANIZATION

(a) Caregivers. In family foster homes providing emergency shelter, a minimum of two caregivers must be living in the home, one of whom is present in the facility at all times. For group care facilities providing emergency shelter for 6 to 12 children, there must be two caregivers on duty at the facility during waking hours and one on duty and one on call at night to provide care for the children. Facilities providing care to more than 12 children in a living unit will not be approved as emergency shelter facilities.

(b) Qualifications for Caregivers

- (1) An emergency shelter caregiver is an individual who is at least 21 years of age and not more than 60 years of age.
- (2) As the physical and emotional demands of providing short term care for frightened, upset, neglected and abused children are great, caregivers shall be selected who are able to withstand such stress. Caregivers shall be emotionally stable people with the ability to tolerate frequent interruptions in schedule. They shall have demonstrated skills in caring for the physical and emotional needs of children in crisis and be willing to accept children, at any time day or night, possibly without prior notice. A plan must be developed and implemented by the provider agency whereby caregivers are given access to information about: basic knowledge about neglect and abuse of children; needs of children in crisis; emergency

shelter staff's role in the protective services comprehensive plan to protect the child; developmental stages of children; alternatives in discipline; some knowledge of first aid; basic knowledge about separation and placement of children.

(c) Child Care

- (1) No corporal punishment of children shall be used.
- (2) Each child shall have a physical examination within 72 hours after admission unless the child has had an examination immediately prior to emergency shelter placement.
- (3) An emergency shelter facility shall not be used for care of a child if the Department responsible for protective services to that child is more than one hour's driving distance from the facility.

(d) Facility

- (1) Family foster homes, group homes, and child caring institutions providing emergency shelter shall have a telephone in the home or living unit in which such care is provided.
- (2) Transportation must be available at all times for use by caregivers.
- (3) Family foster homes and group care facilities providing emergency shelter may not provide care for children not receiving emergency shelter. Child caring institutions providing emergency shelter may not provide care within the same cottage or living unit for children not receiving emergency shelter.
- (4) The emergency shelter facility must maintain an emergency shelter log that will list at a minimum the name of the child, the name and phone number of the protective services worker, the date of admission and date of discharge.
- (5) An emergency shelter facility which provides more than 30 consecutive days of shelter for any child does so in violation of emergency shelter standards and its status as an approved emergency shelter facility is invalid.
- (6) The emergency shelter facility must be available for referrals on a 24 hour basis.

Statutory Authority G.S. 110-119; 143B-10; 143B-153; 110-49.

SECTION .0300 - CHILD PROTECTIVE SERVICES: GENERAL

.0303 DEFINITIONS

As used in this Subchapter, unless the context requires otherwise, the following terms shall have the meaning specified:

- (1) "Abused child" means a person less than 18 years of age as defined in G.S. 7A-517(1).
- (2) "Neglected child" means a person less than 18 years of age as defined in G.S. 7A-517(21). A neglected child is also a disabled infant with a life-threatening condition from whom appropriate nutrition, hydration or medication is being withheld; a neglected child is also a disabled infant under one year of age with a life threatening condition from whom medically indicated treatment, which in the treating physician's reasonable medical judgement would be most likely to be effective in ameliorating or correcting such life threatening conditions, is being withheld, unless in the treating physician's reasonable medical judgement any of the following conditions exist:
 - (a) infant is chronically ill and irreversibly comatose; or
 - (b) the provision of medical treatment would merely prolong dying, would not ameliorate or correct all of the life threatening conditions, or would otherwise be futile in terms of the survival of the infant; or
 - (c) the provision of medical treatment would be virtually futile in terms of the survival of the infant and under the circumstances the treatment would be inhumane.

The term "infant" means a child less than one year of age. The reference to less than one year of age shall not be construed to imply that treatment should be changed or discontinued when an infant reaches one year of age, or to affect or limit any other protection regarding medical neglect of children over one year of age.
- (3) "Dependent child" means a person less than 18 years of age as defined in G.S. 7A-517(13).
- (4) "Report" means any oral or written communication to the county department

of social services which provides information that the person or institution making the report suspects a child is abused, ~~or~~ neglected or dependent.

- (5) "Institution" means any public or private institution, facility, agency, group, organization, corporation or partnership employing, directing, assisting or providing its facilities to persons who, as a part of their usual responsibilities, give care or services to children less than 18 years of age and any hospital or other health care facility providing treatment to infants with life threatening conditions.
- (6) "Complaint" means a "report" by a person or institution regarding a child who is alleged to be abused, neglected, or dependent.
- (7) "County director" means the county director of social services and any staff member to whom responsibility for protective services has been delegated by the Director.
- (8) "Investigation" means the assessment process by which sufficient information is gathered to determine whether protective services are required and what services would be most helpful to the child and the parents or other caretakers.

Statutory Authority G.S. 143B-153; 7A-517; 7A-543.

.0304 RECEIVING INFORMATION: INITIATING PROMPT INVESTIGATIONS OF REPORTS

(a) The county director shall receive and initiate an investigation on all reports of suspected child abuse, ~~or~~ neglect or dependency, including anonymous reports:

(b) The county director shall make a diligent effort to obtain the following information from the person making the report:

- (1) the name and address of the parent, guardian or caretaker and the name of the alleged perpetrator;
- (2) the name and actual or approximate age of the child or children;
- (3) the nature and extent of the alleged neglect, abuse or dependency;
- (4) the present whereabouts of the child or children if not at the home address;
- (5) other information that the reporter has which might be helpful in establishing the need for protective services.

including the name, address and phone number of other individuals who may have information about the condition of the child or children;

(6) the name and address of the individual making the report.

(c) When a county director receives a report ~~on~~ of suspected abuse and decides that a law enforcement agency should be notified, the county director shall provide the law enforcement agency with the information obtained from the person making the report as outlined in (b)(1) through (b)(5) of this Rule. The name and address of the individual making the report, included as (b) (6) of this Rule may be shared with law enforcement when this information is necessary for law enforcement to perform their duties as related to the report.

(d) The county director shall promptly initiate an investigation of suspected abuse, ~~or~~ neglect or dependency and in all cases shall initiate an investigation of suspected abuse within 24 hours after receiving a report and shall initiate an investigation of suspected neglect or dependency within 72 hours after receiving a report. Initiation of an investigation is defined as having face-to-face contact with the alleged victim child or children. If there is not such face-to-face contact within the prescribed time period, the case record shall contain documentation to explain why such contact was not made and what other steps were taken to assess the risk of harm to the child or children.

~~(e) The investigation shall include a visit with the child and to the place where the child resides.~~

(e) When the director is unable to initiate the investigation within the prescribed time period, as indicated in (d) of this Rule, because the alleged victim child or children cannot be located, the director shall make diligent efforts to locate the alleged victim child or children until such efforts are successful or until the director concludes that the child or children cannot be located. Diligent efforts shall include, but not be limited to, visits to the child's or children's address at different times of the day and on different days. All efforts to locate the child or children shall be documented in the case record.

(f) When abuse, ~~or~~ neglect or dependency is alleged to have occurred in an institution, in addition to obtaining information as described in (b) of this Rule, the county director shall initiate the investigation by contacting the individual who is administratively responsible for on-site operation of the institution and solicit the cooperation of the administration of the institution.

(g) The county director must have an internal two level review, including at a minimum the worker and the worker's supervisor, prior to making a decision that information received does not constitute a report of abuse, ~~or~~ neglect or dependency.

(h) The county director must establish a process by which the person providing this information may obtain a review of the agency's decision not to accept the information as a report of abuse, ~~or~~ neglect or dependency. The process shall include:

- (1) informing the person providing the information that the agency will not conduct an investigation, the basis for that decision, and their right to and the procedures for obtaining such a review; and
- (2) designating the persons by whom and the manner in which such reviews will be conducted.

Statutory Authority G.S. 7A-543; 7A-544; 143B-153.

.0305 CONDUCTING A THOROUGH INVESTIGATION

(a) The county director shall make a thorough investigation to assess:

- (1) whether the specific environment in which the child or children is found meets the child's or children's need for care and protection; and
- (2) facts regarding the existence of abuse, ~~or~~ neglect or dependency; and
- (3) extent of abuse and neglect; and
- (4) risk of harm to and need for protection of the child or children.

(b) When the county director receives a report of suspected abuse, neglect or dependency, the county director shall check the county agency's records and the North Carolina Central Registry of Child Abuse and Neglect Reports to ascertain if any previous reports of abuse or neglect have been made concerning the alleged victim child or children.

(c) Face-to-face contact with other children residing in the home shall be made as soon as possible, but no later than seven working days after the initiation of the investigation, unless there is documentation in the case record to explain why such contact was not made.

(d) There shall be a face-to-face interview with any parent or caretaker with whom the victim child or children reside, unless there is documentation in the case record to explain why such an interview

was not conducted. When possible, the parent or caretaker shall be interviewed on the same day as the victim child or children.

(e) The investigation shall include a visit to the place where the child or children reside.

(f) There shall be a face-to-face interview with the alleged perpetrator or perpetrators unless there is documentation to explain why such an interview was not conducted.

(g) Any available persons identified at the time the report was accepted for investigation as having information concerning the condition of the child or children shall be interviewed in order to obtain any information relevant to the investigation.

(h) When additional information is necessary to complete a thorough investigation, information from the following sources shall be obtained and utilized:

- (1) Professionals or staff at an out-of-home care setting having relevant knowledge pertaining to the alleged abuse, neglect or dependency;
- (2) Other persons living in the household or attending or residing in the out-of-home care setting;
- (3) Any other source having relevant knowledge pertaining to the alleged abuse, neglect or dependency;
- (4) Records, i.e., school, medical, mental health, or incident reports in an out-of-home care setting.

(i) The county director shall exercise discretion in the selection of collateral sources in order to protect the family's or out-of-home care setting's right to privacy and the confidentiality of the report.

(j) ~~(b)~~ Conducting a thorough investigation as outlined in (a) of this Rule when the alleged abuse, or neglect or dependency occurred in an institution shall include the following:

- (1) A discussion of the allegation with the individual who has on-site administrative responsibility for the institution;
- (2) A discussion of the procedure to be followed during the investigation;
- (3) The utilization of resources within and without the institution as needed and appropriate;
- (4) A discussion of the findings with the Administrator of the institution which shall be confirmed in writing by the county director and shall be held confidential by all parties as outlined in 10 NCAC 411 .0313, of this

Subchapter;

- (5) ~~When abuse or neglect is confirmed, the child's legal custodian shall be informed;~~
- (6) ~~When abuse or neglect is confirmed, a service plan for the care and protection of the child shall be developed in cooperation with the institution and the legal custodian;~~
- (7) ~~When abuse is confirmed, a written report shall be made to the prosecutor in the county where the institution is located.~~

Statutory Authority G.S. 143B-153; 7A-544.

.0306 WHEN ABUSE, NEGLECT OR DEPENDENCY IS FOUND

(a) ~~When a thorough investigation reveals the presence of abuse or neglect, the county director shall decide on, implement, and over see a service plan to assure adequate care for the child. The plan shall include:~~

- (1) ~~providing and arranging for appropriate services in the child's own home for as long as the child requires protective services, as defined by the service plan and as indicated by the caretakers' willingness and ability to improve their care of their child.~~
- (2) ~~petitioning for the removal of the child from his own home and placing the child in appropriate care when protection cannot be initiated or continued in the child's own home.~~

(a) ~~When a thorough investigation reveals the presence of abuse, neglect or dependency, the county director shall notify the following persons or agencies of the case finding:~~

- (1) ~~any parent or caretaker who was alleged to have abused or neglected the child or children;~~
- (2) ~~any parent or other individual with whom the child or children resided at the time the county director initiated the investigation; and~~
- (3) ~~any agency with whom the court has vested legal custody.~~

(b) ~~When abuse, neglect or dependency is found, the county director shall determine whether the case is one for which a structured risk assessment is required. The director shall base this determination on the instructions to the risk assessment tool provided by the Department of Human Resources, Division of Social Services.~~

For all cases that require the completion of a structured risk assessment, the director shall complete such an assessment using the risk assessment tool provided by the Department of Human Resources, Division of Social Services. This risk assessment shall be completed within seven working days following a case finding of abuse, neglect or dependency; and the findings of the risk assessment shall be used in evaluating the need for services and in developing an intervention plan.

(c) In all cases in which abuse, neglect or dependency is found, the county director shall develop, implement, and over-see an intervention plan to ensure that there is adequate care for the victim child or children. The intervention plan shall:

- (1) be based on the findings of the structured risk assessment when such a risk assessment was determined to be required according to the instructions provided by the Department of Human Resources, Division of Social Services; and
- (2) contain goals representing the desired outcome toward which all case activities shall be directed; and
- (3) contain objectives that:
 - (A) describe specific desired outcomes,
 - (B) are measurable,
 - (C) identify necessary behavior changes,
 - (D) are based on an assessment of the specific needs of the child or children and family,
 - (E) are time-limited, and
 - (F) are mutually accepted by the county director and the client;
- (4) specify all the activities needed to achieve each stated objective;
- (5) have clearly stated consequences that will result from either successfully following the plan or not meeting the goals and objectives specified in the plan; and
- (6) shall include petitioning for the removal of the child or children from the home and placing the child or children in appropriate care when protection cannot be initiated or continued in the child's or children's own home.

(d) The risk assessment tool referred to in (b) of this Rule is to be used in those cases in which abuse, neglect or dependency is found and which meet the criteria presented in the instructions to the risk assessment tool provided by the

Department of Human Resources, Division of Social Services. For those cases that require the completion of a structured risk assessment, the risk assessment tool shall be completed at the following points in the case:

- (1) within seven working days following a case finding of abuse, neglect or dependency, and prior to the development of the intervention plan and prior to the provision of treatment or supportive services; and
- (2) as part of the six-month review and the annual review, if the case remains open for services; and
- (3) when the county director is considering taking court action in relation to the case; and
- (4) when the county director is considering closing the case for services; and if the director decides to close the case, the case must be closed within 30 days following completion of the risk assessment; and
- (5) at other times, at the county director's discretion, when conducting a structured risk assessment would help the director in making decisions concerning an open child protective services case.

(e) ~~(b)~~ When an investigation leads a county director to find evidence that a child has been abused, the county director shall immediately, but in all cases within three working days of finding the evidence, make a written report to the prosecutor. The report shall include:

- (1) the name and address of the child, of the parents or caretakers with whom the child lives, and of the alleged perpetrator when this person is different from the parents or caretaker;
- (2) whether the abuse was physical, sexual or emotional;
- (3) the dates that the investigation was initiated and that the evidence of abuse was found;
- (4) whether law enforcement has been notified and the date of the notification;
- (5) what ~~was the~~ evidence of abuse ~~that~~ was found;
- (6) what plan to protect the child has been developed and if ~~it is~~ being implemented what is being done to implement it.

(f) When a thorough investigation reveals the presence of abuse, neglect or dependency in an

institution, the county director shall complete the following steps:

- (1) the child's or children's legal custodian shall be informed;
- (2) an intervention plan for the care and protection of the child or children shall be developed in cooperation with the institution and the legal custodian;
- (3) when abuse is found, a written report shall be made to the prosecutor in the county where the institution is located.

Statutory Authority G.S. 7A-544; 7A-548; 143B-153.

.0307 WHEN ABUSE, NEGLECT OR DEPENDENCY IS NOT FOUND

(a) When a thorough investigation does not reveal abuse, ~~or~~ neglect or dependency, the county director shall:

- (1) ~~communicate the finding of no abuse or neglect to the person having legal custody of the child and to the alleged perpetrator, when different from the person with legal custody; notify the following persons or agencies of the case finding:~~
 - (a) any parent or caretaker who was alleged to have abused or neglected the child or children;
 - (b) any parent or other individual with whom the child or children resided at the time the county director initiated the investigation; and
 - (c) any agency with whom the court has vested legal custody;
- (2) communicate to the persons or agencies named in (1) of this Rule that the Department shall no longer be involved with the child or children on a non-voluntary basis.

~~(b) When dependency as defined in G.S. 7A-517(13) is found the county department of social services shall provide protective services to the child.~~

Statutory Authority G.S. 7A-542; 7A-544; 143B-153.

.0308 REVIEW BY THE PROSECUTOR

(a) If a petition is not filed within five working days of the receipt of a report of abuse, ~~or~~ neglect or dependency the county director shall give written notice of his decision not to file a petition to the person making the report, unless the person

does not give his name and mailing address, or the person waives his right to the notification, and these circumstances are documented in the protective services case record.

The written notice must communicate that a petition has not been filed and set forth the following information and rights of the person making the report:

- (1) There is no finding of abuse, ~~or~~ neglect or dependency; or the county department of social services is taking action to protect the welfare of the child or children and what specific action it is taking; and
- (2) The reporter has a right to request a review of the decision not to file a petition; and
- (3) The request for review must be made to the prosecutor, whose address shall be included, within five working days after the reporter receives the county director's decision.

(b) When the county director receives a notice from the prosecutor that a review will be held regarding not filing a petition, he shall send immediately, but in all cases within three working days of the receipt of the notice, a copy of the investigation report to the prosecutor.

Statutory Authority G.S. 143B-153.

SECTION .0400 - COMMUNITY CHILD PROTECTION TEAMS

.0401 NATURE AND PURPOSE OF TEAM

(a) The community child protection team is a group comprised of community representatives meeting together on a regular basis to promote the development of a community-wide approach to the problem of child abuse, ~~and~~ neglect and dependency. The community child protection team is established by the director of the county department of social services.

(b) The community child protection team shall not encompass a geographic or governmental area larger than one county. The county director of social services may establish more than one community child protection team when needed due to caseload size or to access the special expertise of existing groups.

Statutory Authority G.S. 7A-544; 7A-675; 143B-153.

.0402 DUTIES AND RESPONSIBILITIES OF

THE TEAM

The duties and responsibilities of the team shall be as follows:

- (1) To review cases of child fatalities as defined in Rule .0409(a) of this Section. The purpose of such review shall be to identify whether gaps and deficiencies exist in the community child protection system and to assist the county director in the protection of surviving siblings;
- (2) To review selected active cases as outlined in Rule .0405 of this Section in which abuse, ~~or~~ neglect or dependency is suspected or found. The purpose of such review shall be to assist the county director in evaluating allegations of abuse, ~~or~~ neglect or dependency and in planning and providing services to prevent further ~~abuse or neglect~~ maltreatment; and
- (3) To recommend and advocate for system improvements and needed resources where gaps and deficiencies exist.

Statutory Authority G.S. 7A-544; 7A-675; 143B-153.

.0409 CASES SUBJECT TO REVIEW BY THE COMMUNITY CHILD PROTECTION TEAM

(a) Each team shall review cases in which a child died as a result of suspected abuse, ~~or~~ neglect or dependency and a report of abuse, ~~or~~ neglect or dependency had been made about the child or his family to the county department of social services within the previous 12 months or the child or his family were recipients of child protective services within the previous 12 months.

(b) Each team shall review other cases in accordance with Rule .0405(4) and (5) of this Section.

Statutory Authority G.S. 7A-544; 7A-675; 143B-153.

.0410 CONFIDENTIALITY

(a) The county director is authorized to share with the community child protection team any information available to him that is needed by the team in the execution of their duties as defined by Rule .0402 of this Section.

(b) Each team member and invited participant shall sign a statement indicating their understanding of and adherence to confidentiality requirements including the possible civil or criminal consequences of any breach of

confidentiality. Rules regarding confidentiality shall apply to any personal files that are created or maintained by any team member or invited participant. This does not preclude any agency representative from sharing with his agency, on a need to know basis, information acquired at a community child protection team meeting regarding a current client or referred case.

(c) Members of the team who have access to client information and fail to comply with the rules in this Section shall be denied access to confidential information and subject to dismissal from the team.

(d) Any invited participant who is given access to client information during the team review and fails to comply with the rules in this Section shall be denied future participation in team reviews.

(e) The county director shall not share any information which discloses the identity of individuals who have reported suspected abuse, ~~or~~ neglect or dependency to the county department of social services.

Statutory Authority G.S. 7A-544; 7A-675; 108A-80; 143B-153.

SUBCHAPTER 41Q - RESIDENTIAL MATERNITY HOMES

SECTION .0200 - MINIMUM LICENSURE STANDARDS

.0201 PERSONNEL

(a) Staff Qualifications and Functions.

(1) Administrator. There shall be an administrator employed for the general management and supervision of the maternity home. The Administrator employed after the effective date of the rules of this Subchapter must have a bachelor's degree from a college or university accredited by the Association of Colleges and Schools and no less than four years work experience in a human services program including supervision, administration, and management. The Administrator shall have the following responsibilities:

- (A) direct the maternity home's program of care and services in accordance with policies established by the governing board and within license standards;
- (B) recruit, employ, supervise and discharge staff;

- (C) assure a training program for staff;
 - (D) prepare the annual budget, supervise expenditures, and operate within the budget established;
 - (E) establish and maintain good working relationships with other social agencies and represent the agency in the community; and
 - (F) delegate authority to a qualified staff member during his absence.
- (2) Professional Services Staff. The maternity home must have available professional services personnel to assure appropriate services for each resident of the home. Professional personnel must include a doctor, dentist, nurse, social worker, psychologist, psychiatrist, member of the clergy, nutritionist, health educator, and teacher. Whether services are purchased through a contractual agreement or provided by members of the maternity home staff or obtained through public or private agencies or on a voluntary basis, professional services must be provided by qualified practitioners who are recognized and accepted by applicable professional organizations and appropriate state licensing boards.
- (3) Social Work Supervisor. If the maternity home employs staff to provide social work services, they shall employ a person who shall be responsible for supervising, evaluating, and monitoring the work and progress of the social services staff. The social work supervisor employed after the effective date of the rules of this Subchapter must have at a minimum a master's degree in social work or related area of study from an accredited school, and at least two years of social work experience; or a bachelor's degree and four years of experience in social work or related field.
- (4) Social Services Worker. If the maternity home employs social workers to be responsible for intake services, providing casework services to the residents and their families, coordinating the services and resources affecting the client and their families, the social worker must have either a master's degree in social work or related field of study from an accredited school, or a bachelor's degree in social work or a related field and two years experience working directly in human services. If the social work staff are not supervised by a person meeting the qualifications of (a) (3) of this Rule, all social work staff shall meet these qualifications of (a) (3) of this Rule.
- (b) Staffing Requirements. When an agency employs five or more social worker staff, the agency shall employ a social work supervisor.
- (c) Resident Care Staff.
- (1) Full time resident house parents or counselors must be employed for direct care of maternity home residents.
 - (2) All resident care staff hired after the effective date of the rules of this Subchapter shall be at least 18 years of age.
- (d) Volunteer Workers. If the maternity home uses volunteers to work directly with residents, the requirements of 10 NCAC 41N .0211, apply.
- (e) Additional Personnel Requirements. In addition to those requirements specified in 10 NCAC 41N .0211, the following rules are applicable to maternity home programs:
- (1) Health Examinations. All resident care staff and food service staff shall have a health physical examination completed by a physician, physician's assistant, or nurse practitioner, hereafter referred to as "licensed medical provider," within at least six months before beginning work and biennially thereafter. A TB skin test is required prior to assuming the position and annually thereafter, except when the licensed medical provider advises against it. ~~Such examinations~~ Examinations must include tests necessary to determine that the staff member is ~~free from communicable diseases and~~ able to carry out assigned duties and does not have any communicable disease or condition which poses significant risk of transmission in the facility. A report of each examination must be made a part of the employee's personnel file.
 - (2) Leave for Resident Care Staff. Resident care staff shall have a minimum of eight 24 hour days off duty each month.
 - (3) Staff Development. The maternity home staff shall have a written staff

development plan which provides staff training in the following areas: medical, physical, and psychological aspects of pregnancy; prenatal and postnatal care; developmental needs of adolescents and young adults; counseling skills; emergency medical care; and nutrition and food preparation.

Statutory Authority G.S. 131D-1; 143B-153.

**TITLE 15A - DEPARTMENT OF
ENVIRONMENT, HEALTH, AND
NATURAL RESOURCES**

Notice is hereby given in accordance with G.S. 150B-21.2 that the EHNHR - Environmental Management Commission intends to amend rule cited as 15A NCAC 2B .0304.

The proposed effective date of this action is October 1, 1993.

The public hearing will be conducted at 7:00 p.m. on April 1, 1993 at the Courtroom, Transylvania County Courthouse, Main Street, Brevard, NC.

Reason for Proposed Action: To reclassify Reasonover Creek including Lake Julia in the French Broad River Basin for use as a raw water supply source.

Comment Procedures: All persons interested in this matter are invited to attend. Comments, statements, data and other information may be submitted in writing prior to, during or within 30 days after the hearing or may be presented verbally at the hearing. Verbal statements may be limited at the discretion of the hearing officer. Submittal of written copies of verbal statements is encouraged.

**CHAPTER 2 - ENVIRONMENTAL
MANAGEMENT**

**SUBCHAPTER 2B - SURFACE WATER
STANDARDS: MONITORING**

**SECTION .0300 - ASSIGNMENT OF
STREAM CLASSIFICATIONS**

.0304 FRENCH BROAD RIVER BASIN

(a) Places where the schedules may be inspected:

- (1) Clerk of Court:
 - Avery County
 - Buncombe County
 - Haywood County
 - Henderson County
 - Madison County
 - Mitchell County
 - Transylvania County
 - Yancey County
- (2) North Carolina Department of Environment, Health, and Natural Resources
 - Asheville Regional Office
 - Interchange Building
 - 59 Woodfin Place
 - Asheville, North Carolina

(b) Unnamed Streams. Such streams entering Tennessee will be classified "B."

(c) The French Broad River Basin Schedule of Classifications and Water Quality Standards was amended effective:

- (1) September 22, 1976;
- (2) March 1, 1977;
- (3) August 12, 1979;
- (4) April 1, 1983;
- (5) August 1, 1984;
- (6) August 1, 1985;
- (7) February 1, 1986;
- (8) May 1, 1987;
- (9) March 1, 1989;
- (10) October 1, 1989;
- (11) January 1, 1990;
- (12) August 1, 1990;
- (13) August 3, 1992;
- (14) October 1, 1993.

(d) The Schedule of Classifications and Water Quality Standards for the French Broad River Basin was amended effective March 1, 1989 as follows:

- (1) Cataloochee Creek (Index No. 5-41) and all tributary waters were reclassified from Class C-trout and Class C to Class C-trout ORW and Class C ORW.
- (2) South Fork Mills River (Index No. 6-54-3) down to Queen Creek and all tributaries were reclassified from Class WS-I and Class WS-III-trout to Class WS-I ORW and Class WS-III-trout ORW.

(e) The Schedule of Classifications and Water Quality Standards for the French Broad River

Basin was amended effective October 1, 1989 as follows: Cane River (Index No. 7-3) from source to Bowlens Creek and all tributaries were reclassified from Class C trout and Class C to Class WS-III trout and Class WS-III.

(f) The Schedule of Classifications and Water Quality Standards for the French Broad River Basin was amended effective January 1, 1990 as follows: North Toe River (Index No. 7-2) from source to Cathis Creek (Christ Branch) and all tributaries were reclassified from Class C trout and Class C to Class WS-III trout and Class WS-III.

(g) The Schedule of Classifications and Water Quality Standards for the French Broad River Basin was amended effective August 3, 1992 with the reclassification of all water supply waters (waters with a primary classification of WS-I, WS-II or WS-III). These waters were reclassified to WS-I, WS-II, WS-III, WS-IV or WS-V as defined in the revised water supply protection rules, (15A NCAC 2B .0100, .0200 and .0300) which became effective on August 3, 1992. In some cases, streams with primary classifications other than WS were reclassified to a WS classification due to their proximity and linkage to water supply waters. In other cases, waters were reclassified from a WS classification to an alternate appropriate primary classification after being identified as downstream of a water supply intake or identified as not being used for water supply purposes.

(h) The Schedule of Classifications and Water Quality Standards for the French Broad River Basin was amended effective October 1, 1993 as follows: Reasonover Creek (Index No. 6-38-14-(1) from source to Reasonover Lake Dam and all tributaries were reclassified from Class B Trout to Class WS-V and B Trout, and Reasonover Creek (Index No. 6-38-14-(4) from Reasonover Lake Dam to Lake Julia Dam and all tributaries were reclassified from Class C Trout to Class WS-V Trout.

Statutory Authority G.S. 143-214.1; 143-215.1; 143-215.3(a)(1).

Notice is hereby given in accordance with G.S. 150B-21.2 that the Environment, Health, and Natural Resources, NCWTFB Board of Certification intends to amend rules cited as 15A NCAC 18D .0201 and .0206.

The proposed effective date of this action is May 3, 1993.

The public hearing will be conducted at 9:30 a.m. on March 9, 1993 at the Jane S. McKimmon Center, NC State University, Western Boulevard, Raleigh, NC.

Reason for Proposed Action: To establish cross connection control personnel certification and change "Grades" to "Class" when used to describe a category of system. To provide the conditions which require an operator in responsible charge and to specify grade of certification held by the operator in responsible charge.

Comment Procedures: Any person requiring information may contact Mr. John C. McFadyen, Post Office Box 27687, Raleigh, North Carolina 27611-7687, Telephone (919) 733-2321 or 733-0379. Written comments may be submitted to the above address no later than March 2, 1993. Notice of an oral presentation must be given to Mr. John C. McFadyen at the above address prior to the public hearing.

CHAPTER 18 - ENVIRONMENTAL HEALTH

SUBCHAPTER 18D - WATER TREATMENT FACILITY OPERATORS

SECTION .0200 - QUALIFICATION OF APPLICANTS AND CLASSIFICATION OF FACILITIES

.0201 GRADES OF CERTIFICATION

Applicants for the various grades of certification shall meet the following educational and experience requirements:

- (1) GRADE A-SURFACE shall have one year acceptable experience at a surface water facility while holding a Grade B-Surface certificate and have satisfactorily completed an approved A-Surface school.
- (2) GRADE B-SURFACE shall:
 - (a) Be a college graduate with a bachelor's degree in the physical or natural sciences or be a graduate of a two year technical program with a diploma in water and wastewater technology, and have six months of acceptable experience at

- (b) a surface water facility, or
- (b) Have one year of acceptable experience at a surface water facility while holding a Grade C-Surface certificate and have satisfactorily completed an approved B-Surface school.
- (3) GRADE C-SURFACE shall:
 - (a) Be a college graduate with a bachelor's degree in the physical or natural sciences or be a graduate of a two year technical program with a diploma in water and wastewater technology, and have six months of acceptable experience at a surface water facility, or
 - (b) Be a high school graduate or equivalent, have six months acceptable experience at a surface water facility and have satisfactorily completed an approved C-Surface school.
- (4) GRADE A-WELL shall have one year of acceptable experience at a well water facility while holding a Grade B-Well certificate and have satisfactorily completed an approved A-Well school.
- (5) GRADE B-WELL shall:
 - (a) Be a college graduate with a bachelor's degree in the physical or natural sciences or be a graduate of a two year technical program with a diploma in water and wastewater technology, and have six months of acceptable experience at a well water facility, or
 - (b) Have one year of acceptable experience at a well water facility while holding a Grade C-Well certificate and have satisfactorily completed an approved B-Well school.
- (6) GRADE C-WELL shall:
 - (a) Be a college graduate with a bachelor's degree in the physical or natural sciences or be a graduate of a two year technical program with a diploma in water and wastewater technology, and have six months of acceptable experience at a well water facility, or
 - (b) Have six months of acceptable experience at a well water facility and have satisfactorily completed an approved C-Well school.
- (7) GRADE A-DISTRIBUTION shall have one year of acceptable experience at Grade Class B or higher distribution system while holding a Grade B-Distribution certificate and have satisfactorily completed an approved A-Distribution

school, and hold current cardiopulmonary resuscitation certificate.

- (8) GRADE B-DISTRIBUTION shall:

- (a) Be a college graduate with a bachelor's degree in the physical or natural sciences or be a graduate of a two year technical program with a diploma in water and wastewater technology, and have six months of acceptable experience at a Grade Class B or higher distribution system, or
- (b) Have one year of acceptable experience at a Grade Class C or higher distribution system while holding a Grade C-Distribution certificate and have satisfactorily completed an approved B-Distribution school.

- (9) GRADE C-DISTRIBUTION shall hold a certificate of completion of approved trench shoring training and shall:

- (a) Be a college graduate with a bachelor's degree in the physical or natural sciences, or be a graduate of a two year technical program with a diploma in water and wastewater technology, and have six months of acceptable experience at a Grade Class C or higher distribution system, or
- (b) Be a high school graduate or equivalent, have six months of acceptable experience at a Grade Class C or higher distribution system and have satisfactorily completed an approved C-Distribution school, or
- (c) Have one year of acceptable experience at a Grade Class C or higher distribution system and have satisfactorily completed an approved C-Distribution school.

- (10) GRADE CROSS-CONNECTION-CONTROL shall:

- (a) Be a college graduate with a bachelor's degree in the physical or natural sciences, or be a graduate of a two-year technical program with a degree in water and wastewater or civil engineering technology, and have satisfactorily completed an approved cross connection control school, or
- (b) Be a high school graduate or equivalent, have six months of acceptable experience at Class C-Distribution or higher system and have satisfactorily completed an approved cross connection control school, or

- (c) Have one year of acceptable experience at a Class C-Distribution or higher system while holding a Grade C-Distribution or higher certificate and have satisfactorily completed an approved cross connection school, or
- (d) Be a plumbing contractor licensed by the State of North Carolina and have satisfactorily completed an approved cross connection control school.

Statutory Authority G.S. 90A-21(c); 90A-22; 90A-23.

.0206 CERTIFIED OPERATOR REQUIRED

(a) ~~There shall be an operator in responsible charge for each water treatment facility.~~

There shall be an operator in responsible charge for each water treatment facility that adds chemicals to the water, has approved plans for adding chemicals to the water, or has equipment installed for adding chemicals to the water. The operator in responsible charge shall possess a valid certificate issued by the Board equivalent to or exceeding the classification of the facility for which he or she is designated except for purchase water systems which add only a disinfectant to the water in which case the operator in responsible charge shall hold a surface water, well water or distribution system certification equivalent to or exceeding the classification of the facility without respect to the original source of the water.

(b) There shall be an operator holding at least a Class Grade C surface certification or above assigned to be on duty on the premises when a Class A, Class B, or Class C surface water treatment facility is treating water. In no case shall there be a substitute non-certified operator for more than seven days. Implementation of this requirement is subject to the following provisions:

- (1) Upon the effective date of this rule, each affected facility shall have two years to come into compliance;
- (2) Upon vacancy of a position resulting in noncompliance with this requirement each facility shall notify the Board Office within 24 hours or at the start of the next regular business day of such vacancy;
- (3) Upon such vacancy the facility shall have 90 days to fill the position with a certified Class Grade C or above operator or shall have pending approval for a temporary certification for the opera-

tor;

- (4) Within 18 months of vacancy the facility shall have a certified ~~Class~~ Grade C or above operator assigned to fill the vacancy.

Statutory Authority G.S. 90A-20; 90A-28; 90A-29.

TITLE 21 - OCCUPATIONAL LICENSING BOARD

Notice is hereby given in accordance with G.S. 150B-21.2 that the Board of Medical Examiners of the State of North Carolina intends to amend rules cited as 21 NCAC 32L .0001 - .0009, .0011 - .0013 and adopt rule cited as 21 NCAC 32L .0010.

Editor's Note: The agency is proposing to renumber existing rules .0010 - .0012 to .0011 - .0013 and adopt a new rule .0010.

The proposed effective date of this action is June 1, 1993.

The public hearing will be conducted at 1:00 p.m. on February 19, 1993 at the North Raleigh Hilton, 3415 Wake Forest Road, Raleigh, N.C..

Reason for Proposed Action:

21 NCAC 32L .0001 - .0008 - To amend rules for clarification of and addition to Board's requirements for PA approval to include National Certification, Continuing Education, additional approval categories, additional prescribing privileges, and additional supervision accountability.

21 NCAC 32L .0010 - To add a rule to include a general listing of what PA's are trained to do and to provide an avenue for physicians to request approval for their PA's to perform special procedures specifically tailored to the needs of the physician's individual practices.

21 NCAC 32L .0011 - .0013 - To amend Board's registration requirements for PA's from annual to biennial, to require additional documentation of National Certification, Continuing Education, and supervision; to increase fees in accordance with increased BME staff and Board member involvement regarding PA's.

Comment Procedures: Persons interested may

comment by written or oral statement at the hearing or in writing to Administrative Procedures, NCBME, PO Box 26808, Raleigh, NC 27611-6808, by March 3, 1993.

CHAPTER 32 - BOARD OF MEDICAL EXAMINERS

SUBCHAPTER 32L - APPROVAL OF PHYSICIAN ASSISTANTS

.0001 DEFINITIONS

The following definitions apply to this Subchapter:

- (1) "Physician Assistant or PA" means an auxiliary, paramedical person who functions at the direction of or under the supervision of a physician licensed by the Board and who performs tasks traditionally performed by the physician, such as history taking, physical examination, diagnosis and treatment. Categories of approval are explained in Rule .0003 of this Subchapter.
- (2) "Physician Assistant Applicant" means the individual upon whose behalf an application is submitted may function ~~before approval by the Board in the same manner in which he functioned as a student under strict supervision~~ as outlined in Rule .0002(1) of this Subchapter.
- (3) "Physician Assistant Applicant - Previously Approved" means the individual upon whose behalf an application is submitted who has been previously approved as a PA in North Carolina. The previously approved PA may function prior to approval of the new job, as outlined in Rule .0002 (2) of this Subchapter.
- (4) "Physician Assistant-Intern" means the individual who has not received NCCPA certification and is approved by the Board to function as outlined in Rule .0003 of this Subchapter.
- (5) "Physician Assistant-Certified" means the individual who holds current NCCPA certification and earns 100 hours of Category I CME every two years which is approved by AAPA and is approved by the Board to function as outlined in Rule .0003 of this Subchapter.
- (6) "Physician Assistant-CME" means an individual approved prior to June 1, 1993, who continues to be registered

with the Board by submitting documentation of earning 100 hours of Category I CME every two years which is approved by AAPA and is approved by the Board to function as outlined in Rule .0003 of this Subchapter.

- (3) (7) "Supervision" means the physician's function of overseeing, managing, and directing the medical acts performed by the PA as outlined in ~~Rule~~ Rules .0009 and .0010 of this Subchapter.
- (4) (8) "Primary Supervising Physician" means the physician who, by signing the application to the Board, accepts full medical administrative responsibility for the PA's medical activities and conduct at all times whether he/she personally is providing supervision or supervision is being provided by a Back-up Supervising Physician. The Primary Supervising Physician shall assume total responsibility to assure the Board that the PA is sufficiently qualified by education and training to perform all medical acts required of the PA and shall assume total responsibility for the PA's performance in the particular field or fields in which the PA is expected to perform medical acts. The primary supervising physician will be approved for one year unless a written request with valid reasons for change is specifically approved by the Board.
- (5) (9) "Back-up Supervising Physician" means the physician who, by signing the application to the Board, accepts the responsibility to be available to supervise the PA's activities in the absence of the Primary Supervising Physician only in the practice sites listed in the application approved by the Board. The Back-up Supervising Physician is responsible for the activities of the PA only when he/she is providing supervision.
- (6) (10) "Formulary" means ~~the document which lists~~ listing of generic categories of drugs to be prescribed, ordered, or dispensed by physician extenders under written standing orders from the supervising physician for patient care in approved practice sites as more specifically delineated in the Approved Formulary.
- (7) (11) "Approved practice sites" mean only those practice sites specifically listed in the approved application on file in the Board's office in which the PA may

- legally perform medical acts.
- (12) NCCPA - National Commission for Certification of Physician Assistants - See Rule .0003 (a)(3).
- (13) AAPA - American Academy of Physician Assistants.
- (14) CME - Continuing Medical Education - See Rules .0003 and .0010.
- (15) Rural Health Clinics - defined by the N.C. Office of Rural Health and Resource Development as any practice which has certification under the Rural Health Clinic Act (P:95-210). Current requirements include location in a non-urbanized area in a county with a federal designation of Medically Underserved Area (MUA) or Health Professional Shortage Area (HPSA).

Statutory Authority G.S. 90-18(13); 90-18.1.

.0002 PHYSICIAN ASSISTANT APPLICANT STATUS

The Physician Assistant Applicant Status may be used only by an individual whose application for approval of a Physician Assistant has been received in the Board's office.

The Physician Assistant Applicant status may not be used to "try out" a job or work temporarily in a job in which the individual does not intend to obtain Board approval. In the event the individual leaves the job in which he/she has worked as a Physician Assistant Applicant before Board approval is granted, the individual must submit a written explanation to the Board before he/she may work in the Physician Assistant Applicant status in another job.

~~(1) The Physician Assistant Applicant status applies to:~~

Physician Assistant Applicants fall into two categories:

- (1) Physician Assistant Applicant - new to North Carolina:
 - (a) Effective - only upon receipt of the application in the Board's office.
 - (b) Definition:
 - ~~(a)~~ (i) an individual newly graduated from a PA training program; or
 - ~~(b)~~ (ii) an individual coming to North Carolina for the first time who has worked previously as a PA in another state.
 - (c) Limitations:
 - (i) wear identification as a Physician Assistant Applicant;

- (ii) have no prescribing privileges;
 - (iii) have immediate physician countersigning of all notations in all patient charts in all practice locations;
 - (iv) have no remote practice sites. (The supervising physician must always be physically present in the practice site in which the applicant is working.)
- ~~(2) A Physician Assistant Applicant, described in Subparagraph(1) of this Rule, may function before approval by the Board under strict supervision with the following limitations:~~
- (2) Physician Assistant Applicant - Previously Approved:
 - (a) Effective - only upon receipt of the application in the Board's office.
 - (b) Definition:
 - (i) an individual who has been previously approved as a PA in North Carolina in another practice situation which has terminated; or
 - (ii) an individual who is currently approved in one job and is applying for approval of a second job.
 - (c) Limitations:
 - (i) wear identification as a Physician Assistant;
 - (ii) use prescribing number previously issued by the Board for prescribing privileges in accordance with the Approved Formulary;
 - (iii) have immediate physician countersigning of all notations in all patient charts in all practice locations;
 - (iv) have no remote sites. (The supervising physician must always be physically present in the practice site in which the applicant is working.)
- ~~(3) The Physician Assistant Applicant status does not apply to an individual previously approved as a PA in North Carolina in another practice situation which has terminated who is seeking approval in a new job. The previously approved PA may function prior to approval of the new job as follows:~~
- ~~(a) wear identification as a "Physician Assistant;"~~
 - ~~(b) use prescribing number previously issued by the Board for prescribing privileges;~~
 - ~~(c) have physician countersigning of all notations in all patient charts in all practice locations within 24 hours of~~

PA/patient contact.

Statutory Authority G.S. 90-18(13).

.0003 REQUIREMENTS FOR PA APPROVAL

(a) ~~Before being approved~~ Eligibility for approval - to be approved by the Board, an applicant must:

- (1) Be of good moral character.
- (2) Give evidence that he/she has successfully completed a PA training program recognized by the Board as set forth in Rule .0006 of this Subchapter.
- (3) Give evidence of current NCCPA certification if applying for initial NC approval after June 1, 1993:

(A) Physician Assistants approved before June 1, 1993, shall be exempt from the NCCPA certification requirement but must meet CME requirements set out in Rule .0010 of this Subchapter.

(B) Physician Assistants approved before June 1, 1993, who hold current NCCPA certification shall provide documentation at the time of biennial registration beginning July 1, 1993 in addition to CME requirements set out in Rule .0010 of this Subchapter.

(C) Physician Assistant applicants awaiting NCCPA examination scores may be approved as a Physician Assistant Intern and function under the limitations of Rule .0003 until NCCPA certification documentation is received in the Board's office. The applicant must take the first available NCCPA examination after applying for PA approval in North Carolina.

(D) In the event, the Physician Assistant Intern fails the NCCPA examination:

- (i) Board approval to function in the Intern status will become void and the individual will automatically be placed in the PA Applicant status as outlined in Rule .0002(1) of this Subchapter and must take the next available NCCPA examination. During this time, the applicant must provide documentation of earning 50 hours of CME by July 1 after failing the examination.
- (ii) If documentation is received of failure of the second NCCPA

examination, Board approval to function in any capacity as a Physician Assistant will become void until documentation of current NCCPA certification is provided to the Board along with the required application forms and credentials.

(b) Approval Categories after June 1, 1993:

(1) Physician Assistant-Applicant - (see Rule .0002 of this Subchapter).

(2) Physician Assistant-Intern - an individual who applies for approval before receiving NCCPA scores may function as a PA upon receipt of the application in the Board's office as follows:

(A) wear identification as Physician Assistant-Intern;

(B) have prescribing privileges in accordance with the Approved Formulary;

(C) have physician countersign all notations in all patient charts in all practice locations within 24 hours of PA/patient contact;

(D) have no remote practice sites. (The supervising physician must always be physically present in the practice site in which the applicant is working.)

(3) Physician Assistant-Certified - An individual holding NCCPA certification and 50 hours of CME per year approved by AAPA whose PA application has been approved may function as follows:

(A) wear identification as Physician Assistant;

(B) have prescribing privileges in accordance with the Approved Formulary;

(C) have physician countersign all notations in all patient charts in all practice locations within 72 hours of PA/patient contact;

(D) remote practice sites allowed with supervision outlined in Rule .0009 of this Subchapter.

(4) Physician Assistant-CME - An individual approved prior to July 1, 1994, with 50 hours of CME per year approved by AAPA whose PA application has been approved may function as follows:

(A) wear identification as Physician Assistant;

(B) have prescribing privileges in

accordance with the Approved Formulary;

(C) have physician countersign all notations in all patient charts in all practice locations within 72 hours of PA/patient contact;

(D) remote practice sites allowed.

~~(b) Initial~~

(c) Approval may be denied for any of the reasons set forth in this Rule or in Rule .0007 of this Subchapter, as well as failure to satisfy the Board of the qualifications of the PA training program from which the applicant graduated as set forth in Rule .0006 of this Subchapter.

Statutory Authority G.S. 90-18(13).

.0004 APPLICATION FOR PA APPROVAL

(a) Application for approval of a PA must be made upon forms supplied by the Board and must be submitted jointly by the PA and supervising physicians with whom the PA will work.

(b) Application forms submitted to the Board must be completed in every detail and every supporting document required must be submitted by the deadline set by the Board in order that the application may be considered appropriately.

(c) If for any reason a PA discontinues working under the supervision of the primary physician who submitted the application under which the PA is approved, the Board shall be notified and the PA's approval shall automatically terminate until such time as a new application is approved by the Board.

(d) The following applications for changes in the PA practice may be administratively approved by the Board's staff:

- (1) routine job changes of a PA previously approved in N.C. North Carolina;
- (2) additional job under a new primary supervising physician;
- (3) change of primary supervising physician when that is the only change taking place in a currently approved PA practice site;
- (4) addition of back-up supervising physicians to a currently approved PA practice site;
- (5) addition of practice sites under the supervision of the currently approved primary supervising physician;
- (6) temporary approval for second site on relief basis not to exceed two months.

~~(e) Administrative approval is not automatic for the applications listed in this Rule. The changes~~

~~may be administratively approved at the discretion of the Board's staff. Changes cannot be processed administratively but must be considered by the Board as follows: if any of the background questions are answered "yes" by the PA or primary supervising physician; or if the PA or any of the supervising physicians listed have an investigative, complaint, or public file.~~

(e) While these changes may be administratively approved at the discretion of the Board's staff, administrative approval is not automatic for such applications. Under the following conditions, changes may not be processed administratively by the Board staff, but may still be considered by the Board: if any of the background questions are answered "yes" by the PA or primary supervising physician, or if the Board has an investigative or complaint file pertaining to the PA or any of the supervising physicians listed on the application, or if formal disciplinary action has been taken against the PA or physician in North Carolina or any other jurisdiction.

Statutory Authority G.S. 90-18(13); 90-18.1.

.0005 PRESCRIBING PRIVILEGES

(a) The PA applicant and the supervising physicians shall acknowledge in the application that they are familiar with state and federal statutes laws and rules of the Board regarding prescribing; and shall agree to comply ~~with these laws and rules~~ by incorporating these statutes and rules, including the Approved Formulary, into their written standing orders.

~~(b) The generic categories listed in the Formulary are based on the American Hospital Formulary Service published by the American Society of Hospital Vi. The Formulary is adopted by reference by the Board as part of this Rule in accordance with provisions of G.S. 150B-14(e).~~

~~(c)~~ (b) The prescribing stipulations contained in these Rules and in the Approved Formulary apply to writing prescriptions, ordering the administration of medications in out-patient and inpatient settings, and dispensing medications. Approval to dispense must be obtained from the Board of Pharmacy.

~~(d)~~ (c) Prescribing stipulations are as follows:

(1) Controlled Substances:

(A) No controlled substances (Schedules 1, 2, 2N, 3, 3N, 4, 5) defined by the State and Federal Controlled Substances Act may be prescribed, ordered, or dispensed.

(B) Verbal orders given to the PA by the

- supervising physician for administration of a controlled substance to a specific patient may be entered into the patient chart by the PA just as an RN may transcribe a physician's verbal order into a patient chart.
- (2) Parenteral Medications - No parenteral preparations may be prescribed, ordered, dispensed, or administered unless under the order of the supervising physician as set forth in Paragraph (c) ~~(d)~~(3)(B) of this Rule with the exception of those medications listed on the Approved Formulary as allowed.
- (3) Excluded Drugs:
- (A) Any pure form or combination of the generic classes of drugs listed in the Approved Formulary may be prescribed, ordered, or dispensed, unless the drug or class of drug is listed as excluded from the Approved Formulary.
- (B) The PA may prescribe an excluded drug or class of drug only as follows:
- (i) after the patient has been previously seen by the supervising physician for initial treatment of that illness and a written order has been entered into the chart by the physician for future treatment by the PA; or
- (ii) upon a specific written or verbal order obtained from the supervising physician before the prescription or order is issued by the PA.
- (C) Such a prescription or order written as described in Paragraph (b) of this Rule must be signed by the PA with a notation that it is issued on the specific order of the supervising physician. For example: Mary Smith, PA, on order of John Doe, M.D.
- (4) Refills - A prescription may not indicate a refill unless authorized by the supervising physician, with the following exceptions: of
- (A) ~~Birth control medications which~~ Oral contraceptives may be issued for a period not to exceed one year.
- (B) Prenatal vitamin refills may be issued not to exceed the perinatal period.

(C) Fluoride refills may be issued not to exceed one year.

- (5) Dosage Units - Amount of drug prescribed, ordered, or dispensed can be no more than 100 dosage units or a one month supply (whichever is most applicable) with the exception of ~~birth control medications which may be issued for a period not to exceed one year~~ those noted in Paragraph (c)(4) of this Rule.
- (6) Prescription Notations - Every prescription must be noted on the patient's chart. A second prescription for the same medication may be authorized by telephone by the PA and must be entered on the patient's chart and countersigned by the supervising physician within the specific countersigning time approved by the Board.
- (7) Prescribing Number - A prescribing number is assigned by the Board to a PA upon approval by the Board. This number must appear on all prescriptions issued by the PA. The prescribing number is used as the PA's Approval Number. A "license" number is not issued.
- (8) Prescription Blank Format - All prescriptions issued by a PA shall contain the name and telephone number of the supervising physician; the name, practice address, telephone number, and prescribing number of the PA, as well as all information required by law. A suggested prescription format is included in the application packet.
- (9) Pre-signed Prescription Blanks - The supervising physician shall not leave pre-signed prescription forms for use by the PA.

Statutory Authority G.S. 90-18(13); 90-18.1; 150B-14(c).

.0006 REQUIREMENTS FOR RECOGNITION OF PA TRAINING PROGRAMS

All PA training programs approved by the American Medical Association ~~Council on Medical Education~~ (AMA) Committee on Allied Health Education and Accreditation to be in compliance with the "Essentials for the Assistant to the

Primary Care Physician" are recognized by the Board only if they meet the following core curriculum requirements.

- (1) Application for recognition of a PA training program not approved by the AMA as specified above shall be made by letter and supporting documents from the director of the program and must demonstrate to the satisfaction of the Board that such program fulfills the following requirements:
 - (a) Sponsorship - The training program must be sponsored by a college or university with appropriate arrangements for the clinical training of its students, such as a hospital maintaining a teaching program. There must be evidence that the program has education as its primary orientation and objective.
 - (b) Director - The program must be under the supervision of a qualified director, who has at his/her disposal the resources of competent personnel adequately trained in the administration and operation of educational programs.
 - (c) Facilities - Adequate space, light and modern equipment must be provided for all teaching functions. A library, containing up-to-date textbooks, scientific periodicals, and reference material pertaining to clinical medicine, its underlying scientific disciplines, and its specialties, shall be readily accessible to students and faculty.
 - (d) Curriculum - The curriculum must provide adequate instruction in the basic sciences underlying medical practice to provide the trainee with an understanding of the nature of disease processes and symptoms, abnormal tests, and drug actions. This must be combined with instruction, observation, and participation in history taking, physical examination, and therapeutic procedures. This should be in sufficient depth to enable the graduate to integrate and organize historical and physical findings. The didactic instruction shall follow a planned and progressive outline and shall include an appropriate mixture of classroom lectures, textbook assignments, discussions, demonstrations, and similar activities. Instruction shall include

practical instruction and clinical experience under qualified supervision sufficient to provide understanding of a skill in performing those clinical functions which the PA may be asked to perform. There must be sufficient evaluative procedures to assure adequate evidence of competence. Although the student may concentrate his/her effort and his/her interest in a particular specialty of medicine, the program must ~~insure~~ ensure that he/she possesses a broad general understanding of medical practice and therapeutic techniques.

- (e) Length of program - Although some variation may be possible for the individual student, dependent on aptitude, previous education and experience, the curriculum shall be designed to require two or more academic years for completion.
- (f) Faculty - The program must have a faculty competent to teach the didactic and clinical ~~material~~ materials which comprises the curriculum. The faculty shall include at least one instructor who is a graduate of medicine, licensed to practice medicine in the location of the school, whose training and experience enable him to properly supervise progress and teaching in clinical subjects. He/she shall be in attendance for sufficient time to ~~insure~~ ensure proper exposure of the student to clinical teaching and practice. The program may utilize instructors other than physicians, but sufficient exposure to clinical medicine must be provided to ~~insure~~ ensure understanding of the patient, ~~his~~ the problem, and the diagnostic and therapeutic responses to ~~this~~ the problem.
- (g) Entrance Requirements - The program must, through appropriate entrance requirements, ~~insure~~ ensure that candidates accepted for training possess:
 - (i) ability to use written and spoken language in effective communication with physicians, patients, and others;
 - (ii) quantification skills to ~~insure~~ ensure proper ~~calculation~~ calculations and interpretation of ~~tests~~ medical testing;
 - (iii) behavioral characteristics of honesty

- and dependability; and
- (iv) high ethical and moral standards, in order to safeguard the interest of patients and others.
- (2) To retain its recognition by the Board, a recognized program shall:
 - (a) make available to the Board the operating budget and yearly summaries of case loads and educational activities done by clinical affiliates, including volume of outpatient visits and number of inpatients;
 - (b) maintain a satisfactory record of the entrance qualifications of and evaluations of all work done by each student, which shall be available to the Board; and
 - (c) notify the Board in writing of any major changes in the curriculum or a change in the directorship of the program.
- (3) Recognition of a program may be withdrawn when, in the opinion of the Board, the program fails to maintain the educational standards described above. When a program has not been in operation for a period of two consecutive years, recognition will automatically be withdrawn. Withdrawal of recognition from a program will in no way affect the status of a PA who graduated from the program while it was recognized and who has been approved by the Board.

Statutory Authority G.S. 90-18(13).

.0007 TERMINATION OF PA APPROVAL

The approval of a PA may be terminated by the Board when, after due notice and hearing in accordance with provisions of ~~Article 3A of G.S. 150B~~ G.S. 150B-38, it shall find:

- (1) that the PA has held himself/herself out or permitted another to represent him/her as a licensed physician;
- (2) that the PA has engaged in the performance of medical acts other than at the direction of, or under the supervision of, a physician licensed by the Board who is approved by the Board to be a supervising physician;
- (3) that the PA has performed a medical act for which the PA is not approved or for which the PA is not qualified by education and training to perform, including prescribing, ordering, or dispensing

drugs not allowed by the Approved Formulary;

- (4) that the PA is impaired physically, mentally, or professionally as a result of using mind-altering chemicals;
- (5) that the PA has been convicted in any court, of a felony or other criminal offense;
- (6) that the PA is adjudicated mentally incompetent or that the PA's mental or physical condition renders the PA unable to safely function as a PA;
- (7) that the PA has failed to comply with any of the provisions of this Subchapter.

Statutory Authority G.S. 90-18(13).

.0008 METHOD OF IDENTIFICATION

The PA shall wear an appropriate name tag spelling out the words Physician Assistant-Applicant, Physician Assistant-Intern, or "Physician Assistant." (Physician Assistant-Certified and Physician Assistant-CME categories may use the title Physician Assistant.)

Statutory Authority G.S. 90-18(13).

.0009 SUPERVISION OF A PA

Supervision shall be provided by the responsible physician as follows:

- (1) Availability:
 - (a) The supervising physician shall be available for direct communications by radio, telephone, or telecommunications.
 - (b) The supervising physician shall be available on a regularly scheduled basis for referrals of patients from the PA.
 - (c) A PA cannot be supervised by a primary supervising physician who is more than thirty (30) miles away without special permission of the Board.
- (2) Written Standing Orders:
 - (a) The supervising physician shall provide in each practice location, for use by the PA and for referral by other personnel, written standing orders and drug protocols to cover most commonly encountered problems in the practice setting.
 - (b) The written standing orders shall include a predetermined plan for emergency services life or limb threatening emergencies.
 - (c) The PA shall refer a patient to another physician other than an approved super-

- vising physician only in accordance with written standing orders.
- (d) Blanket written standing orders shall not include the use of controlled substances or drugs excluded by the Formulary.
 - (e) Only patient specific standing orders given to the Physician Assistant by the supervising physician before treatment is rendered may include controlled substances or other therapeutics excluded by the Formulary.
- (3) Countersigning:
- (a) All entries by a PA into patient charts in all approved practice locations must be countersigned by the supervising physician. Entries include, but are not limited to: progress notes; treatment rendered; tests or procedures ordered; and notations of prescriptions or orders, and drugs dispensed or administered.
 - (b) The time interval between the PA's contact with the patient and chart review and countersigning by the supervising physician shall be 72 hours specified on the Statement of Approval in accordance with Rule .0003 of this Subchapter.
 - (c) A longer countersigning time interval may be considered by the Board upon specific request. The request should explain the practice circumstances which necessitate the longer countersigning interval.
- (4) Supervision Arrangements:
- (a) The intent of the Board in detailing supervision arrangements is to seek to solve the problem of the very small communities where there is no care. The practice for that extender is an extension of the physician's practice, wherever that physician may physically be located. Patients would identify and know the physician and the physician will be on site a specified number of hours a week to supervise the extender and take care of the patients. If the patient should require care in the hospital setting, the same physician would be available to provide such care.
 - (b) These three elements of supervision must be present:
 - (i) The first element of supervision involves on-site supervision including
- the examination of patients by the physician with the off-site extender to make a diagnosis and treatment plan to assess the quality of the care being provided. For example, if a patient were to present as too complicated for a telephone consultation, the physician would examine the patient, review the data, make a diagnosis, and throughout the process assess the extender's abilities.
- (ii) The second element of supervision is chart review of those charts of patients seen solely by the extender since the physician's last visit. These would be kept on-site and the physician would review these in the presence of or with the extender nearby.
 - (iii) The third element is written standing orders or protocols as outlined in Rule .0009(2) of this Subchapter.
- (c) If the PA is to perform duties away from the supervising physician, the application must clearly specify the circumstances which would justify this action and the supervisory arrangements established to protect the patient.
 - (d) Details must be submitted describing distance, travel time topography, physical characteristics, and communication ability between the PA and the supervising physician.
 - (e) Since the patients of physician assistants are in reality the patients of the primary supervising physician, the primary physician must be on-site a minimum of four hours a week for rural health clinics as defined in Rule .0001(15) of this Subchapter and eight hours a week in all other sites.
 - (i) Any exceptions to this rule must be specifically requested on the application form and will be reviewed by the Board on an individual basis.
 - (ii) Patients requiring continuing care should be seen by a supervising physician at least once every 12 months.
- (5) Supervising Physicians:
- (a) A physician in a graduate medical education program, whether fully licensed or holding only a resident's training license, cannot be named as a supervising physician.
 - (b) ~~A physician in a graduate medical education program who is also practicing~~

~~ing in a non training situation may supervise physician assistants in the non training situation if fully licensed.~~

- (e) (b) All physicians who may supervise the PA in any manner must be approved by the Board before the PA supervision occurs.
- (c) All supervising physicians must sign the statement of "Certification of Understanding and Compliance" as part of the application for approval which certifies that the physicians and PA applicant have carefully read and understand the statutes and rules regarding physician assistants and agree that such statutes and rules will be fully complied with by the PA applicant and supervising physicians. The supervising physician must also accept responsibility for the applicant's conduct as a physician assistant under his/her supervision and indicate understanding that conduct which violates the statutes and rules governing physician assistants may subject the physician to sanctions by the Board including suspension or revocation of the physician's license to practice medicine in North Carolina.
- (d) The supervising physician must be able to perform any task he assigns to the PA.
- (6) The PA must be prepared to demonstrate upon request to a member of the Board, or its delegates:
 - (a) the ability to perform the medical acts assigned by the supervising physician; and
 - (b) compliance with statutes, rules, and the Approved Formulary.

Statutory Authority G.S. 90-18(13).

.0010 CORE MEDICAL ACTS

The physician assistant is academically and clinically prepared by training to provide health care services with the direction and supervision of a qualified and licensed physician. The following core medical acts include performing diagnostic, therapeutics, and preventive and health maintenance services in any setting in which the physician renders care, in order to allow more effective and focused application of the physician's particular knowledge and skills.

Physician assistants generally are trained to carry

out the following core medical acts as delegated to him/her by the supervising physician.

- (1) Establish health status data base.
 - (a) Establish effective interpersonal relationships with patients.
 - (i) Respect the feelings and attitudes of patients.
 - (ii) Demonstrate caring by attitude expressed to patients.
 - (iii) Respond to personal and cultural factors affecting patients.
 - (iv) Practice effective interviewing skills.
 - (b) Obtain a comprehensive or problem-specific history for a patient of any age by eliciting historical information in the following areas:
 - (i) chief complaint;
 - (ii) history of present illness;
 - (iii) past medical history;
 - (iv) family history;
 - (v) psychosocial history, including health risk factors and current life situation;
 - (vi) review of systems.
- (c) Perform a complete or problem-focused physical examination for a patient of any age.
- (d) Order and/or perform diagnostic tests.
 - (i) Perform the following screening tests:
 - (A) Denver Developmental Screening Test;
 - (B) visual acuity with Snellen test;
 - (C) electrocardiogram;
 - (D) tuberculin skin test;
 - (E) urinalysis;
 - (F) stool test for occult blood;
 - (G) routine specimen plating;
 - (H) gram stain;
 - (I) KOH preparation and hanging drop;
 - (J) intradermal testing for allergies (under physician supervision);
 - (K) hematocrit;
 - (L) white blood cell count;
 - (M) peripheral blood smear;
 - (N) throat culture;
 - (O) PAP smear;
 - (ii) Understand the indications for and significance of abnormal results for:
 - (A) blood chemistries;
 - (B) VDRL;
 - (C) ELISA and Western Blot HIV tests;
 - (D) tests of blood glucose;
 - (E) complete blood count;
 - (F) arterial blood gases;

- (G) triglycerides and cholesterol;
- (H) sedimentation rate;
- (I) coagulation studies;
- (J) pregnancy tests;
- (K) PAP smears;
- (L) urinalysis and culture;
- (M) GC and Chlamydia cultures;
- (N) thyroid function studies;
- (O) liver function tests;
- (P) cardiac enzymes;
- (Q) diagnostic x-rays;
- (iii) Obtain the following specimens for laboratory evaluation:
 - (A) blood;
 - (B) urine;
 - (C) stool;
 - (D) vaginal secretions and cervical scrapings;
 - (E) wound exudate;
 - (F) sputum.
- (e) Record and communicate findings by:
 - (i) presenting a complete, clear and concise summary of pertinent aspects of the history and physical examination in written form and orally; and
 - (ii) preparing discharge summaries, progress notes, admission orders, pre and post-operative notes.
- (2) Analyze data base and formulate management plan.
 - (a) Differentiate between normal and abnormal findings for a patient of any age.
 - (b) Develop a differential diagnosis based on data obtained.
 - (c) With physician guidance, have an understanding of current diagnosis and treatment of the following common problems encountered in the physician's practice:
 - (i) abdominal pain;
 - (ii) abortion, spontaneous;
 - (iii) acid-base disturbances;
 - (iv) AIDS;
 - (v) alcohol abuse;
 - (vi) allergies;
 - (vii) amenorrhea, menorrhagia, metrorrhagia;
 - (viii) anal disorders;
 - (ix) anemia;
 - (x) angina;
 - (xi) arteriosclerosis;
 - (xii) arthritis;
 - (xiii) asthma;
 - (xiv) back pain;
 - (xv) breast cysts;
 - (xvi) bronchitis;
 - (xvii) burns;
 - (xviii) bursitis;
 - (xix) cataracts;
 - (xx) cellulitis;
 - (xxi) cerebrovascular accident;
 - (xxii) chest pain;
 - (xxiii) cholelithiasis, cholecystitis;
 - (xxiv) congestive heart failure;
 - (xxv) conjunctivitis and blepharitis;
 - (xxvi) constipation, fecal impaction;
 - (xxvii) contraception;
 - (xxviii) coryza;
 - (xxix) cough;
 - (xxx) dementia (treatable and chronic);
 - (xxxi) diabetes mellitus;
 - (xxxii) diarrhea;
 - (xxxiii) drug abuse;
 - (xxxiv) drug reactions;
 - (xxxv) dysmenorrhea;
 - (xxxvi) ectopic pregnancy;
 - (xxxvii) emphysema;
 - (xxxviii) enuresis;
 - (xxxix) epistaxis;
 - (xl) fatigue;
 - (xli) foreign body;
 - (xlii) gastroenteritis;
 - (xliii) glaucoma;
 - (xliv) headache;
 - (xlv) heat exhaustion/stroke;
 - (xlvi) hematuria;
 - (xlvii) hemorrhoids;
 - (xlviii) hernia;
 - (xlix) hyperlipidemia;
 - (l) hypertension;
 - (li) hyperventilation;
 - (lii) insect bites;
 - (liii) irritable bowel disease;
 - (liv) lacerations, contusions, abrasions;
 - (lv) laryngitis and tracheitis;
 - (lvi) melen and hematochezia;
 - (lvii) menopausal symptoms;
 - (lviii) psychiatric disorders;
 - (lix) nephrolithiasis;
 - (lx) obesity and eating disorders;
 - (lxi) osteoporosis;
 - (lxii) otitis externa;
 - (lxiii) otitis media, acute and serous;
 - (lxiv) peripheral vascular disease;
 - (lxv) pharyngitis and tonsillitis;
 - (lxvi) Pelvic Inflammatory Disease;
 - (lxvii) pleurisy;
 - (lxviii) pneumonia;
 - (lxix) pregnancy;

- (lxx) premenstrual syndrome;
 - (lxxi) prostatic hypertrophy;
 - (lxxii) rhinitis, allergic and vasomotor;
 - (lxxiii) sexually transmitted diseases;
 - (lxxiv) sexual problems;
 - (lxxv) sinusitis;
 - (lxxvi) skin problems:
 - (A) abscesses and cysts;
 - (B) dermatitis;
 - (C) nail and hair problems;
 - (D) warts;
 - (E) infections and infestations;
 - (F) cutaneous manifestations of systemic disease;
 - (G) neoplasm.
 - (lxxvii) social problems:
 - (A) economic;
 - (B) educational;
 - (C) employment;
 - (D) housing;
 - (E) legal;
 - (F) recreational;
 - (lxxviii) sprains and strains;
 - (lxxix) thyroid problems;
 - (lxxx) tobacco abuse;
 - (lxxxi) transient ischemic attack;
 - (lxxxii) ulcer disease, gastric and duodenal;
 - (lxxxiii) urethritis;
 - (lxxxiv) urinary tract infection;
 - (lxxxv) vertigo and dizziness;
 - (lxxxvi) vaginitis, vulvitis, cervicitis;
 - (lxxxvii) viral illnesses.
- (3) Develop/formulate a health management plan using all necessary resources including:
- (a) the patient;
 - (b) the supervising physician;
 - (c) the patient's family and/or significant others;
 - (d) other health professionals;
 - (e) community resources;
 - (f) past medical records.
- (4) Implement and monitor health management plan.
- (a) Determine the patient's understanding of his/her health problems and explain, in an understandable fashion, the problem, purpose of treatment and management plan.
 - (b) Perform the following therapies/procedures.
 - (i) Administer medications:
 - (A) oral;
 - (B) topical;
 - (C) sublingual;
 - (D) rectal;
 - (E) inhalation.
 - (ii) Administer medications only on the direct order of the supervising physician for the specific patient (see Rule .0005 of this Subchapter):
 - (A) intravenous;
 - (B) subcutaneous;
 - (C) intra dermal;
 - (D) intramuscular.
 - (iii) Perform intubations/cannulations:
 - (A) urinary catheter - straight to Foley;
 - (B) nasogastric tube;
 - (C) intravenous catheters to start IV therapy.
 - (iv) Perform musculoskeletal therapies:
 - (A) casting - preparation, application, removal;
 - (B) immobilization of injured extremity;
 - (C) splinting/joint taping for stabilization;
 - (D) measurement and adjustment of crutches;
 - (E) measurement and adjustment of orthopaedic appliances.
 - (v) Perform pulmonary/ ENT/ interventions/therapies:
 - (A) assist respiration using Ambu bag;
 - (B) administer oxygen by mask or nasal cannula;
 - (C) obtain oximeter readings;
 - (D) ear and eye irrigations;
 - (E) control simple anterior nasal bleed;
 - (F) obtain throat culture;
 - (G) suction nose, mouth, posterior pharynx;
 - (H) curette/irrigate impacted cerumen.
 - (vi) Perform cardiovascular interventions/therapies:
 - (A) administer CPR/BCLS;
 - (B) perform ACLS;
 - (C) measure central venous pressure;
 - (D) perform 12 lead EKG.
 - (vii) Perform gastrointestinal interventions/therapies:
 - (A) irrigate gastrostomy;
 - (B) perform gastric lavage;
 - (C) perform stomal care/fit appliances;
 - (D) remove fecal impaction;
 - (E) give enema.
 - (viii) Perform minor surgical interventions/therapies:

- (A) sterile technique;
- (B) wound care;
- (C) suture/staple lacerations, incisions;
- (D) remove sutures/staples;
- (E) insert/remove packing in wounds;
- (F) control bleeding/hemorrhage;
- (G) incise and drain abscess;
- (H) apply dressings and wraps;
- (I) apply burn dressings;
- (J) assist in operating room as directed.
- (ix) Initiate emergency treatment according to written standing orders:
 - (A) anaphylaxis, severe drug reaction;
 - (B) shock;
 - (C) lacerations;
 - (D) sprains and strains;
 - (E) fractures;
 - (F) hemorrhage, internal and external;
 - (G) respiratory compromise/arrest;
 - (H) cardiac arrest;
 - (I) acute myocardial infarction;
 - (J) seizures;
 - (K) psychiatric crises;
 - (L) burns;
 - (M) bites;
 - (N) altered states of consciousness;
 - (O) insulin shock/hypoglycemia;
 - (P) heat exhaustion/stroke;
 - (Q) poisonings and intoxications;
 - (R) traumatic amputations;
 - (S) spinal cord injury;
 - (T) eye injury;
 - (U) head, chest, abdominal injury;
 - (V) near drowning;
 - (W) hypothermia;
 - (X) dehydration;
 - (Y) precipitous delivery;
 - (Z) neonatal apnea.
- (c) Provide patient education and counseling.
 - (i) Discuss preventive health care measures including but not limited to:
 - (A) use of seat belts and child restraints;
 - (B) exercise and diet;
 - (C) tobacco, alcohol and drug abuse;
 - (D) dental hygiene;
 - (E) breast self-exam;
 - (F) PAP smear;
 - (G) testicular self-exam;
 - (H) "safe sex" and HIV prevention;
 - (I) warning signs of cancer;
 - (J) periodic health screening exams;
 - (K) accident prevention/child-proofing homes;
 - (L) immunizations;
 - (M) smoke detectors in the home.
 - (ii) Teach patient and family about:
 - (A) nutrition;
 - (B) poisoning prevention;
 - (C) lead poisoning prevention;
 - (D) first aid;
 - (E) infection prevention;
 - (F) congenital abnormalities;
 - (G) handicapping conditions;
 - (H) administering injections;
 - (I) use of vaporizer;
 - (J) accessing resources in community;
 - (K) home treatment of minor symptoms;
 - (L) toilet training;
 - (M) sleep problems;
 - (N) growth and developmental tasks for appropriate ages.
 - (iii) Offer support to family dealing with patient's condition.
 - (iv) Counsel patients concerning:
 - (A) anxiety reactions;
 - (B) maladaptive disorders;
 - (C) depression;
 - (D) aging adjustments;
 - (E) grieving process;
 - (F) problems of adolescence;
 - (G) behavioral problems of children, adults;
 - (H) chronic illness;
 - (I) terminal illness;
 - (J) substance abuse issues.
 - (v) Adapt to a variety of settings where health care may be rendered, for example:
 - (A) ambulatory care center;
 - (B) acute care setting;
 - (C) home;
 - (D) schools;
 - (E) rest home or domiciliary care;
 - (F) intermediate care facility, extended care facilities.
- (d) Maintain attitudes and attributes essential to the role of the physician assistant.
 - (i) Be humane, give care, understanding and consideration of the highest level of excellence.
 - (ii) Respect the privacy of your patient.
 - (iii) Respect and keep the confidentiality given you by your patient.
 - (iv) Be aware of your limitations in

knowledge and seek help and advice and close supervision when it is needed.

specifically requested and approved by the Board prior to implementation.

Statutory Authority G.S. 90-18(13).

- (v) Do not hesitate to refer problems beyond your competency.
- (vi) Seek and integrate constructive criticism concerning your judgment and performance.
- (vii) Maintain and expand your knowledge base by seeking appropriate CME.
- (viii) Resist compromises in the practice of medicine.
- (ix) Read and incorporate the position statements of the Board into your practice.
- (5) Special Procedures:
 - (a) Any procedure to be performed by the Physician Assistant not included in Item (7) of this Rule must be listed on the application form along with a statement signed by the primary supervising physician that this physician personally attests to the qualifications of the applicant and the supervising physician to perform these special procedures.
 - (b) Special procedures that must be specifically requested include but are not limited to the following:
 - (i) proctosigmoidoscopy;
 - (ii) joint aspirations;
 - (iii) lumbar puncture;
 - (iv) bone marrow aspiration;
 - (v) thoracentesis and paracentesis;
 - (vi) tissue biopsy;
 - (vii) cerebrospinal fluid;
 - (viii) endotracheal intubation;
 - (ix) obtain arterial blood gas;
 - (x) interpret EKG;
 - (xi) administer local anesthesia including digital blocks;
 - (xii) perform skin biopsy;
 - (xiii) remove foreign bodies;
 - (xiv) treat warts;
 - (xv) relieve subungual hematoma;
 - (xvi) remove ingrown toenail.
 - (c) At the time of biennial registration, the primary supervising physician must sign a statement personally attesting to the PA's continued ability to perform all acts previously approved.
 - (d) If the primary supervising physician wishes to add special procedures for a physician assistant currently approved under his supervision between biennial registrations, these changes must be

.0010 .0011 BIENNIAL REGISTRATION OF PA APPROVAL

(a) Physician Assistants approved under these Rules shall register their approval biennially ~~annually~~ with the Board by July 1 of each odd-numbered year on forms supplied by the Board and shall be accompanied by a registration fee of thirty five dollars (\$35.00) not to exceed two hundred dollars (\$200.00) and the following documentation:

- (1) Individuals approved after June 1, 1993, must provide documentation of current NCCPA certification and one hundred (100) hours of Category I CME within the past two years;
- (2) Individuals approved before June 1, 1993 must provide documentation of one hundred (100) hours Category I CME within the past two years approved by the AAPA at the July 1995 registration.

(b) ~~In the event failure to register continues one fails to register for a period of thirty (30) 30 days,~~ formal action may be taken against the approval of the PA by the Board after notice and hearing in accordance with G.S.150B-38.

Statutory Authority G.S. 90-15.1.

.0011 .0012 FEES

(a) An application fee of ~~one hundred and fifty dollars (\$150.00)~~ two hundred dollars (\$200.00) shall be paid at the time of the initial application for approval and each subsequent application for job change.

(b) An application fee of ~~one hundred dollars (\$100.00)~~ one hundred and fifty dollars (\$150.00) shall be paid at the time of application for a change of primary supervising physician when that is the only change in the PA employment situation.

(c) The fee for ~~annual~~ biennial registration, due July 1 every odd-numbered year is ~~thirty five dollars (\$35.00)~~ one hundred dollars (\$100.00) or as determined by the Board.

(d) No portion of the above fees ~~in this Rule~~ is refundable.

Statutory Authority G.S. 90-15.

.0012 .0013 PA FORMS

The following documents regarding physician assistants may be obtained from the Board's office:

- (1) Rules for Approval of Physician Assistants, Subchapter 32L;
- (2) Approved Formulary;
- (3) North Carolina Laws Regarding Physician Assistants, G.S.90-18(13) and 90-18.1;
- (4) Application for PA Approval;
- (5) Statement of Approval, upon being approved;
- (6) Application for ~~Annual~~ Biennial Registration, mailed during June of every odd-numbered year to all Physician Assistants approved by May 1 of every odd-numbered year; and
- (7) Certificate of Registration, upon registering.

Statutory Authority G.S. 150B-11.

The Rules Review Commission (RRC) objected to the following rules in accordance with G.S. 143B-30.2(c). State agencies are required to respond to RRC as provided in G.S. 143B-30.2(d).

COMMERCE

Departmental Rules

4 NCAC 1K .0103 - Eligible Applicants	RRC Objection	11/19/92
Agency Revised Rule	Obj. Removed	12/17/92
4 NCAC 1K .0204 - Discretionary Public Hearing by the Department	RRC Objection	11/19/92
Agency Revised Rule	Obj. Removed	12/17/92
4 NCAC 1K .0205 - Formal Application Procedures: Approval	RRC Objection	11/19/92
Agency Revised Rule	Obj. Removed	12/17/92
4 NCAC 1K .0206 - Formal Application Procedures: Denial	RRC Objection	11/19/92
Agency Revised Rule	Obj. Removed	12/17/92
4 NCAC 1K .0207 - Reimbursement of Extraordinary Expense	RRC Objection	11/19/92
Agency Revised Rule	Obj. Removed	12/17/92
4 NCAC 1K .0302 - Criteria for Making Necessary Findings	RRC Objection	11/19/92
Agency Revised Rule	Obj. Removed	12/17/92

ENVIRONMENT, HEALTH, AND NATURAL RESOURCES

Coastal Management

15A NCAC 7H .0308 - Specific Use Standards for Ocean Hazard Areas	RRC Objection	11/19/92
Rule Returned to Agency		12/17/92

Environmental Management

15A NCAC 2H .0805 - Certification and Renewal of Certification	RRC Objection	10/15/92
Agency Revised Rule	RRC Objection	10/15/92
Rule Returned to Agency		11/19/92
Agency Filed with OAH	Eff.	12/21/92

Governor's Waste Management Board

15A NCAC 14C .0005 - Conditions for Grants	RRC Objection	12/17/92
Agency Revised Rule	Obj. Removed	12/17/92

Solid Waste Management

15A NCAC 13B .0103 - General Conditions	RRC Objection	12/17/92
Agency Revised Rule	Obj. Removed	12/17/92

Wildlife Resources and Water Safety

15A NCAC 10I .0001 - Definitions	RRC Objection	10/15/92
Agency Responded	No Action	11/19/92
Agency Responded	No Action	12/17/92

HUMAN RESOURCES

Medical Assistance

10 NCAC 26D .0012 - Time Limitation	RRC Objection	12/17/92
Agency Withdrew Rule		12/17/92
10 NCAC 26N .0201 - Offer to Counsel	RRC Objection	12/17/92
Agency Withdrew Rule		12/17/92

Mental Health: General

10 NCAC 14K .0103 - Definitions	RRC Objection	12/17/92
Agency Revised Rule	Obj. Removed	12/17/92

INDEPENDENT AGENCIES**N.C. Housing Finance Agency**

24 NCAC 1M .0202 - Eligibility	RRC Objection	10/15/92
No Response from Agency	No Action	11/19/92
No Response from Agency	No Action	12/17/92
24 NCAC 1M .0204 - Selection Procedures	RRC Objection	10/15/92
No Response from Agency	No Action	11/19/92
No Response from Agency	No Action	12/17/92
24 NCAC 1M .0205 - Administration	RRC Objection	10/15/92
No Response from Agency	No Action	11/19/92
No Response from Agency	No Action	12/17/92
24 NCAC 1M .0206 - Program Fees	RRC Objection	10/15/92
No Response from Agency	No Action	11/19/92
No Response from Agency	No Action	12/17/92
24 NCAC 1M .0301 - Goal and Objectives	RRC Objection	10/15/92
No Response from Agency	No Action	11/19/92
No Response from Agency	No Action	12/17/92
24 NCAC 1M .0302 - Eligibility Requirements	RRC Objection	10/15/92
No Response from Agency	No Action	11/19/92
No Response from Agency	No Action	12/17/92
24 NCAC 1M .0303 - Threshold Review Criteria	RRC Objection	10/15/92
No Response from Agency	No Action	11/19/92
No Response from Agency	No Action	12/17/92
24 NCAC 1M .0306 - Funding Commitment	RRC Objection	10/15/92
No Response from Agency	No Action	11/19/92
No Response from Agency	No Action	12/17/92
24 NCAC 1M .0401 - Goals and Objectives	RRC Objection	10/15/92
No Response from Agency	No Action	11/19/92
No Response from Agency	No Action	12/17/92
24 NCAC 1M .0402 - Eligibility Requirements	RRC Objection	10/15/92
No Response from Agency	No Action	11/19/92
No Response from Agency	No Action	12/17/92
24 NCAC 1M .0403 - Threshold Review Criteria	RRC Objection	10/15/92
No Response from Agency	No Action	11/19/92
No Response from Agency	No Action	12/17/92
24 NCAC 1M .0404 - Ranking Criteria	RRC Objection	10/15/92
No Response from Agency	No Action	11/19/92
No Response from Agency	No Action	12/17/92
24 NCAC 1M .0405 - Agency Board Approval	RRC Objection	10/15/92
No Response from Agency	No Action	11/19/92
No Response from Agency	No Action	12/17/92

INSURANCE**Agent Services Division**

11 NCAC 6A .0802 - Licensee Requirements	RRC Objection	12/17/92
Agency Revised Rule	Obj. Removed	12/17/92

Departmental Rules

11 NCAC 1 .0432 - Manufactured Housing Board Hearings	RRC Objection	12/17/92
Agency Withdrew Rule		12/17/92

Financial Evaluation Division

11 NCAC 11A .0602 - Licensure	RRC Objection	11/19/92
Agency Revised Rule	RRC Objection	11/19/92
Rule Returned to Agency		12/17/92

Multiple Employer Welfare Arrangements

11 NCAC 18 .0019 - Description of Forms	RRC Objection	06/18/92
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Seniors' Health Insurance Information Program

11 NCAC 17 .0005 - SHIIP Inquiries to Insurers and Agents	RRC Objection	06/18/92
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LICENSING BOARDS AND COMMISSIONS**Architecture****Cosmetic Art Examiners**

21 NCAC 14L .0301 - Applicants Licensed as Teachers in Other States	RRC Objection	11/19/92
Agency Revised Rule	Obj. Removed	12/17/92
21 NCAC 14L .0302 - Requirements for Obtaining a Teacher's License	RRC Objection	11/19/92
Agency Revised Rule	Obj. Removed	12/17/92

General Contractors

21 NCAC 12 .0901 - Definitions	RRC Objection	12/17/92
Agency Revised Rule	Obj. Removed	12/17/92
21 NCAC 12 .0908 - Order Directing Payment from Fund	RRC Objection	12/17/92
Agency Revised Rule	Obj. Removed	12/17/92
21 NCAC 12 .0910 - Limitations; Pro Rata Distribution	RRC Objection	12/17/92

REVENUE**Individual Income, Inheritance and Gift Tax Division**

17 NCAC 3B .0401 - Penalties	RRC Objection	08/20/92
17 NCAC 3B .0402 - Interest	RRC Objection	08/20/92

Individual Income Tax Division

17 NCAC 6B .0107 - Extensions	RRC Objection	08/20/92
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RRC OBJECTIONS

<i>17 NCAC 6B .0115 - Additions to Federal Taxable Income</i>	<i>RRC Objection</i>	<i>08/20/92</i>
<i>17 NCAC 6B .0116 - Deductions from Federal Taxable Income</i>	<i>RRC Objection</i>	<i>08/20/92</i>
<i>17 NCAC 6B .0117 - Transitional Adjustments</i>	<i>RRC Objection</i>	<i>08/20/92</i>
<i>17 NCAC 6B .3406 - Refunds</i>	<i>RRC Objection</i>	<i>08/20/92</i>

This Section of the Register lists the recent decisions issued by the North Carolina Supreme Court, Court of Appeals, Superior Court (when available), and the Office of Administrative Hearings which invalidate a rule in the North Carolina Administrative Code.

1 NCAC 5A .0010 - ADMINISTRATIVE PROCEDURES

Thomas R. West, Administrative Law Judge with the Office of Administrative Hearings, declared two portions of Rule 1 NCAC 5A .0010 void as applied in *Stauffer Information Systems, Petitioner v. The North Carolina Department of Community Colleges and The North Carolina Department of Administration, Respondent and The University of Southern California, Intervenor-Respondent* (92 DOA 0666).

15A NCAC 19A .0202(d)(10) - CONTROL MEASURES - HIV

Brenda B. Becton, Administrative Law Judge with the Office of Administrative Hearings, declared Rule 15A NCAC 19A .0202(d)(10) void as applied in *ACT-UP TRIANGLE (AIDS Coalition to Unleash Power Triangle), Steven Harris, and John Doe, Petitioners v. Commission for Health Services of the State of North Carolina, Ron Levine, as Assistant Secretary of Health and State Health Director for the Department of Environment, Health, and Natural Resources of the State of North Carolina, William Cobey, as Secretary of the Department of Environment, Health, and Natural Resources of the State of North Carolina, Dr. Rebecca Meriwether, as Chief, Communicable Disease Control Section of the North Carolina Department of Environment, Health, and Natural Resources, Wayne Bobbitt Jr., as Chief of the HIV/STD Control Branch of the North Carolina Department of Environment, Health, and Natural Resources, Respondents* (91 EHR 0818).

This Section contains the full text of some of the more significant Administrative Law Judge decisions along with an index to all recent contested cases decisions which are filed under North Carolina's Administrative Procedure Act. Copies of the decisions listed in the index and not published are available upon request for a minimal charge by contacting the Office of Administrative Hearings, (919) 733-2698.

KEY TO CASE CODES

ABC	Alcoholic Beverage Control Commission	DST	Department of State Treasurer
BDA	Board of Dental Examiners	EDC	Department of Public Instruction
BME	Board of Medical Examiners	EHR	Department of Environment, Health, and Natural Resources
BMS	Board of Mortuary Science	ESC	Employment Security Commission
BOG	Board of Geologists	HAF	Hearing Aid Dealers and Fitters Board
BON	Board of Nursing	HRC	Human Relations Committee
BOO	Board of Opticians	IND	Independent Agencies
CFA	Commission for Auctioneers	INS	Department of Insurance
COM	Department of Economic and Community Development	LBC	Licensing Board for Contractors
CPS	Department of Crime Control and Public Safety	MLK	Milk Commission
CSE	Child Support Enforcement	NHA	Board of Nursing Home Administrators
DAG	Department of Agriculture	OAH	Office of Administrative Hearings
DCC	Department of Community Colleges	OSP	Office of State Personnel
DCR	Department of Cultural Resources	PHC	Board of Plumbing and Heating Contractors
DCS	Distribution Child Support	POD	Board of Podiatry Examiners
DHR	Department of Human Resources	SOS	Department of Secretary of State
DOA	Department of Administration	SPA	Board of Examiners of Speech and Language Pathologists and Audiologists
DOJ	Department of Justice	WRC	Wildlife Resources Commission
DOL	Department of Labor		
DSA	Department of State Auditor		

CASE NAME	CASE NUMBER	ALJ	FILED DATE
James Meachem Jr. v. NC Agricultural & Technical State University	91 OSP 0106	Morrison	01/07/93
Alan Dean Enwright v. DHR, Division of Social Services, CSE	91 CSE 1040	Becton	01/06/93
Jeffrey W. Burgmeier v. DHR, Division of Social Services, CSE	91 CSE 1052	Nesnow	01/06/93
Rhonnie James Williams v. DHR, Division of Social Services, CSE	91 CSE 1073	Becton	01/06/93
Phillip A. Brooks v. DHR, Division of Social Services, CSE	91 CSE 1145	Mann	01/07/93

CASE NAME	CASE NUMBER	ALJ	FILED DATE
John Lee Morris Sr. v. University of North Carolina at Chapel Hill	91 OSP 1161	Morgan	01/07/93
John T. Adams v. DHR, Division of Social Services, CSE	91 CSE 1242	Mann	01/07/93
Keith M. Edwards v. University of N.C. at Chapel Hill, Public Safety Dept.	91 OSP 1368	Gray	01/15/93
Kathleen L. Dorsey v. University of North Carolina at Wilmington	92 OSP 0636	Morrison	01/15/93
Kenny Wayne Thompson v. N.C. Criminal Justice Ed & Training Stds Commission	92 DOJ 0641	Mann	01/15/93
Wayne C. Almond v. Stanly County Health Department, EHR	92 EHR 0683	West	01/19/93
Ms. Joyce Ann Davis T/A Joyce's Grill, 505 Horton St, Zebulon, NC 27597 v. Alcoholic Beverage Control Commission	92 ABC 0739	Chess	01/06/93
Gerald D. Williams v. DHR, Division of Social Services, CSE	92 CSE 0769	Morrison	01/06/93
Bobby Ray Roberson v. Department of Environment, Health, & Natural Resources	92 EHR 0845	Reilly	01/12/93
David Ray Shumate v. N.C. Alarm Systems Licensing Board	92 DOJ 0943	West	01/07/93
Lawyer E. Crawford v. John Umstead Hospital	92 OSP 1107	Nesnow	01/07/93
Alice Mobley, Gene Mobley v. DHR, Division of Facility Services	92 DHR 1126	Nesnow	01/08/93
Enviro-Soil, Inc., Matthews, N.C. v. N.C. Environmental Mgmt Comm, File GW-92-54FT	92 EHR 1132	Gray	01/12/93
Dillingham Construction Co., Inc. v. EHR, Asbestos Hazard Management Branch	92 EHR 1136	Morgan	01/05/93

CONTESTED CASE DECISIONS

CASE NAME	CASE NUMBER	ALJ	FILED DATE
Geraldine Herring v. Department of Correction	92 OSP 1730	Gray	01/12/93

STATE OF NORTH CAROLINA
COUNTY OF DURHAM

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
91 OSP 1161

JOHN LEE MORRIS SR.
Petitioner,

v.

UNIVERSITY OF NORTH CAROLINA AT
CHAPEL HILL
Respondent.

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RECOMMENDED DECISION

The above-captioned matter was heard by Michael Rivers Morgan, Administrative Law Judge, on June 29, June 30 and July 2, 1992 in Durham, North Carolina.

APPEARANCES

John Lee Morris, Sr., pro se.

Barbara A. Shaw, Assistant Attorney General, for the Respondent.

ISSUES

1. Whether the Respondent had just cause to dismiss the Petitioner from its employ;
2. Whether the Respondent discriminated against the Petitioner on the basis of race in dismissing the Petitioner from its employ.

STIPULATED FACTS

The parties stipulated and agreed to the following facts in the Prehearing Order filed on June 24, 1992:

The Petitioner, Mr. Morris, was employed by the Respondent beginning October 15, 1990 as a Laborer, pay grade 50. His pay grade remained the same throughout his period of employment with the Respondent. He was terminated from employment by Respondent effective August 29, 1991.

FINDINGS OF FACT

Based upon the evidence admitted at the hearing, the undersigned administrative law judge finds the following facts:

1. The Petitioner's job duties with the Respondent included cleaning, cutting grass and similar miscellaneous work while assigned to a grounds crew.
2. Demetrious Flythe and Karen Lovick were employed with the Respondent's Physical Plant

Department, Grounds Division during the months of February and March of 1991.

3. On February 5, 1991, Flythe reported to her supervisor Beverly Junkin that on the previous day of February 4, 1991, the Petitioner handed Flythe an envelope and asked her not to open it until she was alone, because it should be a secret between the Petitioner and Flythe.
4. Flythe subsequently opened the envelope and found that it contained two romantic cards.
5. At the bottom of one of the romantic cards, the Petitioner wrote that he thought about Flythe everyday, that he thought Flythe was beautiful, that seeing Flythe everyday "made" his day, that the Petitioner wanted Flythe to go to church with him on Sunday, that he dreamed of squeezing Flythe tight in his arms at night and that he hoped the Lord would forgive him for saying it.
6. The second romantic card which was enclosed in the envelope which the Petitioner gave to Flythe on February 4, 1991 contained \$27.00 in cash, with a handwritten note inside the card which stated that the number 27 was the Petitioner's lucky number and that the Petitioner wanted Flythe to have the money inside the card.
7. Flythe told Ms. Junkin on February 5, 1991 that Flythe felt that she could handle the situation herself involving the Petitioner.
8. On February 5, 1991 at 1:20 PM, the Petitioner called Flythe by telephone at a time when the Petitioner was expected to be working. Flythe told the Petitioner that she did not want the Petitioner to call her again or make any comments to her unless they were related to work and could not be answered by the Petitioner's immediate supervisor. The Petitioner stated that he was sorry if he had offended Flythe.
9. Flythe informed Ms. Junkin about the telephone call which Flythe had received from the Petitioner on February 5, 1991 at 1:20 PM.
10. Ms. Junkin instructed Flythe to report the incident involving Flythe and the Petitioner to Larry Trammel, the Respondent's Grounds Superintendent.
11. Flythe informed Trammel about the incidents involving Flythe and the Petitioner, after which Trammel offered to intervene in this matter.
12. Flythe requested that Trammel give her one more chance to handle the situation between the Petitioner and Flythe.
13. On February 6, 1991, the Petitioner approached Flythe at her work area, stated that he was sorry if Flythe had taken what the Petitioner had done the wrong way and told Flythe that he had been known to "offer up to \$50.00."
14. For a time period of several days immediately after February 5, 1991, Flythe noticed the Petitioner "hanging around" in the parking lot where Flythe parked her vehicle, although the Petitioner's vehicle parking area was located in an entirely different place.
15. On or about October 29, 1990, which was approximately two weeks after the Petitioner began his employment with the Respondent, Flythe responded to questions from the Petitioner about her personal life by telling him that she was "very happily married."
16. On March 19, 1991, Lovick reported to her supervisor Tom Sudderth, before beginning work for the

day, that the Petitioner had made several statements to Lovick in the immediate preceding days which she stated she did not appreciate, did not feel she should have to tolerate and had made her feel extremely uncomfortable.

17. Lovick informed Sudderth that on March 15, 1991, the Petitioner joined Lovick as she went to her vehicle parking lot at the conclusion of the work day. The Petitioner told Lovick that he wanted the two of them to be friends, that he was not getting along with his wife and that he would like to take Lovick to lunch. Lovick replied that she had a boyfriend, planned to be married in three months and that she and the Petitioner could only be friends.
18. After Lovick was absent from work on March 18, 1991 on sick leave, the Petitioner called out to Lovick as she walked to work on the following day of March 19, 1991. The Petitioner asked Lovick how she was doing, told her that he hoped that she was feeling better and then the Petitioner said "I think it's love." Lovick told the Petitioner that she did not want to hear that. The Petitioner then told Lovick not to tell anyone about this and that it would be their secret. Lovick said to the Petitioner that the Petitioner was married, that he should be telling this to his wife and that Lovick did not want to hear anything else. The Petitioner then told Lovick that he had a gift for Lovick in his vehicle and would give it to her later in the afternoon after work. Lovick informed the Petitioner that she did not want a gift, did not want to listen to anything that he had to say and did not want to talk to him any more. Lovick then walked away, arrived at work and reported the incidents involving the Petitioner and her to Sudderth.
19. Later in the day on March 19, 1991, a meeting was conducted in Trammel's office which was attended by Trammel, Lovick, Sudderth, Junkin, Grounds Supervisor Paul Rigsbee, the Petitioner's field supervisor Jackson Lassiter and the Petitioner.
20. In the meeting of March 19, 1991, Trammel asked Lovick to recount the details of the events involving the Petitioner and her of March 15, 1991 and the morning of March 19, 1991, which Lovick did.
21. After Lovick recounted the incidents involving the Petitioner and her, Trammel asked the Petitioner if Lovick's statements were true and the Petitioner stated "in a way it was true." The Petitioner stated that he told everyone that he loved them and that Lovick probably interpreted his statement erroneously, that the Petitioner had a gift for Lovick because she did not have enough sick leave to be paid for the work day of March 18, 1991 which she had missed and that he had asked Lovick to go to lunch with him but that she must have interpreted the invitation in the wrong way.
22. Later in the March 19, 1991 meeting, Trammel discussed the concept of sexual harassment and told the Petitioner that the incidents involving the Petitioner and Lovick were not the first occurrence of sexual harassment by the Petitioner that had been reported to Trammel, but that Trammel had respected the wishes of the employee involved in the first incident to allow that employee to handle the situation herself with the Petitioner without Trammel's intervention on that employee's behalf.
23. Trammel informed the Petitioner that the Petitioner's actions could not and would not be tolerated due to a second report of harassment, and that the Petitioner could either resign from his employment or he would be terminated.
24. Trammel suspended the Petitioner from his employment with the Respondent.
25. A pre-dismissal conference was conducted with the Petitioner concerning his employment on March 21, 1991.

26. In a letter dated March 21, 1991 addressed to the Petitioner from Trammel, the Petitioner's employment with the Respondent was terminated based upon a pattern of uninvited advances by the Petitioner toward two female employees of the Respondent, the Petitioner's continued actions of speaking to female students on the Respondent's campus in apparent attempts to draw them into conversations after the Petitioner had been told by his field supervisor to stop this conduct and the Petitioner's failure to stay in, his assigned work area with the rest of his work crew despite warnings from the Petitioner's supervisor to the Petitioner to stop wandering away from the work area.
27. Herbert Paul is the Respondent's Physical Plant Director.
28. Upon the Petitioner's appeal of his termination from the Respondent's employ, Paul reviewed the matter at the Respondent's Step Two level of appeal.
29. Paul determined that the Petitioner had committed sexual harassment in his conduct toward Flythe and Lovick, but that the Petitioner would be reinstated in his employment with the Respondent if the following three conditions were met: a written apology to Flythe and Lovick from the Petitioner for the Petitioner's actions towards them, the placement of a final written warning in the Petitioner's personnel file and the Petitioner's attendance of a course about sexual harassment given by the Respondent.
30. Paul related the conditions of the reinstatement of the Petitioner's employment with the Respondent in a letter to the Petitioner dated June 20, 1991.
31. In a letter to Paul from the Petitioner dated July 9, 1991, the Petitioner stated that he accepted the conditions of the Petitioner's reinstatement of employment with the Respondent, although the Petitioner did not feel that he had harassed Flythe and Lovick.
32. Paul did not consider the Petitioner's letters of apology to Flythe and Lovick to be actual letters containing apologies, but considered them to be letters from the Petitioner to these female employees which indicated that they had misunderstood the Petitioner's statements and that the Petitioner did not harass them.
33. Paul received a letter from Lovick after Lovick had obtained the Petitioner's letter of apology to her. Lovick informed Paul in her letter that she was not satisfied with the Petitioner's letter of apology to her because it did not contain an apology but instead explained how Lovick misunderstood the Petitioner's intentions.
34. On July 16, 1991, which was the day which followed the Petitioner's employment reinstatement date of July 15, 1991, the sexual harassment course instructors Mary O'Melia and Bill Burston informed Paul that the Petitioner was not very receptive and that the Petitioner either did not understand or did not want to understand the policy concerning sexual harassment and how it related to him.
35. On or about August 16, 1991, Paul received a report of an incident which allegedly occurred on July 18, 1991--three days after the Petitioner's reinstatement of his employment with the Respondent--in which the Petitioner "went out of his way" to walk by and speak to Lovick.
36. Paul informed the Petitioner on July 12, 1991 that upon the Petitioner's reinstatement, Paul was going to reassign the Petitioner in the Petitioner's job assignment because Paul did not want any contact between the Petitioner and the two female employees which could lead to another situation involving an allegation of sexual harassment.
37. On August 28, 1991, a pre-dismissal conference was conducted in Paul's office which involved Paul,

the Petitioner and Collin Rustin of the Respondent's Counseling Office.

38. The Petitioner stated at the pre-dismissal conference that he had walked around an area on the Respondent's grounds past Lovick, turned around and retraced his steps. The Petitioner indicated that he spoke to Lovick each of the two times that he passed her.
39. In a letter dated August 29, 1991 addressed to the Petitioner from Paul, the Petitioner was informed that the conditions of the Petitioner's reinstatement had not been met, that Paul was rescinding the Petitioner's reinstatement and that the Petitioner's employment was terminated.

CONCLUSIONS OF LAW

1. The United States Supreme Court case of McDonnell Douglas Corporation v. Green, 411 U.S. 792, 93 S.Ct. 817, 36 L.Ed. 2d 668 (1973) establishes that in a discrimination case, the charging party must establish a prima facie case of discrimination by providing sufficient facts in order to raise an inference of discrimination. The responding party then must rebut this inference by presenting evidence that the basis for its action was a legitimate, nondiscriminatory reason. The charging party then has the opportunity to provide evidence that the responding party's reasons for its actions are pretextual.
2. The Petitioner has not established a prima facie case of racial discrimination due to his failure to provide sufficient facts in order to raise an inference of racial discrimination by the Respondent.
3. Title 25, Chapter 1C, Section .0214(b) of the North Carolina Administrative Code defines the term "sexual harassment" as deliberate, unsolicited, and unwelcome verbal and/or physical conduct of a sexual nature or with sexual implications by a supervisor or co-worker which:
 - (1) has or may have direct employment consequences resulting from the acceptance or rejection of such conduct; or
 - (2) creates an intimidating, hostile or offensive working environment; or
 - (3) interferes with an individual's work performance.
4. The Petitioner committed sexual harassment in his conduct toward Demetrious Flythe and Karen Lovick through his deliberate, unsolicited and unwelcome verbal and physical conduct of a sexual nature and with sexual implications which created an intimidating and offensive working environment for these co-workers of the Petitioner.
5. North Carolina General Statutes Section 126-35 states, in pertinent part, that no permanent employee subject to the State Personnel Act shall be discharged for disciplinary reasons, except for just cause.
6. The Respondent had just cause to dismiss the Petitioner from its employ based upon the Petitioner's acts of sexual harassment toward Demetrious Flythe and Karen Lovick, who were co-workers of the Petitioner in the Respondent's employ.

RECOMMENDATION

It is recommended that the Respondent's dismissal of the Petitioner from its employ be upheld on the basis of just cause, in the absence of any evidence that the Respondent discriminated against the Petitioner on the basis of race in effecting his dismissal.

ORDER

It is hereby ordered that the agency serve a copy of the final decision on the Office of Administrative Hearings, P.O. Drawer 27447, Raleigh, N.C. 27611-7447, in accordance with North Carolina General Statute 150B-36(b).

NOTICE

The agency making the final decision in this contested case is required to give each party an opportunity to file exceptions to this recommended decision and to present written arguments to those in the agency who will make the final decision. G.S. 150B-36(a).

The agency is required by G.S. 150B-36(b) to serve a copy of the final decision on all parties and to furnish a copy to the parties' attorney of record and to the Office of Administrative Hearings.

The agency that will make the final decision in this contested case is the State Personnel Commission.

This the 7th day of January, 1993.

Michael Rivers Morgan
Administrative Law Judge

STATE OF NORTH CAROLINA
COUNTY OF HALIFAX

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
92 DOJ 0641

KENNY WAYNE THOMPSON,
Petitioner,

vs.

N.C. CRIMINAL JUSTICE EDUCATION AND
TRAINING STANDARDS COMMISSION,
Respondent.

PROPOSED DECISION

This matter was heard before Julian Mann, III, Chief Administrative Law Judge, on October 29, 1992, in the Halifax County Courthouse, Halifax, North Carolina. The record closed with the receipt of the Petitioner's "Proposal for Decision" on December 7, 1992.

APPEARANCES

For Petitioner:

Ronnie C. Reaves
Ronnie C. Reaves, P.A.
Attorney at Law
P. O. Box 587
Weldon, North Carolina 27890
Attorney for Petitioner

For Respondent:

Robin P. Pendergraft
Special Deputy Attorney General
N. C. Department of Justice
P. O. Box 629
Raleigh, North Carolina 27602-0629
Attorney for Respondent

ISSUE

Whether it is proper for Respondent to suspend Petitioner's Law Enforcement Officer certification for knowingly making a material misrepresentation of any information required for certification.

RULE AT ISSUE

12 NCAC 9A .0204(b)(6)

EXHIBITS

For Petitioner:

Petitioner's Exhibits #1, #2

For Respondent:

Respondent's Exhibits #1, 1A, 1B, 1C, 1D, 1E, 1F, 1G, 1H, 1I, 1J, 1K, 2A, 2B, 2C, 2D, 3A, 3B, 3C, 3D, 3E, 4, 5

WITNESSES

For Petitioner:

Kenny Wayne Thompson, Petitioner

Wayne Medlin
Raymond Vaughan
Theodore Mayer
Margaret Burgwyn

For Respondent: Scott Perry

FINDINGS OF FACT

Stipulated Facts

The parties stipulated to the following facts:

1. Both parties are properly before this Administrative Law Judge, in that jurisdiction is proper, that both parties received notice of hearing, and that Petitioner received notice of Deferral of his Law Enforcement Officer Certification by Respondent on May 14, 1992.
2. The North Carolina Criminal Justice Education and Training Standards Commission (hereinafter referred to as the Commission) has the authority granted under Chapter 17C of the North Carolina General Statutes and Title 12 of the North Carolina Administrative Code, Chapter 9, to certify criminal justice officers and to deny, revoke or suspend such certification consistent with the law.
3. Petitioner applied with the North Carolina Criminal Justice Training and Standards Council (Respondent's predecessor) for certification as a Law Enforcement Officer with the Enfield Police Department in February 1978.
4. Petitioner was issued a probationary certification (PRA240803254) by the North Carolina Criminal Justice Training and Standards Council effective February 3, 1978.
5. Petitioner was issued a general certification (GNA240803254) as a Law Enforcement Officer by the Criminal Justice Training and Standards Council effective March 6, 1979, and thereafter, subsequent general certifications were issued upon transfer to new police departments: Weldon Police Department effective January 15, 1980; Weldon Police Department effective October 1, 1982; Zebulon Police Department effective February 28, 1984; Weldon Police Department effective June 13, 1985; Enfield Police Department effective May 22, 1987; and Garysburg Police Department effective March 9, 1989.
6. As part of this transfer to different law enforcement agencies, Petitioner completed Report of Appointment forms (Form F-5 and F-5A) and Personal History Statements (Form F-3).

Based upon the foregoing Stipulations and the greater weight of the evidence, the undersigned makes the following:

FINDINGS OF FACT

1. The Office of Administrative Hearings has jurisdiction over this contested case pursuant to Chapters 17C and 150B of the North Carolina General Statutes.
2. Respondent is an agency of the State of North Carolina.
3. Petitioner is a citizen and resident of the State of North Carolina and is presently married.
4. Petitioner had 11 different warrants for arrest for various misdemeanor offenses (Respondent's Exhibits 1A-1K):

<u>OFFENSE</u>	<u>NUMBER</u>	<u>OFFENSE</u>	<u>DATE OF DISPOSITION</u>
Domestic Criminal Trespass	82 CR 7122	7/04/82	Dismissed 11/19/82
Assault on a Female	82 CR 7127	7/04/82	Dismissed 11/19/82
Larceny	82 CR 9266	8/27/82	Dismissed 11/19/82
Assault on a Female	82 CR 9267	8/27/82	Dismissed 11/19/82
Common Law Robbery	83 CR 6555	6/13/83	Dismissed 8/17/83
Assault with a Deadly Weapon	83 CR 6556	6/13/83	Dismissed 8/17/83
Assault with a Deadly Weapon	83 CR 6557	6/13/83	Dismissed 8/17/83
Damage to Personal Property	83 CR 6558	6/13/83	Dismissed 8/17/83
Assault on a Female	83 CR 6559	6/13/83	Convicted 8/17/83
Domestic Criminal Trespass	83 CRS 11146	9/14/83	Convicted 1/16/84
Assault on a Female	83 CRS 11147	9/24/83	Dismissed 1/16/84

5. Four forms entitled, "Report of Appointment/Application for Certification" (Form F-5A LE) were completed upon transferring to the four law enforcement agencies named below (Respondent's Exhibits 2A-2D). These forms are required to be sent to Respondent before an officer may be certified with the requesting agency, and such forms were received by Respondent from the following law enforcement agencies on the following dates: Weldon Police Department 6/13/85; Enfield Police Department 5/22/87; Garysburg Police Department 3/8/89; and Woodland Police Department 4/27/92.

6. On each of the Form F-5A LE there was a space provided where the Petitioner was required to list each criminal offense charge and the disposition of each case.

7. On each and every Form F-5A LE this record section was left blank.

8. Respondent signed each Form F-5A LE indicating that the information submitted was complete and accurate and above the certification: "I further understand and agree that any omission, falsification, or misrepresentation of any factor or portion of such information can be the sole basis for termination of my employment and/or denial or revocation of my certification at any time, now or later."

9. Petitioner completed a Personal History Statement (Form F-3) (Respondent's Exhibits 3A-3E) for each of the law enforcement agencies listed below and answered the question regarding arrest by police in the following manner:

<u>AGENCY</u>	<u>QUESTION</u>	<u>ANSWER</u>
A. Zebulon PD (1-23-84)	Have you ever been arrested or detained by police?	Yes. Assault on Female. Weldon Police Department. No-contest (Disposition) Domestic Trespass. Halifax Sheriff Department No-contest (Disposition)
B. Weldon PD (6-10-85)	Have you ever been arrested by police?	Yes. AOF/Trespass. Halifax County Sheriff. 07-83 Stop sign. Raleigh (agency). 01-85. Payer for Judgement [sic] Disposition
C. Enfield PD (5-15-87)	Have you ever been arrested by police?	Yes. Domester [sic]. Halifax County Sheriff [agency]

- | | | | |
|----|--------------------------|--|-------------------|
| D. | Garysburg PD
(2-7-89) | Have you ever been
arrested by police? | (No answer given) |
| E. | Woodland PD
(4-21-92) | Have you ever been charged
with a criminal offense? | (No answer given) |

10. The Form F3 is submitted to the employing agency as part of the application process and is not as a matter of course sent to Respondent.

11. Petitioner is 40 years old and has been in law enforcement for about 15 years; after working at Enfield Police Department for about two years, he transferred to Weldon Police Department.

12. While at Weldon, Petitioner and his former wife began to have marital problems and they separated.

13. All 11 charges, which occurred between July 1982 to September 1983, arose out of problems with his former wife, Hazel Thompson, and her boyfriend, Milton Johnson. The underlying validity of the charges were suspect. All the offenses were dismissed except for two - assault on a female and domestic criminal trespass, both of which involved the entry of no-contest pleas.

14. Linwood Ricks, the Chief of Police at Weldon, served some of the warrants on Petitioner during that time. When he re-applied with Weldon Police in June 1985, Petitioner discussed his convictions and other charges with Chief Ricks.

15. In 1987, Petitioner went to work with the Enfield Police Department part time to supplement his income. Mike Gaither, Chief of Police at Enfield, had full knowledge of all Petitioner's charges.

16. Petitioner admits that he did not list the charges on the Applications For Certification (Form F-5A LE), but believed that his employers were to complete the arrest section. Petitioner believed that his answers to the question about his arrest record on the Personal History Statements, (Form F-3) for Zebulon, Weldon and Enfield Police Departments, were sufficient. In Petitioner's opinion, the Chiefs from Weldon, Enfield and Garysburg Police Departments were aware of his record.

17. Petitioner did not inform the Zebulon Police Department of the specific charges, but only told them he had marital problems in the past.

18. Petitioner believed that all the agencies involved were familiar with the charges, and further, Petitioner believed that these bad problems were over. He wanted to put these incidents in the past since they were not "a pleasant experience" for him. He also added that these charges were not something he was trying to hide, since if anyone had asked him he would have told them about it.

19. Margaret Elizabeth Burgwyn, Police Commissioner for the Woodland Police Department, testified on Petitioner's behalf and indicated that: the Town of Woodland decided to hire Petitioner as their police chief in the Spring of 1992; the Woodland interview committee asked

Petitioner whether he had every had any trouble with the law. Petitioner replied that he had "some domestic problems but that's all over now." After offering Petitioner the job, the town learned of the 11 criminal charges. Petitioner withdrew his acceptance of the chief position and the town board recommended that Petitioner be hired as an auxiliary officer with Woodland Police Department and was sworn in September 1992. In Ms. Burgwyn's opinion, Petitioner is a man of high integrity and sound character and that Respondent should consider probationary status for Petitioner (Petitioner's Exhibit #1).

20. Joseph Wayne Medlin is the Chief of Police, Zebulon Police Department and has known Petitioner since 1984 when he served as Petitioner's sergeant. Petitioner discussed the criminal charges with him and he was unaware that Petitioner had a "Class B" misdemeanor conviction. Medlin "hated to see him

(Petitioner) leave" and Petitioner left Zebulon in good standing.

21. Raymond Rudolph Vaughan is the Chief of Police, Garysburg Police Department. Petitioner was a part time officer with Garysburg Police Department; Petitioner exceeded expectations in his work and was a professional Law Enforcement Officer; he was familiar with Petitioner's marital problems, but was not aware that Petitioner had criminal charges, and he had relied on prior agencies' background checks on Petitioner.

22. Theodore "Mike" Mayer was the past Chief of Police, Enfield Police Department, and presently serves as the Director of Public Safety in Wilmington. Petitioner's work at Enfield had been excellent; he had named Petitioner operations supervisor and second in command; Petitioner discussed charges with him after he had received a copy of Respondent's suspension letter and that he was satisfied with Petitioner's answers. He found Petitioner to be completely reliable and with great integrity. While he would follow whatever mandate the Commission may impose, he believed that Petitioner's continued service would be in the best interest of law enforcement in North Carolina and Enfield.

Based upon the foregoing Stipulations and Findings of Fact, the undersigned makes the following:

CONCLUSIONS OF LAW

1. The Office of Administrative Hearings has jurisdiction over this contested case pursuant to Chapters 17C and 150B of the North Carolina General Statutes.

2. The North Carolina Criminal Justice Education and Training Standards Commission has the authority, pursuant to G.S. 17C-6, to establish minimum standards for the certification of persons to be employed and retained as criminal justice officers.

3. The Personal History Statement (Form F-3) and the Report of Appointment/Application for Certification (Form F-5A LE) are required documents in the process for certification as a law enforcement officer.

4. Petitioner's failure to list his 11 criminal charges, which includes two misdemeanor convictions, on his Personal History Statements for Zebulon, Weldon, Enfield, Garysburg and Woodland Police Departments, constituted misrepresentations.

5. Petitioner's misrepresentations on these Personal History Statements were knowingly made and were material.

6. Petitioner's failure to list his 11 criminal charges, which included two misdemeanor convictions, on his Report of Appointment/Application for Certification (F-5A LE) with the Weldon, Enfield, Garysburg and Woodland Police Departments constituted misrepresentations.

7. Petitioner's misrepresentations on these Report of Appointments/Applications for Certification forms were knowingly made and were material.

8. Respondent has sufficient cause to suspend Petitioner's certification as a Law Enforcement Officer for knowingly making a material misrepresentation of information required for certification in violation of 12 NCAC 09A .0204(b)(6).

9. Pursuant to 12 NCAC 9A .0205(b)(4) the Respondent, following an administrative hearing, has the discretion to "substitute a period of probation in lieu of suspension." Factors which indicate that Respondent should exercise its probationary discretion are:

a. The criminal charges, which were of questionable validity, arose in a time of a previous marital separation with the date of all offenses being over 10 years ago;

b. There is no indication in the record that these offenses represented a character defect or a pattern of assaultive behavior by the Petitioner;

c. Petitioner disclosed the substance of the offenses in two Personal History Statements (Respondent's Exhibits #3A and 3B) and verbally to prospective employers;

d. Some of the Petitioner's instances of his failure to disclose were more in the nature of negligent omissions than an intentional misrepresentation;

e. Petitioner's former employers all testified in positive and laudatory terms about his abilities as a Law Enforcement Officer:

1. Chief Medlin (Zebulon) was aware of his past marital difficulties and "...hated to see him (Petitioner) leave."

2. Chief Vaughan (Garysburg) testified he was aware of his past marital difficulties and that Petitioner performed in a professional manner and exceeded expectations.

3. Theodore Mayer (present Director of Public Safety - Wilmington) testified he was aware of his past marital difficulties and: "I found him completely reliable; his continued service would be in the best interest of law enforcement."

4. Margaret Burgwyn (prospective employer), Town of Woodland, stated in writing (Petitioner's Exhibit #1) "However I hope you (Respondent) will consider the human as well as the factual circumstances in this case and that you might consider a probationary period rather than revocation of his certification."

Based upon the foregoing Stipulations, Findings of Fact and Conclusions of Law, the undersigned recommends as his proposal for decision the following:

1. That Petitioner's certification as a Law Enforcement Officer be suspended for a period of one (1) year.

2. That the one (1) year suspension be stayed for a period of five years upon specific terms of probation to include that Petitioner not violate any of Respondent's rules for maintaining certification and such other terms of probation as Respondent deems necessary.

ORDER

It is hereby ordered that the agency serve a copy of the final decision on the Office of Administrative Hearings, P.O. Drawer 27447, Raleigh, N.C. 27611-7447, in accordance with North Carolina General Statute 150B-36(b).

NOTICE

The agency making the final decision in this contested case is required to give each party an opportunity to file exceptions and proposed findings of fact and to present oral and written arguments to the agency. G.S. 150B-40(e).

A copy of the final agency decision or order shall be served upon each party personally or by certified mail addressed to the party at the latest address given by the party to the agency and a copy shall be furnished to his attorney of record. G.S. 150B-42(a). It is requested that the agency furnish a copy to the Office of

Administrative Hearings.

The agency that will make the final decision in this contested case is the North Carolina Justice Education and Training Standards Commission.

This the 15th day of January, 1993.

Julian Mann, III
Chief Administrative Law Judge

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
92 ABC 0739

MS. JOYCE ANN DAVIS T/A JOYCE'S GRILL)	
505 HORTON STREET, ZEBULON, NC 27597)	
Petitioner,)	
)	
v.)	RECOMMENDED DECISION
)	
NC ABC COMMISSION)	
Respondent.)	
)	

The above-captioned contested case was heard on Friday, December 18, 1992, before Administrative Law Judge Sammie Chess, Jr. The hearing was conducted in the Lee House in Raleigh, North Carolina. This cause was initiated by the Petitioner's filing of a petition in the office of Administrative Hearings on or about June 29, 1992, in order to contest Respondent's denial of Petitioner's application for an ABC Permit.

APPEARANCES

For Petitioner:	Maola Jones JONES, AVERY and WILLIS Attorney at Law Post Office Box 28270 Raleigh, North Carolina
For Respondent:	Larry S. Height Chief Agency Legal Specialist N.C. ABC Commission Post Office Box 26687 Raleigh, North Carolina

WITNESSES

For Respondent

Diane Jensi
J. Wayne Medlin

For Petitioner

Joyce Ann Davis (Petitioner)

ISSUE

Whether Respondent unjustly denied Petitioner's application for on-premise beer and unfortified wine on the grounds of local government objections and reputation of the petitioner under N.C. Gen. Stat. 18B-900 and 18B-901.

Based upon the greater weight of the evidence admitted at the hearing, which by its nature requires determination of credibility based on personal observation of witness demeanor, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. Petitioner is a citizen and resident of Wendell, Wake County, North Carolina.
2. Respondent is the North Carolina Alcoholic Beverage Control Commission which exercises powers and duties as found in Chapter 18B of the North Carolina General Statutes.
3. Petitioner filed application for a permanent ABC permit and the application was disapproved which gave rise to the filing of Petitioner's contested case petition.
4. The respondent, ABC Commission issued a permit to Titus Capers to sell on-premise beer and unfortified wine in an establishment called Capers Sports Club Bar which was operated in same building and situated at the same location for nine (9) months. The previous owner, Titus Capers, sold this bar along with the surrounding six (6) acres of property to Petitioner, Ms. Joyce Ann Davis.
5. The Petitioner is thirty-seven years of age.
6. The Petitioner is a resident of North Carolina.
7. The Petitioner has never been convicted of a felony.
8. The Petitioner, operates another establishment on Arendell Avenue in Zebulon and has been issued a permit by the Respondent to sell on-premise beer and unfortified wine at that establishment.
9. The Petitioner has never been convicted of an alcoholic beverage offense.
10. The Petitioner has never been convicted of a misdemeanor or of a controlled substance offense.
11. The Petitioner has never had an Alcoholic Beverage permit revoked.
12. Petitioner has never been cited for a building or fire code violation at the 505 Horton Street location.
13. There are no other businesses of this type operating in the area.
14. Only one occupied residence is located in the immediate area. This residence is located across the street from the 505 Horton Street establishment and the residents have made no objections to the location and operation of this establishment. The Petitioner owns the house located adjacent to the establishment and this house is unoccupied. A water and sewer treatment plant operated by the Town of Zebulon is immediately adjacent to the Petitioner's establishment. A knitting mill factory is located some 500 feet from the establishment.
15. The hours of operation for Joyce's Grill are from 9:00 p.m. to 3:30 a.m. on Fridays and Saturdays.

16. A fight erupted suddenly at the Petitioner's establishment during which her employee, a bouncer, shot a patron. This disagreement had its genesis outside of the Petitioner's establishment. The Petitioner subsequently fired the bouncer/employee and warned the patrons who were involved in the affray not to return to the establishment. Moreover, the Petitioner hired additional personnel to pat-down entering patrons for guns and drugs and to patrol both the inside of the establishment and the establishment's parking lot.

17. The Petitioner installed spot lights in the parking lot to facilitate patrol of the area and has put \$2,000.00 worth of gravel throughout the parking lot. The Petitioner also plans to expand the parking lot after the city completes its right-of-way construction.

18. The establishment is located in an area that is zoned business/commercial.

19. The establishment is located in a curve in the road.

20. The Zebulon Police Department received calls and made arrests at other locations in Zebulon, notably the Triangle East Center; these calls and arrests were similar in nature and in number as those calls and arrests which occurred at Joyce's Grill.

Based on the foregoing Findings of Fact, the undersigned Administrative Law Judge makes the following:

CONCLUSIONS OF LAW

1. Respondent and Petitioner stipulated that the Petitioner is of good reputation and character, has a clean criminal record, and is a suitable person to hold an ABC permit for which she has applied.

2. The Respondent with full knowledge of the parking facilities and that the facility was located in a curve in the road issued permits to the previous owner to sell on-premise beer and unfortified wine. No objections as to the suitability of this location were made by the Respondent at the time during which the previous owner applied for and subsequently was issued an ABC permit to sell on-premise beer and unfortified wine at this location. Petitioner has made improvements in the parking facilities with the addition of lights and gravel. If the location were suitable under a prior owner, it should be a suitable location for the Petitioner, especially considering the improvements the Petitioner made to the parking area.

3. The location and operation of the Petitioner's establishment meets the requirements of N.C. Gen. Stat. 18B-901 in that:

- a. The establishment is not located within 50 feet of a church or public school or church school.
- b. There is no other business of this type operating in the area.
- c. The establishment is appropriately located in an area which is zoned for this type of business.

4. Although violence in any form is abhorred, the evidence regarding the fight that occurred at the Petitioner's establishment did not rise to the level as to convince the undersigned that the Petitioner should be disqualified from receiving an ABC Permit. The Petitioner, as a result of the affray, made reasonable efforts in good faith to correct the situation by firing the bouncer/employee and by increasing the number of employees to patrol both the interior of the establishment and the parking lot.

Based upon the foregoing Findings of Fact and Conclusions of Law, the Administrative Law Judge makes the following:

RECOMMENDED DECISION

The undersigned recommends to the Respondent ABC Commission that Respondent's decision to disapprove Petitioner's permit application be reversed and that Petitioner receive from the Respondent all ABC permits (both temporary and permanent) for which Petitioner applied and was denied.

ORDER

It is hereby ordered that the agency serve a copy of the final decision on the Office of Administrative Hearings, P.O. Drawer 27447, Raleigh, NC 27611-7447 in accordance with N.C. Gen. Stat. 150B-36(b).

NOTICE

The agency making the final decision in this contested case is required to give each party an opportunity to file exceptions to this recommended decision and to present written arguments to those in the agency who will make the final decision, N.C. Gen. Stat. 150B-36(a).

The agency is required by N.C. Gen. Stat. 15B-36(b) to serve a copy of the final decision on all parties and to furnish a copy to the parties' attorney of record and the to Office of Administrative Hearings.

The agency that will make the final decision in this contested case is the North Carolina Alcoholic Beverage Control Commission.

This the 6th day of January, 1993.

Sammie Chess Jr.
Administrative Law Judge

The North Carolina Administrative Code (NCAC) has four major subdivisions of rules. Two of these, titles and chapters, are mandatory. The major subdivision of the NCAC is the title. Each major department in the North Carolina executive branch of government has been assigned a title number. Titles are further broken down into chapters which shall be numerical in order. The other two, subchapters and sections are optional subdivisions to be used by agencies when appropriate.

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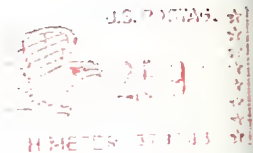
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