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The **NORTH CAROLINA REGISTER**

IN THIS ISSUE

EXECUTIVE ORDER

PROPOSED RULES

Administrative Hearings, Office of
Environment, Health, and Natural Resources
Mortuary Science, Board of
Nursing Home Administrators, Bd. of Examiners
Pharmacy, Board of
Plumbing, Heating & Fire Sprinkler Contractors
Real Estate Commission
State Treasurer

RRC OBJECTIONS

RULES INVALIDATED BY JUDICIAL DECISION

CONTESTED CASE DECISIONS

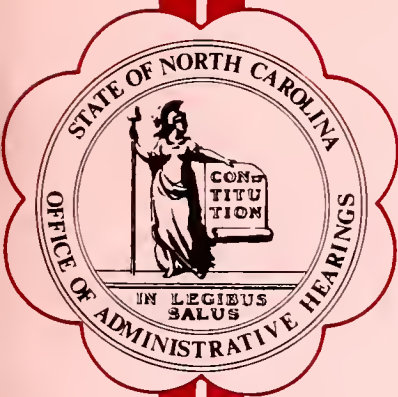
ISSUE DATE: May 14, 1993

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Volume 8 • Issue 4 • Pages 332 - 400

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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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Publication Schedule

(January 1993 - 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
*****	*****	*****	*****	*****	*****	*****
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
02/01/93	01/08/93	01/15/93	02/16/93	03/03/93	03/20/93	05/03/93
02/15/93	01/25/93	02/01/93	03/02/93	03/17/93	03/20/93	05/03/93
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04/01/93	03/11/93	03/18/93	04/16/93	05/01/93	05/20/93	07/01/93
04/15/93	03/24/93	03/31/93	04/30/93	05/15/93	05/20/93	07/01/93
05/03/93	04/12/93	04/19/93	05/18/93	06/02/93	06/20/93	08/02/93
05/14/93	04/23/93	04/30/93	05/29/93	06/13/93	06/20/93	08/02/93
06/01/93	05/10/93	05/17/93	06/16/93	07/01/93	07/20/93	09/01/93
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10/01/93	09/10/93	09/17/93	10/16/93	10/31/93	11/20/93	01/04/94
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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 8
STATE GOVERNMENT RECYCLING,
REDUCTION OF SOLID WASTE, AND
PURCHASE OF PRODUCTS WITH
RECYCLED CONTENT**

WHEREAS, 83% of the 9.5 million tons of solid waste generated annually in North Carolina is disposed of in landfills; and

WHEREAS, the State of North Carolina has taken significant measures to promote alternatives to landfilling and incineration by establishing solid waste reduction goals of 25% by 1993 and 40% by the year 2001; and

WHEREAS, source reduction and recycling are key elements in a comprehensive approach to reducing North Carolina's dependency on landfills and incineration for the disposal of solid waste; and

WHEREAS, recovered materials are not truly recycled until they are brought back into productive use in manufacturing and consumption; and

WHEREAS, the purchase of recycled products is necessary to ensure markets for recyclable materials, and state government constitutes a large consumer of products that are available with recycled material content; and

WHEREAS, the purchase of recycled products helps conserve natural resources and reduce energy consumption;

NOW, THEREFORE, by the authority vested in me as Governor by the Constitution and laws of North Carolina, it is **ORDERED**:

Section 1. PURPOSE

That all state agencies shall maximize their efforts to: (1) reduce the amount of solid waste they generate; (2) recycle material recoverable from solid waste originating at their facilities; and (3) purchase and use products made wholly or in part from recycled materials.

Section 2. RESPONSIBILITIES OF STATE AGENCIES

(a) Applicability

For the purposes of this Executive Order, "state agencies" shall include state government departments and the University of North Carolina.

(b) Responsibilities

- (1) Each state agency shall be responsible for implementing programs to reduce and recycle solid waste generated by its operations and to purchase and use products having recycled content. Such programs shall be consistent with, and at least as comprehensive as described in, this Order. Each agency shall designate one or more individuals to coordinate and oversee its recycling, waste reduction, and recycled products purchasing programs, and to serve as a liaison with the Office of Waste Reduction of the Department of Environment, Health, and Natural Resources.
- (2) The Office of Waste Reduction shall provide technical assistance, education and training to state agencies on these matters, and shall serve as a central point of information and coordination for all state agency recycling and waste reduction efforts.
- (3) The Divisions of Auxiliary Services and Facility Management of the Department of Administration shall facilitate state agencies' recycling efforts as part of their regular functions, which include but are not limited to overseeing contracts for or providing waste hauling and housekeeping services, and operating the State Surplus Property Agency.
- (4) As provided in this Order, the Division of Purchase and Contract of the Department of Administration shall aggressively explore opportunities for purchasing products having recycled content in place of those not having recycled content, and shall actively promote the purchase of recycled products by state agencies and others eligible to purchase items from state contracts.

Section 3. SOURCE REDUCTION OF WASTE

(a) General requirements

To encourage reduction of waste at its source, all state agencies shall review their operations to determine where solid waste can be reduced at its sources of generation. Specific measures state agencies shall employ to reduce waste at the source include but are not limited to those identified in this Section.

(b) Printing and photocopying

State agencies shall avoid unnecessary printing or photocopying of printed materials, and shall require two-sided copying on all documents when feasible and practicable. All new photocopy machines purchased shall have duplexing capabilities if their capacity is rated at sixty thousand (60,000) copies or more per month.

(c) Durability, necessity, packaging, and recyclability

State agencies shall discourage the use of disposable products where reusable products are available and economically viable for use. Further, state agencies shall assess their waste generation with regard to purchasing decisions and make every attempt to purchase items only when needed and in amounts that are not excessive. When purchases are necessary, state agencies shall, to the extent feasible and practicable, acquire durable items or items that are readily recyclable when discarded, and items having minimal packaging.

Section 4. COLLECTION OF RECYCLABLE MATERIALS(a) Collection programs for recyclable materials

- (1) As set forth in G.S. 130A-309.14, all state agencies shall ensure that employees have access to containers for recycling (at a minimum) aluminum cans, high-grade office paper, and corrugated cardboard. All state employees are required to separate identified recyclable materials generated in the course of agency operations and place them in the appropriate recycling containers. The provisions of this section shall not apply in those situations where the agency head makes a written determination that their implementation is not feasible.
- (2) State agencies that routinely host the general public, such as highway rest areas, state parks and recreation areas, employment security offices, state historic sites, etc., shall implement programs for the collection and recycling of appropriate materials discarded by the public at all such locations (e.g., aluminum, glass, and plastic beverage containers) when feasible and practicable. State agencies shall work closely with the appropriate

local government agencies when developing and implementing these recycling programs.

(b) Education of agency employees

It shall be the duty of each state agency to educate its employees about agency recycling/waste reduction goals and procedures and to ensure participation. The Office of Waste Reduction shall assist agencies to develop and implement educational programs. Each agency shall establish a network of assistant coordinators to work with the agency coordinator in carrying out this responsibility. The assistant coordinators shall disseminate information about recycling and waste reduction policies and programs and monitor participation in programs and report any problems, suggestions, or other feedback to the agency's designated coordinator.

Section 5. PURCHASE AND USE OF PRODUCTS HAVING RECYCLED CONTENT

To help develop markets for recyclable materials, to support local government recycling efforts mandated by G.S. 130A-309.09B, and to set an example for local government and the private sector, all state agencies shall purchase and use products made wholly or in part with recycled materials whenever feasible and practicable.

(a) Purchasing

- (1) In cooperation with the Office of Waste Reduction, the Division of Purchase and Contract shall make every effort to identify products made from recycled materials that meet appropriate standards for use by state agencies.
- (2) Product specifications shall be written to encourage vendors to offer products having recycled content. When products having recycled content are offered that are comparable in quality, availability, and price to products not having recycled content, term contracts shall carry only the recycled products.
- (3) Term contracts shall be written in a format that prominently identifies products having recycled content, and these products shall be listed in conjunction with any comparable products that do not have recycled content, to enable agencies to readily identify the availability of these products. The Division of Purchase and

Contract shall prepare a listing of all recycled products available on state contracts on a semi-annual basis, and make it available to all potential purchasers to increase awareness of opportunities to purchase recycled products.

(b) Recycled Paper

(1) State agencies are directed to purchase and use recycled paper for all letterhead stationery, reports, memoranda, and other documents when feasible and practicable. All new photocopiers purchased shall have the ability to use xerographic paper having at least 50% recycled content.

(2) State agencies shall attempt to meet the following goals for the percent of the total dollar value of all paper and paper products purchased having recycled content:

Fiscal Year 1993-94: at least 25%
 Fiscal Year 1994-95: at least 35%
 Fiscal Year 1995-96: at least 45%
 Fiscal Year 1996-97: at least 55%
 Fiscal Year 1997-98: at least 65%

(c) Guidelines

The Division of Purchase and Contract and the Office of Waste Reduction shall develop guidelines for minimum content standards for recycled products purchased by state agencies.

(d) Departmental Review

State agencies that have delegated purchasing authority shall review their existing specifications to ensure that they do not contain restrictive language or other barriers to purchasing recycled products, unless such specifications are necessary to protect public health, safety, or welfare.

Section 6. REPORTING

(a) State Agency Annual Reports

On at least an annual basis, beginning October 1, 1994, each state agency shall report to the Office of Waste Reduction for the previous fiscal year the following information, at a minimum: activities or programs implemented to reduce the amount of waste generated by the agency; amounts and types of recycled products purchased; and amounts and types of materials collected for recycling by the agency.

(b) Annual Progress Report to Governor

The Office of Waste Reduction, in conjunction with the Department of Administration, shall provide guidance to agencies for preparing their annual reports. The Office shall compile the agency reports and provide an annual report to the Governor on progress by state government agencies in source reduction of waste, recycled products procurement, and collection of recyclable materials.

(c) Tracking Recycled Products Procurement

The Division of Purchase and Contract shall review its procurement tracking system and determine any changes needed to facilitate tracking of recycled products purchased by state agencies and others.

Section 7. EFFECT OF OTHER EXECUTIVE ORDERS

Executive Order 172 is hereby rescinded. All other Executive Orders or portions of Executive Orders inconsistent herewith are hereby rescinded.

Section 8. EFFECTIVE DATE

This Executive Order shall be effective immediately.

Done in the Capitol City of Raleigh, North Carolina this 22nd day of April, 1993.

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

**CHAPTER 13 - SOLID WASTE
MANAGEMENT**

**SUBCHAPTER 13B - SOLID WASTE
MANAGEMENT**

Notice is hereby given that the Commission for Health Services is extending the comment period for the notice published in the North Carolina Register, March 15, 1993, on pages 2720 - 2773 (7:24 NCR 2720 - 2773). The notice includes the adoption of 15A NCAC 13B .1601-.1604, .1621-.1628, .1630-.1637, .1680 and the amendment to 15A NCAC 13B .0501. Public hearings were held on March 30, March 31 and April 1, 1993.

Reason for Proposed Action: These rules are proposed to implement the new and revised Federal criteria, published October 9, 1991 under the authority of Subtitle D of the Resource Conservation and Recovery Act (RCRA). In 1979, the U.S. EPA published 40 CFR Part 257 establishing the criteria for classifying all sanitary landfills. 40 CFR Part 257 is the basis for the State's permitting program for sanitary landfills set forth in Section .0500; the revised 40 CFR Part 257 excludes municipal solid waste landfills (MSWLFs), which are subject to a new Part 258. Rule .0501 is proposed for amendment to reflect the change to Part 257 and new Section .1600 - Requirements for Municipal Solid Waste Landfill Facilities is proposed for adoption to implement a permitting program for the new Part 258 criteria. Following State approval, the action will qualify the Division's program to receive "Approved State" status from the U.S. EPA and implement standards which meet North Carolina's specific needs. Without approval of this action, the regulated community will be subject to inflexible federal requirements, increased expenditure of local funds and complications of the existing permit approval process. In addition, current rules do not meet the requirements of existing State law [G.S. 130A-294(b)] which requires "rules shall be consistent with applicable federal law."

Comment Procedures: All persons interested in these matters must submit written comments to Brad Rutledge, Solid Waste Section, P.O. Box

27687, Raleigh, NC 27611-7687, (919) 733-0692. Written comments must be received or postmarked by 5:00 p.m. on Friday, May 28, 1993.

Only persons who have made comments at the public hearings held by the Department on these rules or who have submitted written comments will be allowed to speak at the special Commission meeting scheduled for June 30, 1993 in Raleigh, NC. Comments made at the Commission meeting must either clarify previous comments or address proposed changes from staff pursuant to comments made during the public hearing process.

IT IS VERY IMPORTANT THAT ALL INTERESTED AND POTENTIALLY AFFECTED PERSONS, GROUPS, BUSINESSES, ASSOCIATIONS, INSTITUTIONS, OR AGENCIES MAKE THEIR VIEWS AND OPINIONS KNOWN TO THE COMMISSION FOR HEALTH SERVICES THROUGH THE COMMENT PROCESS, WHETHER THEY SUPPORT OR OPPOSE ANY OR ALL PROVISIONS OF THE PROPOSED RULES. THE COMMISSION MAY MAKE CHANGES TO THE RULES AT THE COMMISSION MEETING IF THE CHANGES COMPLY WITH G.S. 150B-21.2(f).

Notice is hereby given in accordance with G.S. 150B-21.2 that the EHNR - Commission for Health Services intends to amend rule cited as 15A NCAC 18A .2537.

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

The public hearing will be conducted at 1:30 p.m. on June 16, 1993 at the Highway Building, First Floor Auditorium, 1 South Wilmington Street, Raleigh, North Carolina.

Reason for Proposed Action: This amendment is to prevent enforcement of a rule which might cause a serious and unforeseen threat to public welfare. This amendment is to prevent enforcement of a rule that would impose an undue burden on the owners of pools operating prior to May 1, 1991 by requiring major renovations of bathhouses and locker rooms, replacement of existing fences, gates, decks

and ladders, and the addition of specific depth and bottom markings.

Comment Procedures: All persons interested in these matters are invited to attend the public hearing. Written comments may be presented at the public hearing or submitted to John P. Barkley, Department of Justice, P. O. Box 629, Raleigh, NC 27602-0629, (919) 733-4618. Persons who wish to speak at the hearing should contact John P. Barkley at (919) 733-4618. Persons who call in advance of the hearing will be given priority on the speaker's list. Oral presentation lengths may be limited depending on the number of people that wish to speak at the public hearing. Only persons who have made comments at a public hearing or who have submitted written comments will be allowed to speak at the Commission meeting. Comments made at the Commission meeting must either clarify previous comments or address proposed changes from staff pursuant to comments made during the public hearing process.

IT IS VERY IMPORTANT THAT ALL INTERESTED AND POTENTIALLY AFFECTED PERSONS, GROUPS, BUSINESSES, ASSOCIATIONS, INSTITUTIONS, OR AGENCIES MAKE THEIR VIEWS AND OPINIONS KNOWN TO THE COMMISSION FOR HEALTH SERVICES THROUGH THE PUBLIC HEARING AND COMMENT PROCESS, WHETHER THEY SUPPORT OR OPPOSE ANY OR ALL PROVISIONS OF THE PROPOSED RULES. THE COMMISSION MAY MAKE CHANGES TO THE RULES AT THE COMMISSION MEETING IF THE CHANGES COMPLY WITH G.S. 150B-21.2(f).

Editor's Note: The temporary rule and the agency's findings of need were submitted to the Codifier of Rules for review on April 30, 1993. The Codifier returned the rule and its findings to the agency on May 3, 1993 as the Codifier determined that the agency failed to meet the criteria listed in G.S. 150B-21.1(a). The agency resubmitted the rule and its findings on May 3, 1993 with a statement that the rule be entered into the North Carolina Administrative Code. Therefore, this Rule was filed as a temporary amendment effective May 11, 1993 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner.

CHAPTER 18 - ENVIRONMENTAL HEALTH

SUBCHAPTER 18A - SANITATION

SECTION .2500 - PUBLIC SWIMMING POOLS

.2537 MAINTENANCE AND OPERATION

(a) All public swimming pools constructed or remodeled on or after May 1, 1991 shall be maintained and operated in accordance with the Rules of this Section.

(b) On or after May 1, 1993 all public swimming pools including those constructed prior to May 1, 1991 shall be maintained and operated in accordance with the following:

- (1) All safety provisions of Rule .2530 (a) and (b) of this Section shall be met.
- (2) Decks shall be structurally sound, ~~and provide uniform walking surface with no offset greater than one half inch (1.3 cm).~~
- (3) There shall be no loose coping.
- (4) Artificial lighting shall be provided in ~~accordance with Rule .2524 of this Section~~ for all pools used when natural lighting is not sufficient to make all parts of the pool and pool area clearly visible.
- (5) ~~Fences and gates shall be constructed and maintained in accordance with Rule .2528 of this Section except that public swimming pools built prior to May 1, 1993 are not required to relocate gates or doors to meet provisions of Rule .2528(6) of this Section.~~ Swimming pools shall be protected by a fence, wall, building, or other enclosure, or any combination thereof, which completely encloses the swimming pool area. All gates and doors shall be equipped with self-closing and positive self-latching closure mechanisms. Existing waterslide flumes and other appurtenances are not required to be located inside the fence.
- (6) ~~Floating safety ropes and bottom markings shall be provided as required in Rule .2523 of this Section where the slope of the pool bottom exceeds 1 to 10 vertical rise to horizontal distance.~~
- (6) ~~(7) Depth markings shall be provided, as described in Rule .2523 of this Section.~~

- (7) (8) Drain covers shall be in good condition and securely attached.
- (8) (9) Damaged face plates or fittings shall be repaired or replaced.
- (9) (10) Underwater light niches shall be maintained or covered so as not to present a potential hazard to bathers.
- (11) ~~Surface skimmers shall be maintained in working condition with baskets and weirs in place. Overflow gutters and grates shall be maintained in working condition.~~
- (12) ~~Pool ladders with non-skid treads and stair railings shall be maintained and securely fastened in place. Contrasting color bands at least two inches wide shall be applied and maintained on the leading edge of stair treads.~~
- (10) (13) Diving equipment and pool slides including stairs and railing shall be maintained in good working order.

Statutory Authority G.S. 130A-282.

* * * * *

Notice is hereby given in accordance with G.S. 150B-21.2 that the EHNH - N. C. Zoological Park intends to amend rule cited as 15A NCAC 22B .0503

The proposed effective date of this action is August 2, 1993.

Instructions on How to Demand a Public Hearing (must be requested in writing within 15 days of notice):

Any person(s) requesting a public hearing on the proposed rule must submit a written request by 5-29-93. The request must be submitted to: Dwight M. Holland, Director, N. C. Zoological Park, 4401 Zoo Parkway, Asheboro, NC 27203.

Reason for Proposed Action: To increase special events and fundraising opportunities and produce more revenues for the Zoo.

Comment Procedures: Interested persons may contact Dwight M. Holland at (919) 879-7101 for more information regarding this rule. Written comments will be received for 30 days after publication of the notice. The request must be submit-

ted to: Dwight Holland, Director, N. C. Zoological Park, 4401 Zoo Parkway, Asheboro, NC 27203. Mailed written comments must be postmarked no later than 6-13-93.

CHAPTER 22 - NORTH CAROLINA ZOOLOGICAL PARK REGULATIONS

SUBCHAPTER 22B - GENERAL PROVISIONS

SECTION .0500 - DISORDERLY CONDUCT: PUBLIC NUISANCE: ETC.

.0503 INTOXICATING LIQUORS: CONTROLLED SUBSTANCE OR BEVERAGES

(a) A person shall not possess or consume any beer, wine, whiskey, controlled substance, or any other intoxicating substance within any state park except that alcoholic beverages may be served at a specific event at the Zoo authorized in writing by the Director of the Zoo.

(b) A person shall not be or become intoxicated while within any state park.

(c) A person shall not sell or attempt to sell any beer, wine, whiskey, controlled substance, or any other intoxicating substance within any state park.

Statutory Authority G.S. 113-264(a).

TITLE 20 - DEPARTMENT OF STATE TREASURER

Notice is hereby given in accordance with G.S. 150B-21.2 that the Board of Trustees of the Teachers and State Employees' Retirement System and the Board of Trustees of the Local Government Retirement System intends to amend rules cited as 20 NCAC 2A .0101, .0201 - .0202, .0301 - .0302, .0401 - .0402.

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

Instructions on How to Demand a Public Hearing (must be requested in writing within 15 days of notice): Any person requesting that the Boards of Trustees hold a public hearing on the proposed amendment must submit a written request by June 1, 1993, to Stephen F. Albright, APA Coordinator, Department of State Treasurer, 325 N. Salisbury Street, Raleigh, NC 27603.

Reason for Proposed Action: To recognize the new funds for which the Retirement Systems Division is responsible. 20 NCAC 2A .0402 - To recognize the new fund for which the Retirement Systems Division is responsible and the liquidation of a pre-existing fund.

Comment Procedures: Written comments should be submitted to Stephen F. Albright, APA Coordinator, Department of State Treasurer, 325 N. Salisbury Street, Raleigh, NC 27603.

CHAPTER 2 RETIREMENT SYSTEMS

SUBCHAPTER 2A - DIVISIONAL RULES

SECTION .0100 - ORGANIZATIONAL RULES

.0101 ORGANIZATION: AUTHORITY

The retirement systems division provides the staffing for the administration of the following agencies. The agencies and the statutory authority of each are:

- (1) Teachers' and State Employees' Retirement System of North Carolina -- G.S. 135, Article 1;
- (2) North Carolina Local Governmental Employees' Retirement System -- G.S. 128, Article 3;
- (3) Public Employees' Social Security Agency -- G.S. 135, Article 2;
- (4) Legislative Retirement System of North Carolina -- G.S. 120-4, Article 1A;
- (5) Consolidated Judicial Retirement System of N.C. -- G.S. 135, Article 4;
- (6) Supplemental Retirement Income Plan of North Carolina -- G.S. 135, Article 5;
- (7) Disability Income Plan of North Carolina -- G.S. 135, Article 6;
- (8) Firemen's and Rescue Squad Workers' Pension Fund -- G.S. 58, Article 86;
- (9) Register of Deeds' Supplemental Pension Fund -- G.S. 161, Article 3.

Statutory Authority G.S. 128-28(g); 135-6(f).

SECTION .0200 - RULE-MAKING PROCEDURES

.0201 ESTABLISHMENT OF PROCEDURAL RIGHTS

The rules in 20 NCAC 1F .0100 establish rule-making procedures for the Retirement Systems and health benefits Division. All correspondence with the Retirement Systems and health benefits Division should be addressed to:

Director of the Retirement Systems
Albemarle Building
325 North Salisbury Street
Raleigh, North Carolina 27603 27644.

Statutory Authority G.S. 150B-12; 135-6(f); 128-28(g).

.0202 DEFINITIONS

The following definitions apply to rule-making in 20 NCAC 1F .0100:

- (1) The "Division" is the Retirement Systems and health benefits Division and includes the agencies enumerated in 20 NCAC 2A .0101.
- (2) The "Chief Officer" is the Director of the Retirement Systems.

Statutory Authority G.S. 135-6(f); 128-28(g).

SECTION .0300 - DECLARATORY RULINGS

.0301 ESTABLISHMENT OF PROCEDURAL RIGHTS

The rules in 20 NCAC 1F .0200 establish declaratory ruling procedures for the Retirement Systems and health benefits Division.

Statutory Authority G.S. 135-6(f); 128-28(g).

.0302 DEFINITIONS

The following definitions apply to declaratory rulings in 20 NCAC 1F .0200:

- (1) The "Division" is the Retirement Systems and health benefits Division;
- (2) The "Chief Officer" is the Director of the Retirement Systems.

Statutory Authority G.S. 135-6(f); 128-28(g).

SECTION .0400 - CONTESTED CASE PROCEDURES

.0401 ESTABLISHMENT OF PROCEDURAL RIGHTS

The rules in 20 NCAC 1F .0300 establish contested case procedures for the Retirement Systems and health benefits Division, with following amendments:

- (1) Informal resolution of the problem begins

when a person calls, writes, or visits the state retirement system's office and describes the problem to a counselor/field representative;

- (2) If the problem is not resolved during this initial contact, the person will be referred to the administrator of the appropriate section;
- (3) If the problem is not resolved at this level, the person should discuss it with the Assistant Director of the Retirement Systems;
- (4) If the aggrieved person is dissatisfied at this point, he should discuss his difficulty with the Director of the Retirement Systems.

Statutory Authority G.S. 150B-23; 135-6(f); 128-28(g).

.0402 DEFINITIONS

The following definitions apply to the contested case procedures in 20 NCAC 1F .0300:

- (1) The "Division" is the Retirement Systems and health benefits Division;
- (2) The "Chief Officer" is the Director of the Retirement Systems;
- (3) The "Appropriate Board" is either the Board of Trustees of the Teachers' and State Employees' Retirement System or the Board of Trustees of the Local Governmental Employees' Retirement System or the Board of Trustees of the Law Enforcement Officers' Retirement System Firemen's and Rescue Squad Workers' Pension Fund.

Statutory Authority G.S. 135-6(f); 128-28(g).

Notice is hereby given in accordance with G.S. 150B-21.2 that the Board of Trustees of the Firemen's and Rescue Squad Workers' Pension Fund intends to amend rules cited as 20 NCAC 2N .0105 - .0107, .0210 - .0211; adopt rule cited as 20 NCAC 2N .0108 and repeal rules cited as .0305 - .0313. Editor's Note: The rules codified as 3 NCAC 3 have been transferred from the Department of State Auditor to the Department of State Treasurer and are codified as 20 NCAC 2N effective May 1, 1993.

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

The public hearing will be conducted at 10:00 a.m. on June 17, 1993 at the Albemarle Bldg, Conference Room, Room 100, 325 N. Salisbury Street, Raleigh, NC 27603.

Reason for Proposed Action: Transfer of Pension Fund from the Department of State Auditor to the Department of State Treasurer.

Comment Procedures: A written copy of the comments will be required of all persons wishing to speak at the public hearing. All written comments must be received by 4:30 p.m. on June 17, 1993. Written comments should be sent to Stephen F. Albright, APA Coordinator, Department of State Treasurer, 325 N. Salisbury Street, Raleigh, NC 27603.

CHAPTER 2 - RETIREMENT SYSTEMS

SUBCHAPTER 2N - NORTH CAROLINA FIREMEN'S PENSION FUND

SECTION .0100 - ORGANIZATION OF THE FUND

.0105 DEFINITIONS

As used in this Subchapter:

- (1) "Board" means the Board of Trustees of the North Carolina Firemen's and Rescue Squad Workers' Pension Fund.
- (2) "Chairman" means the Chairman of the Board of Trustees of the North Carolina Firemen's and Rescue Squad Workers' Pension Fund.
- (3) "Director" means the Director of ~~the North Carolina Firemen's and Rescue Squad Workers' Pension Fund~~ Retirement Systems Division of the Department of State Treasurer.
- (4) "Member" means a member of the North Carolina Firemen's and Rescue Squad Workers' Pension Fund.
- (5) "Pension fund" means the North Carolina Firemen's and Rescue Squad Workers' Pension Fund.

Statutory Authority G.S. 58-86-10.

.0106 OFFICE OF THE DIRECTOR

~~(a) The office of the director is located at Room 201, Legislative Office Building, 300 N. Salisbury St., Raleigh, N.C. 27611. The telephone number for the office is (919) 733-3275. Office hours are from 8 a.m. to 5 p.m., Mondays through Fridays, except legal holidays.~~

~~(b) The office of the director is part of the Department of the State Auditor and is responsible for general day to day administration of the pension fund in accordance with G.S. 118-33 through 118-49 and the rules in this Chapter.~~

The Office of the Director is located in the Albemarle Building, 325 North Salisbury Street, Raleigh, North Carolina and the mailing address is 325 North Salisbury Street, Raleigh, North Carolina 27603-1388. Office hours are from 8 a.m. to 5 p.m., Mondays - Fridays, except legal holidays.

Statutory Authority G.S. 58-86-10.

.0107 BOARD OF TRUSTEES

A majority of the members of the Board of Trustees constitute a quorum. The Chairman of the Board is the State Treasurer Auditor. The Chairman may call meetings of the Board as he deems necessary or desirable. The Chairman shall call a meeting of the Board if a majority of the members of the Board request in writing a meeting.

Statutory Authority G.S. 58-86-10.

.0108 DIVISIONAL RULES

The following rules are hereby incorporated by reference including subsequent amendments to the rules:

- (1) Rules .0101; Organization, Authority; .0102, Exercise of Authority; .0103, Delegation of Authority to Director; of 20 NCAC 2A.
- (2) Sections .0200, Rule-Making Procedures; .0300, Declaratory Rulings; .0400, Contested Case Procedures; of 20 NCAC 2A.
- (3) Rule .0504, Direct Report of Monthly Benefits; of 20 NCAC 2A.

Statutory Authority G.S. 58-86-10; 150B-21.6.

SECTION .0200 - GENERAL PROVISIONS

.0210 ANNUAL CERTIFICATION OF FIREMEN

(a) In order for a member to receive credit for time served as an eligible fireman, the governing body of the county or city that the member's fire department serves must certify annually:

- (1) that the fire department meets the requirements of G.S. 58-86-25 ~~418-38~~; and
- (2) which members of the fire department have met the requirements of G.S. 58-86-25 ~~418-38~~.

The certification is due by June 30 of each year.

(b) The certification must be made on the annual certification of firemen form. This form may be obtained from the office of the Director at the address shown in Rule .0106(a) of this Subchapter. The form asks for information such as name and address of the governing body and the fire department and the certifications described in Paragraph (a) of this Rule.

(c) Members on leaves of absence under either Rule .0214 or .0215 of this Section should be included on the roster of members required by Paragraph (a) of this Rule.

(d) Failure to submit an annual certification of firemen form by June 30th will result in a reduction or delay of benefits. So long as an annual certification is delinquent the members to be covered by that certification will not receive credit for service during the time period to be covered by the certification.

(e) For the purpose of G.S. 58-86-25, "drills and meetings" shall be defined as any meeting in which the members of the Department conduct official departmental business, or, training session/drill, in which attendance by the member will result in the preparation of, or knowledge gained by, the member in the area of fire prevention, fire suppression, or protection of life and property. Such drills and meetings held by the Department to meet the requirements of this Section shall be held for the purpose of providing a learning and/or preparation experience for the members, or participation by the member in the business affairs of the Department.

Statutory Authority G.S. 58-86-10; 58-86-25.

.0211 ANNUAL CERTIFICATION OF RESCUE SQUAD WORKERS

(a) In order for a member to receive credit for service as an eligible rescue squad worker, the member's rescue squad must provide the office of the director with a certified roster of the members meeting the requirements to join the North Carolina Association of Rescue Squads, Inc. The

roster must be certified by the secretary of the North Carolina Association of Rescue Squads, Inc. The certification is due by January 1 of each year.

(b) The certification must be made on the annual certification of rescue squad workers form. This form may be obtained from the office of the director at the address shown in Rule .0106(a) of this Subchapter. The form asks for information such as the name and address of the rescue squad and the certification described in Paragraph (a) of this Rule.

(c) Members on leaves of absence under either Rule .0214 or .0215 of this Section should be included on the roster of members.

(d) Failure to submit an annual certification of rescue squad workers form by January 1st will result in a reduction or delay of benefits. So long as an annual certification is delinquent the members to be covered by that certification will not receive credit for service during the time period to be covered by the certification.

(e) For the purpose of G.S. 58-86-30, "training and meetings" shall be defined as any meeting in which the members of the Department/squad conduct official business, or training session/drill, in which attendance by the member will result in the preparation of, or knowledge gained by, the member in the area of rescue, Emergency Medical Services, injury prevention, or protection of life and property. Such drills and meetings held by the squad to meet the requirements of this Section shall be held for the purpose of providing a learning and/or preparation experience for the members, or participation by the members in the business affairs of the Department.

Statutory Authority G.S. 58-86-10; 58-86-30.

SECTION .0300 - ADMINISTRATIVE RULEMAKING PROCEDURES

.0305 PETITIONS FOR RULE-MAKING

(a) ~~Any person wishing to submit a petition requesting the adoption, amendment, or repeal of a rule by the board shall address the petition to the office of the director at the address specified in Rule .0106 of this Chapter.~~

(b) The petition should contain the following information:

- (1) ~~the name of the agency;~~
- (2) ~~a draft of the proposed rule or amendment;~~
- (3) ~~a summary of the contents of the proposed rule or amendment;~~
- (4) ~~reasons for the proposal;~~

(5) ~~effect of the proposal on existing rules or orders;~~

(6) ~~data supporting the proposal;~~

(7) ~~effect of the proposal on existing practices in area involved, including cost factors;~~

(8) ~~names of those most likely to be affected by the proposal (with addresses if known); and~~

(9) ~~name(s) and address(es) of petitioner(s).~~

Statutory Authority G.S. 118-35; 150B-16.

.0306 DECISION ON PETITION

(a) ~~The chairman will determine, based on a study of the facts stated in the petition, whether the public interest will be served by granting or denying the petition. The chairman will consider all the contents of the submitted petitions plus any additional information deemed relevant, and make his recommendation thereon to the board.~~

(b) ~~Within 30 days after submission of the petition, or at its next regularly scheduled meeting, whichever is later, the board will render a final decision. If the decision is to deny the petition the chairman will notify the petitioner in writing of the reasons therefor. If the decision is to grant the petition the board will initiate a rule-making proceeding by issuing a notice as provided in 3 NCAC 03 .0308.~~

Statutory Authority G.S. 118-35; 150B-16.

.0307 NOTICE OF RULE-MAKING

~~Upon determination to hold rule-making proceedings, either in response to a petition or otherwise, the board will give 30 days notice in the publication of the North Carolina Register of a public hearing, in accordance with G.S. 150B-12.~~

Statutory Authority G.S. 118-35; 150B-12.

.0308 ARGUMENTS

~~Any person desiring to present data, views or arguments on the proposed rule or rule change must file a notice with the chairman at the office of the director at the address specified in Rule .0106 of this Chapter, at least ten days before the hearing. Such notice may be waived, or failure to give notice may be excused by the presiding officer of the hearing for good cause. Any person permitted to make an oral presentation is encouraged to submit a written copy of the presentation to the chairman at least ten days prior~~

to the hearing.

Statutory Authority G.S. 118-35; 150B-11(1).

.0309 REQUEST FOR ORAL PRESENTATIONS

A request to make an oral presentation should contain a brief summary of the subject upon which the individual will speak and an estimation of the length of time needed. Presentations may not exceed five minutes unless the presiding officer, either before or at the hearing grants an extension of time for good reason.

Statutory Authority G.S. 118-35; 150B-11(1); 150B-12.

.0310 WRITTEN STATEMENT

(a) Any person may file a written statement containing data, comments or arguments in support of or in opposition to a proposed rule or rule change. Such statements may be filed before, during or for 30 days after the hearing by delivering the statement by mail or in person to the chairman.

(b) An extension of time for filing written statements may be granted either in the notice of the particular rule-making hearing or by the presiding officer of the hearing.

(c) All such submitted statements should clearly state the rule or proposed rule to which the comments are addressed.

Statutory Authority G.S. 118-35; 150B-11(1).

.0311 REQUEST FOR STATEMENT OF FINAL DECISION

Any person desiring a concise statement of the principal reasons for or against the adoption of a rule by the board and the factors that led to sustaining or overruling its adoption may submit a written request to the chairman. Such requests may be submitted either prior to the rule-making hearing or within 30 days thereafter.

Statutory Authority G.S. 118-35; 150B-12(e).

.0312 RECORD OF RULE-MAKING

A record of all rule-making hearings will be maintained as long as the rule is in effect and for five years thereafter. This record shall contain:

- (1) the original petition or petitions;
- (2) the notice;
- (3) all written memoranda and information submitted;

(4) a record or summary of oral presentations; and

(5) any statements of the reasons for and against adoption of a rule issued by the board.

The record will be maintained on file in the office of the director.

Statutory Authority G.S. 118-35; 150B-12(e).

.0313 DECLARATORY RULINGS

(a) Any person substantially affected by a statute administered or rule promulgated by the board may request a declaratory ruling as to how the statute or rule applies to a given factual situation or whether a particular rule is valid. All request for declaratory rulings shall be in writing and delivered to the chairman at the office of the director.

(b) Whenever the board believes for good cause that issuing a declaratory ruling is inappropriate, it may refuse to do so. The board shall notify the petitioner of its decision in writing stating the reasons for the denial of the declaratory ruling.

Statutory Authority G.S. 118-35; 150B-17.

TITLE 21 - OCCUPATIONAL LICENSING BOARDS

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Board of Mortuary Science intends to adopt rules cited as 21 NCAC 34A .0125 - .0126; 34D .0104 - .0105; amend rules cited as 21 NCAC 34A .0201 and 34D .0301.

The proposed effective date of this action is August 2, 1993.

The public hearing will be conducted at 1:00 p.m. on June 15, 1993 at the Student Center Board Room, Fayetteville Technical Community College, 2201 Hull Road, Fayetteville, NC 28303.

Reason for Proposed Action:

21 NCAC 34A .0125 - To provide for fingerprint checks to facilitate determination of character of applicants for resident traineeship and licensure.

21 NCAC 34A .0126 - To provide for screening of complaints and for determining probable cause of

law violations.

21 NCAC 34A .0201(a) - To reduce total license fees of persons holding both funeral director's and embalmer's licenses.

21 NCAC 34D .0104 - To provide that forms shall indicate that they are approved by Board and date of approval to assure use of only current, approved forms.

21 NCAC 34D .0105 - To require that copies of preneed contracts be filed with Board so Board can monitor them.

21 NCAC 34D .0301(d) - To provide for records retention so Board can inspect them.

Comment Procedures: Interested persons may present statements, orally and in writing, at the public hearing and in writing prior to the hearing by mail addressed to the C Board of Mortuary Science, Box 27368, Raleigh, NC 27611-7368.

CHAPTER 34 - BOARD OF MORTUARY SCIENCE

SUBCHAPTER 34A - BOARD FUNCTIONS

SECTION .0100 - GENERAL PROVISIONS

.0125 FINGERPRINTS

The Board shall require applicants for registration as resident trainees and for licensure to submit to a fingerprint check; provided, however, the Board may waive this requirement for an applicant for licensure who previously submitted to a fingerprint check as an applicant for registration as a resident trainee.

Statutory Authority G.S. 90-210.23(a); 90-210.25(a)(1), (2), (3), (4); 90-210.25(e)(1); 90-210.43(f); 90-210.50(a); 90-210.67(b), (c); 90-210.69(a), (c).

.0126 COMPLAINTS; PRELIMINARY DETERMINATIONS

(a) A person who believes that any person, firm or corporation is in violation of any provision of G.S. 90, Article 13A, 13C or 13D, or Title 21, Chapter 34, of the North Carolina Administrative Code, may file a written complaint with the Board's staff. If the accused is subject to the jurisdiction of the Board, the complaint shall be handled pursuant to this Rule.

(b) A complaint shall be handled initially by the Board's Executive Secretary, Director of Preneed Regulation or their staff designees, who may

dismiss it as unfounded, frivolous or trivial. Complaints against persons subject to the Board's jurisdiction pursuant to G.S. 90, Article 13A and 13C, shall be handled by the Executive Secretary or staff designated by him or her, and complaints against persons subject to the Board's jurisdiction pursuant to G.S. 90, Article 13D, shall be handled by the Director of Preneed Regulation or staff designated by him or her.

(c) Unless the complaint is dismissed pursuant to Paragraph (b) of this Rule, the Executive Secretary, Director of Preneed Regulation or their staff designees shall notify the accused of the complaint in writing. Such notice shall be sent by certified mail, return receipt requested; shall state the allegations as contained in the complaint, or may enclose a copy of the complaint; and shall contain a request that the accused submit a response in writing within 10 days from the date the notice of the complaint is received by the accused.

(d) If the accused admits the allegations, and if, in the opinion of the Executive Secretary, Director of Preneed Regulation or their staff designees, the matter does not merit review by the Board's disciplinary committee, the Executive Secretary, Director of Preneed Regulation or their staff designees shall accept the admission of guilt and shall acknowledge the admission in a letter to the accused.

(e) If the accused admits the allegations, and if, in the opinion of the Executive Secretary, Director of Preneed Regulation or their staff designees, the matter merits review by the Board's disciplinary committee, the Executive Secretary, Director of Preneed Regulation or their staff designees shall refer the matter to the committee. After reviewing the allegations and response, the committee shall make a preliminary determination of the charges and shall recommend to the Board which of the actions in Paragraph (h) of this Rule should be taken.

(f) If the accused does not respond to or denies the allegations, the Board's Executive Secretary, Director of Preneed Regulation or their staff designees shall investigate the allegations, and they may dismiss the complaint as unfounded, frivolous or trivial, or may refer the complaint, response, if any, and any other available evidence to the Board's disciplinary committee for review. From such review, the committee shall make a preliminary determination and shall recommend to the Board which of the actions in Paragraph (h) of this Rule should be taken.

(g) The complaint, response, if any, other

evidence and disposition of each case shall be placed in a permanent file of the accused. When a second complaint is filed against the accused during a period of twelve months, or a third complaint is filed against the accused during any period of time, the Executive Secretary, Director of Preneed Regulation or their staff designees shall present the file to the disciplinary committee for a review. From such review, the committee shall make a preliminary determination of the new complaint and shall recommend to the Board which of the actions in Paragraph (h) of this Rule should be taken.

(h) In accordance with Paragraphs (e) through (g) of this Rule, the disciplinary committee shall review the complaint and the file, if applicable, shall make a preliminary determination, and shall recommend to the Board that one of the following actions be taken:

- (1) that the complaint be dismissed as unfounded, frivolous or trivial;
- (2) that, in the case of an alleged violation of G.S. 90, Article 13A, the case be compromised pursuant to G.S. 90-210.25(e)(1) or that it be set for a contested case hearing in accordance with G.S. 150B, Article 3A, and the rules of the Board;
- (3) that, in the case of an alleged violation of G.S. 90, Article 13C, the case be set for a contested case hearing in accordance with G.S. 150B, Article 3A, and the rules of the Board; or
- (4) that, in the case of an alleged violation of G.S. 90, Article 13D, the case be set for a contested case hearing before an administrative law judge, as provided by G.S. 90-210.69(e).

(i) The Board may accept or reject, in whole or in part, the recommendations of the disciplinary committee.

Statutory Authority G.S. 90-210.23(a); 90-210.25(e); 90-210.43(f), (g); 90-210.50(a); 90-210.69.

SECTION .0200 - FEES AND OTHER PAYMENTS

.0201 FEES AND PENALTIES

(a) Fees for funeral service shall be as follows:

Establishment permit	
Application	\$250.00
Annual renewal	\$150.00
Late renewal penalty	\$100.00
Establishment reinspection fee	\$100.00

Courtesy card		
Application		\$ 75.00
Annual renewal		\$ 50.00
Out-of-state licensee		
Application		\$200.00
Embalmer, funeral director, funeral service		
Application, North Carolina resident		\$150.00
Application, non-resident		\$200.00
Annual renewal		
Embalmer	\$40.00	<u>\$ 30.00</u>
Funeral director	\$40.00	<u>\$ 30.00</u>
Funeral service		\$ 60.00
Reinstatement fee		\$ 50.00
Resident trainee permit		
Application		\$ 50.00
Annual renewal		\$ 35.00
Late renewal penalty		\$ 25.00
Duplicate license certificate		\$ 25.00
Chapel registration		
Application		\$150.00
Annual renewal		\$100.00
(b) Fees for crematories shall be as follows:		
License		
Application		\$400.00
Annual renewal		\$150.00
Late renewal penalty		\$ 75.00
Crematory reinspection fee		\$100.00
Per-cremation fee		\$ 5.00
(c) Fees for preneed funeral contract regulation shall be as follows:		
Preneed funeral establishment license		
Application		\$100.00
Annual renewal		\$100.00
Preneed sales license		
Application		\$ 10.00
Annual renewal		\$ 10.00

Statutory Authority G.S. 90-210.23(a); 90-210.28; 90-210.48; 90-210.67(b), (c).

SUBCHAPTER 34D - PRENEED FUNERAL CONTRACTS

SECTION .0100 - GENERAL PROVISIONS

.0104 INDICATION OF APPROVAL OF FORMS

Every form provided or approved by the Board shall contain words indicating that it is approved by the Board and the month and year of the approval.

Statutory Authority G.S. 90-210.69(a); 90-210.62(b).

.0105 CONTRACT COPIES TO BE FILED

Within 10 days following the sale of a preneed funeral contract, any person selling the contract shall send a copy of it to the Board, accompanying the fee required by G.S. 90-210.67(d).

Statutory Authority G.S. 90-210.69(a); 90-210.62(b); 90-210.67(d); 90-210.68(a).

SECTION .0300 - OPERATIONS

.0301 RECORD AND BOOKKEEPING REQUIREMENTS

(a) Each preneed funeral establishment licensee shall maintain at the address stated on its license a general file containing:

- (1) a copy of each of its license applications, including applications for

- license renewals;
- (2) copies of all preneed examination reports; and
- (3) copies of all annual reports to the Board.

(b) Each such licensee shall maintain, at the same address, files containing all preneed funeral contracts purchased. The files shall be maintained separately for outstanding contracts and for matured or cancelled contracts. The outstanding contract file shall include a copy of each preneed contract filed alphabetically or numerically. The matured or cancelled contract file shall contain a copy of each preneed contract, together with a copy of the certificate of performance, and shall be filed either chronologically or alphabetically by year.

(c) Each such licensee shall maintain, at the same address, the following records:

- (1) a contract register listing the purchaser's name and final disposition of the contract;
- (2) a separate cash journal or separate cash receipt book designated for preneed, showing all preneed payments collected;
- (3) an individual ledger for each contract purchaser showing the purchaser's and beneficiary's names, amount of the contract, amount paid on the contract, amount retained free of trust pursuant to G.S. 90-210.61(a)(2), deposits to trust, withdrawals from trust as permitted by law and the reasons therefor, interest on deposits, total amount of the trust, and amounts paid to insurance companies for insurance-funded contracts;
- (4) copies of bank statements and deposit slips from financial institutions in which trust funds are deposited, certificate of deposit records, including both principal and interest transactions and trust accountings; and
- (5) copies of applications for insurance, insurance policies, beneficiary designation documents and instruments of assignment.

(d) The copies required to be maintained by Paragraph (a) of this Rule shall be retained a minimum of ten years following their origination. The copies and records required to be maintained by Paragraphs (b) and (c) of this Rule shall be retained a minimum of ten years following the substitution of a different funeral establishment to

perform the preneed funeral contract, the revocation of the preneed funeral contract or the death of the contract beneficiary, whichever occurs first.

~~(d)~~ (e) Individual ledgers and records of the depository financial institutions shall be balanced at least annually to ensure accuracy.

Statutory Authority G.S. 90-210.69(a); 90-210.68(a).

* * * * *

Notice is hereby given in accordance with G.S. 150B-21.2 that the N. C. State Board of Examiners for Nursing Home Administrators intends to amend rules cited as 21 NCAC 37 .0211, .0303, .0308, .0404, .0501 - .0502, .0504 - .0505, .0508, .0512, .0514, .0517, .0519, .0603, .0701 - .0707, .0901, .0903, .0912 and repeal rules cited as .0509, .0708 - .0709.

The proposed effective date of this action is August 2, 1993.

The public hearing will be conducted at 10:00 a.m. on June 2, 1993 at 3700 National Drive, Room 104, Raleigh, NC 27612.

Reason for Proposed Action: Rules revised for clarification and definitions with some necessary changes to comply with national examinations and costs. Changes also made to respond to a request petitioned by the industry.

Comment Procedures: Written comments may be sent to N. C. State Board of Examiners for Nursing Home Administrators, 3701 National Drive, Suite 123, Raleigh, NC 27612 through June 14, 1993. Request for an opportunity to present oral testimony at the Public Hearing and a summary of the testimony must be received at this address no later than May 28, 1993.

CHAPTER 37 - BOARD OF NURSING HOME ADMINISTRATORS

SECTION .0200 - PREREQUISITES TO LICENSURE

.0211 ORAL INTERVIEW

An ~~The~~ applicant must appear before the Board

for a personal interview as required by the Board in accordance with the provisions as outlined in Sections .0500 and .0900 of this Chapter. ~~before the Board issues approval of AIT program. The applicant's preceptor must appear with the applicant at the interview, as required by Rule .0509(a) of this Chapter.~~

Statutory Authority G.S. 90-278; 90-285.

SECTION .0300 - APPLICATION FOR LICENSE

.0303 REFERENCES

(a) A candidate for licensure shall submit with his application three ~~current original letters reference forms~~ (one of which must be from a previous employer) from individuals who shall certify to the good moral character of the applicant.

(b) It shall be prima facie evidence of good moral character if a candidate has not been convicted by any local, state, federal, or military court of any crime involving the use, carrying, or possession of a firearm; conviction of any crime involving the use, possession, sale, manufacture, distribution, or transportation of a controlled substance, drug, narcotic, or alcoholic beverage; conviction of a crime involving assault or an act of violence; conviction of a crime involving breaking or entering, burglary, larceny, or any offense involving moral turpitude; or does not have a history of addiction to alcohol or a narcotic drug; provided that, for purposes of this Rule, "conviction" means and includes the entry of a plea of guilty or no contest or a verdict rendered in open court by a judge or jury.

Statutory Authority G.S. 90-278; 90-285.

.0308 RECEIPT OF APPLICATIONS

All applications for licensure must be received in the Board's office a minimum of ~~two~~ three weeks prior to the meeting of the Board at which the application is to be considered. All items required to be provided to constitute a full application must be received by this date.

Statutory Authority G.S. 90-285.

SECTION .0400 - COURSES OF STUDY

.0404 CONTINUING EDUCATION PROGRAMS OF STUDY

(a) The Board shall certify and administer

courses in continuing education for the professional development of nursing home administrators and to enable persons to meet the requirements of these Rules. It is the responsibility of the licensee to keep a record of his continuing education hours. Certified courses, including those sponsored by the Board, an accredited university, college or community college, associations, professional societies, or organizations shall:

- (1) contain a minimum of two classroom hours of academic work and not more than eight classroom hours within a 24-hour period; and
- (2) include instruction in the following general subject areas or their equivalents:
 - (A) ~~applicable standards of environmental health and safety~~ Resident Care Management;
 - (B) ~~local health and safety regulations~~ Personnel Management;
 - (C) ~~general administration~~ Financial Management;
 - (D) ~~psychology of patient care~~ Environmental Management;
 - (E) ~~principles of medical care~~ Regulatory Management;
 - (F) ~~personal and social care~~ Organizational Management;
 - (G) ~~therapeutic and supportive care and services in long-term care~~;
 - (H) ~~departmental organization and management~~;
 - (I) ~~community interrelationships~~;
- (b) Certified courses not administered by the Board shall:
 - (1) be submitted to the Board for approval at least 30 days prior to the presentation of the program;
 - (2) be accompanied with a fee of twenty-five dollars (\$25.00) to cover the cost of reviewing and maintaining records associated with the continuing education program; and
 - (3) be approved for a period of one year from the date of initial presentation.
- (c) The Board shall charge a fee for courses sponsored by it in an amount sufficient to cover the Board's costs.

Statutory Authority G.S. 90-278; 90-280; 90-285; 90-286.

SECTION .0500 - ADMINISTRATOR-

IN-TRAINING

.0501 TRAINING REQUIREMENT

Each applicant for initial licensure shall complete an AIT program under the direction of a preceptor unless he is exempt from this requirement under G.S. 90-278(1)d or Rule .0520 ~~.0519(a)~~ of this Section.

Statutory Authority G.S. 90-278; 90-285.

.0502 APPLICATION TO BECOME ADMINISTRATOR-IN-TRAINING

(a) The applicant will submit to the Board an application, which shall contain such information as name, education, employment history, questions pertaining to moral character, and any other information the Board may require to process an application according to these Rules, and an affidavit stating that the applicant, if granted a license, will obey the laws of the state and the rules of the Board, and will maintain the honor and dignity of the profession.

(b) The applicant will submit a background resume indicating the areas in which he is competent or lacking.

(c) The applicant will submit three ~~current original letters of reference~~ reference forms which shall certify to his or her good moral character as required and defined by Rule .0303 of this Chapter.

(d) The applicant will supply a certified copy of each college transcript indicating the courses completed and hours earned, specifying whether semester or quarter hours. Instead of a transcript the applicant will supply documentation of his supervisory experience in a nursing home if he is utilizing the experience substitute for the education requirement as allowed by General Statute 90-278(1)b.

(e) The preceptor shall submit to the Board three weeks prior to the personal interview, a recommended number of weeks and an individualized curriculum for the AIT program that shall provide the AIT with on the job experience in the six subject areas outlined in Section .0700 of this Chapter.

(f) ~~(e)~~ A fee of one hundred dollars (\$100.00) shall be submitted with the application.

(g) An AIT applicant must maintain at all times a current mailing address with the Board office.

Statutory Authority G.S. 90-278; 90-280; 90-285.

.0504 TRAINING PERMIT

(a) After the interview and approval, the Board shall issue an AIT training permit to the applicant for a maximum one-year period beginning on the date the permit is issued.

(b) Should the ~~trainee~~ AIT not maintain acceptable standards and ~~submit~~ may the required reports, the Board ~~shall~~ may place the ~~applicant~~ AIT on probation or may rescind the AIT training permit.

Statutory Authority G.S. 90-278; 90-285.

.0505 ADMINISTRATOR-IN-TRAINING SELECTION

(a) From an approved list of preceptors, the ~~trainee~~ AIT applicant will select a preceptor of his choice prior to submitting application to the Board.

(b) It shall be the responsibility of the ~~trainee~~ AIT applicant to contact a preceptor to determine if the preceptor will accept the AIT applicant.

(c) Once a preceptor accepts an AIT applicant, the preceptor must submit to the Board a written statement that he or she is willing to serve as a preceptor.

(d) The preceptor shall notify the Board of the starting date of acceptance the AIT program and the date of any discontinuance ~~of traineeship~~.

(e) Any change in preceptor must be approved by the Board.

Statutory Authority G.S. 90-278; 90-285.

.0508 PRECEPTOR QUALIFICATIONS

(a) To be certified as a preceptor the nursing home administrator must:

~~(1) — exemplify the highest ethical and professional standards;~~

(1) ~~(2)~~ have practiced in the field of nursing home administration a minimum of two years or have a masters degree in health care administration; ~~have and has~~ practiced in the field a minimum of one year; ~~and;~~

(2) certify that no revocation proceeding, suspension of admissions, or provisional license ~~other than the initial provisional license~~ has been initiated or is in effect ~~issued~~ against his/her facility(ies);

(3) express himself well and be at ease in a teaching situation;

(4) be the full time administrator of a facility that ~~which~~ is licensed by the Division of Facility Services as a nursing home and be physically present

in the facility a minimum of three days per week;

- (5) successfully complete a preceptor training course approved by the Board; and
- (6) complete 40 hours of continuing education during the 24 months preceding application for certification.

(b) A preceptor must be recertified biennially ~~each two years~~ by the Board in accordance with the qualifications as set out in Paragraph (a) of this Rule at the time of license renewal.

(c) The preceptor and the AIT shall spend a minimum of four hours per week in orientation, direct instruction, planning and evaluation.

(d) An administrator licensed by reciprocity/endorsement who held an active preceptor certificate in another state may also receive a North Carolina preceptor certificate if all other requirements are met.

(e) Any administrator who otherwise meets all requirements of this Rule except for completion of the approved course under Subparagraph (a)(5) of this Rule and who has previously been certified as a preceptor may be issued a temporary preceptor certificate by the Board Chairman until such course is completed.

Statutory Authority G.S. 90-278; 90-285.

.0509 PROGRAM AND CURRICULUM

~~(a) The length of AIT program and the curriculum for the internship will be presented to the Board by the preceptor during the personal interview as required.~~

~~(b) The preceptor will submit to the Board prior to or within the first week of internship an individualized curriculum for the AIT which will provide the trainee with on the job experience in the nine subject areas outlined in Section .0700 of these Rules.~~

Statutory Authority G.S. 90-278; 90-285.

.0512 PRECEPTOR'S REPORTS

~~(a) The preceptor shall submit to the Board a training progress report for the AIT at the end of each month. The preceptor shall make comments on the AIT's weekly/monthly report regarding the progress of his/her training.~~

(b) At the end of the approved AIT program, the preceptor will submit a report and an evaluation of the AIT on forms provided by the Board. These forms are to be submitted to the Board within ~~ten~~ 10 days of completion of the AIT

program. The forms will require the name of the AIT, the place of training, an evaluation of the AIT's abilities, and other information that the Board requests. The preceptor will sign the forms.

(c) The reports will be filed in the AIT's file in the Board's office and will become a permanent record in the individual's file.

Statutory Authority G.S. 90-278; 90-285.

.0514 CHANGE OF STATUS AND DISCONTINUANCE

~~(a) If the AIT changes preceptors, transfers to a different preceptor or discontinues the training, he must notify the Board prior to making this change. If the AIT desires to change preceptors, he/she must submit a Notice of Change of Status and/or Discontinuance form provided by the Board. Prior to changing preceptors, the AIT must notify the Board and the Board Chairman may grant such requests subject to a approval at the next regularly scheduled board meeting.~~

~~(b) If the AIT desires to discontinue his/her internship, the Notice of Change of Status and/or Discontinuance form must be submitted within 10 days of discontinuance before any accumulated training time may be considered should the AIT elect to re-enter his/her internship program at a future date.~~

~~(c) (b)~~ The form requires the name of the AIT and preceptor, the change requested, the effective date, reasons for the change, and any other information that the Board requests. Either the AIT or the preceptor must sign the form.

Statutory Authority G.S. 90-278; 90-285.

.0517 AIT TIME ON THE JOB

(a) The AIT shall serve an internship recommended by the preceptor and approved by the Board with a minimum of 40 hours per week. The minimum AIT program is 12 weeks, which may not be reduced except as stated in G.S. 90-278(1)d and Rule .0520 of this Section.

(b) An internship which has been discontinued by a period of military service shall be allowed to be completed within a year after that service.

(c) An internship which has been discontinued for any purpose other than military service cannot be completed if the absence exceeds one year from the date of discontinuance.

(d) Only one discontinuance is allowed.

Statutory Authority G.S. 90-278; 90-285.

.0519 ADMINISTRATOR-IN-TRAINING PROGRAM

(a) ~~The requirement for serving as an AIT does not apply to an applicant who:~~

- ~~(1) has a baccalaureate or masters degree in nursing home administration or a related health administration field from an accredited institution; and~~
- ~~(2) as part of his educational experience he completed at least a 12 week approved AIT internship in a North Carolina nursing home under the supervision of a preceptor.~~

(a) ~~(b)~~ The preceptor will evaluate and determine recommend to the Board the length of the internship AIT program required to teach the core of knowledge as outlined in Section .0700 of these Rules before accepting the AIT to train in a facility approved by the Board subject to the following provisions:

- ~~(1) the program of internship will be presented to the Board by the preceptor and AIT during the oral interview as required under Rule .0509(a) of this Section; in determining the length of the AIT program, the preceptor shall consider the strengths and weaknesses of the AIT applicant as it relates to his/her education and past supervisory experience. (An inventory sheet will be provided to help the preceptor determine the knowledge of the AIT applicant.);~~
- ~~(2) all AIT's shall serve a minimum of 12 weeks internship, plus any additional weeks as determined by the preceptor and approved by the Board except as otherwise allowed under Rule .0520 of this Section; and the AIT program will be presented to the Board by the preceptor and the AIT during the personal interview as required under Rule .0502(e) of this Section; and~~
- ~~(3) in determining the AIT program, the preceptor shall consider the strengths and weaknesses of the AIT applicant as it relates to his education and past supervisory experience. (An inventory sheet will be provided to help the preceptor determine the length of the AIT program.) except as otherwise allowed under Rule .0520 of this Section, all AITs shall serve a minimum of 12 weeks in the AIT program, plus any additional weeks as~~

determined by the Board. In determining whether to require additional weeks in addition to the 12 week minimum, the Board shall consider the recommendation of the preceptor, and the Board's independent consideration of the AIT applicant's education, training and experience relevant to operating a health care facility.

(b) An AIT applicant who is working toward a baccalaureate or masters degree in nursing home administration or a related health care administration field shall serve a minimum of 12 weeks in the AIT program as part of his/her educational curriculum in a North Carolina licensed nursing home under the supervision of an approved preceptor.

(c) At the completion of the approved AIT program internship and upon successfully passing the examinations as required by the Board, the AIT will be issued a provisional license upon the recommendation of the preceptor.

(d) The provisional license will be valid for up to one year, during which time the AIT will serve a facility as administrator or will serve as assistant administrator with comparable responsibilities in a nursing facility having a minimum of 100 or more nursing beds. All persons who hold a valid provisional license or who have completed the requirements for a provisional license as of the amended effective date of this Rule shall be issued a full license upon submission to the Board their provisional license or payment of the licensing fee if applicable.

(e) The preceptor or a qualified licensed nursing home administrator will continue to serve as preceptor during the provisional license period and will monitor the AIT's monthly reports to the Board.

(f) After the provisional license period is completed and all requirements have been satisfied:

- (1) the preceptor or qualified administrator must file a final report recommending and certifying to the Board that the AIT is a qualified candidate for full licensure;
- (2) the owner(s) of the facility or facilities in which the AIT served his/her one year provisional period as an administrator or an assistant administrator must file a report certifying that the facility or facilities operated by the AIT during the

provisional period were operated in a professional and efficient manner without significant violations of local, state and federal rules and regulations for which the AIT may reasonably be held responsible;

- (3) ~~records of the Division of Facility Services must show that during the provisional period the facility or facilities served by the AIT had no significant violations of local, state and federal rules and regulations for which the AIT may reasonably be held responsible;~~

- (4) ~~the Board will issue a full nursing home administrator's license to the AIT.~~

Statutory Authority G.S. 90-278; 90-285.

SECTION .0600 - EXAMINATION

.0603 EXAMINATION

(a) There shall be a charge of one hundred seventy-five dollars (\$175.00) ~~one hundred fifty dollars (\$150.00)~~ to take the national examination and sixty dollars (\$60.00) to take the state examination.

(b) If the applicant does not pass the examination, no refund will be made.

(c) The applicant will be required to pay the appropriate fee each time he takes the examination.

(d) Upon the third failure of any examination required by the Board, the AIT and the preceptor must submit to the Board a program to strengthen the candidate's weakness as demonstrated by the previous test results. Upon approval by the Board of the program and completion thereof by the candidate, he shall be allowed to take the examinations ~~a fourth time.~~

Statutory Authority G.S. 90-278; 90-280; 90-284; 90-285.

SECTION .0700 - SUBJECTS FOR EXAMINATION

.0701 SUBJECT AREAS

The written or oral examination shall include, but need not be limited to, the following subjects:

- (1) ~~applicable standards of environmental health and safety~~ Resident Care Management,
- (2) ~~local health and safety regulations~~ Personnel Management,
- (3) ~~general administration~~ Financial

Management,

- (4) ~~psychology of patient care~~ Environmental Management,
- (5) ~~principles of medical care~~ Regulatory Management,
- (6) ~~personal and social care,~~ Organizational Management,
- (7) ~~therapeutic and supportive care and services in long term care,~~
- (8) ~~departmental organization and management,~~
- (9) ~~community interrelationships.~~

Statutory Authority G.S. 90-278; 90-285.

.0702 GUIDELINES FOR RULE .0701(1)

The following shall be considered as guidelines with respect to the subject area of Rule .0701(1) of this Section, resident care management ~~applicable standards of environmental health and safety:~~

- (1) ~~hygiene and sanitation~~ Nursing services,
- (2) ~~communicable diseases~~ Social services,
- (3) ~~management of isolation~~ Food services,
- (4) ~~the total environment (noise, color, orientation, stimulation, temperature, lighting, air circulation)~~ Physician services,
- (5) ~~elements of accident prevention~~ Social and therapeutic recreational activities,
- (6) ~~special architectural needs of nursing home patients~~ Medical records,
- (7) ~~drug handling and control~~ Pharmaceutical services,
- (8) ~~safety factors in oxygen usage~~ Rehabilitation services.

Statutory Authority G.S. 90-278; 90-285.

.0703 GUIDELINES FOR RULE .0701(2)

The following shall be considered as guidelines with respect to the subject area of Rule .0701(3 2) of this Section, general administration personnel management:

- (1) ~~institutional administration;~~ Maintaining positive atmosphere,
- (2) ~~planning, organizing, directing, controlling, staffing, coordinating, and budgeting;~~ Evaluation procedures,
- (3) ~~human relations;~~ Recruitment of staff,
 - (a) ~~m a n a g e m e n t / e m p l o y e e~~ interrelationships,
 - (b) ~~employee/employee~~ interrelationships,
 - (c) ~~employee/patient~~ interrelationships,
 - (d) ~~employee/family~~ interrelationships;
- (4) ~~training of personnel;~~ Interviewing

candidates,

- ~~(a) training of employees to become sensitive to patient needs;~~
- ~~(b) on-going in-service training/education.~~
- (5) Selecting future employees.
- (6) Providing staff development and training activities.
- (7) Personnel policies.
- (8) Health and safety.

Statutory Authority G.S. 90-278; 90-285.

.0704 GUIDELINES FOR RULE .0701(3)

The following shall be considered as guidelines with respect to the subject area of Rule .0701(4 3) of this Section, psychology of patient care financial management:

- (1) anxiety; Budgeting.
- (2) depression; Financial planning.
- (3) drugs, alcohol, and their effect; Asset management.
- (4) motivation; Accounting.
- (5) separation reaction.

Statutory Authority G.S. 90-278; 90-285.

.0705 GUIDELINES FOR RULE .0701(4)

The following shall be considered as guidelines with respect to the subject area of Rule .0701(5 4) of this Section, principles of medical care environmental management:

- (1) anatomy and physiology; Maintain and improve buildings, grounds and equipment.
- (2) psychology; Provide a clean, attractive, homelike environment for residents, staff and visitors.
- (3) disease recognition; Safety program which would ensure the health, welfare and safety of residents, staff and visitors.
- (4) disease processes; Have fire, disaster and emergency programs to protect the safety and welfare of residents, staff and property.
- ~~(5) nutrition.~~
- ~~(6) aging processes.~~
- ~~(7) medical terminology.~~
- ~~(8) materia medica (drug reactions).~~
- ~~(9) social services.~~
- ~~(10) utilization review.~~
- ~~(11) professional and medical ethics.~~

Statutory Authority G.S. 90-278; 90-285.

.0706 GUIDELINES FOR RULE .0701(5)

The following shall be considered as guidelines with respect to the subject area of Rule .0701(6 5) of this Section, personal and social care regulatory management:

- (1) resident and patient care planning; Policies and procedures in place to maintain compliance with laws and regulations.
- (2) activity programming; Policies and procedures in place to maintain compliance with directives of governing entities (ie. Board of Directors).
- ~~(a) patient participation.~~
- ~~(b) recreation.~~
- ~~(3) interrelationships between patient and:~~
 - ~~(a) patient.~~
 - ~~(b) staff (staff sensitivity to patient needs as a therapeutic function).~~
 - ~~(c) family and friends.~~
 - ~~(d) administrator.~~
 - ~~(e) management (self government/patient council).~~
- ~~(4) rehabilitation and restorative activities:~~
 - ~~(a) training in activities of daily living.~~
 - ~~(b) techniques of group therapy.~~
- ~~(5) interdisciplinary interpretation of patient care to:~~
 - ~~(a) the patient.~~
 - ~~(b) the staff.~~
 - ~~(c) the family.~~

Statutory Authority G.S. 90-278; 90-285.

.0707 GUIDELINES FOR RULE .0701(6)

The following shall be considered as guidelines with respect to the subject area of Rule .0701(7 6) of this Section, therapeutic and supportive care and services in long-term care organizational management:

- (1) individual care planning as it embraces all therapeutic care and supportive services; Measure outcomes of all programs, policies, and procedures of facility to ensure effectiveness.
- (2) meaningful observations of patient behavior as related to total patient care; Process for communicating with residents, families, staff, volunteers and governing entities.
- ~~(3) interdisciplinary evaluation and revision of patient care plans and procedures;~~
- ~~(4) unique aspects and requirements of geriatric patient care;~~
- ~~(5) professional staff interrelationships with patient's physician;~~
- ~~(6) professional ethics and conduct;~~

- (7) ~~rehabilitative and remotivational role of individual therapeutic and supportive services;~~
- (8) ~~psychological, social, and religious needs, in addition to physical needs of patient;~~
- (9) ~~needs for dental services.~~

Statutory Authority G.S. 90-278; 90-285.

.0708 GUIDELINES FOR RULE .0701(8)

The following shall be considered as guidelines with respect to the subject area of Rule .0701(8) of this Section, ~~departmental organization and management:~~

- (1) ~~criteria for coordinating establishment of departmental and unit objectives;~~
- (2) ~~reporting and accountability of individual departments to administrator;~~
- (3) ~~criteria for departmental evaluation (nursing, food service, therapeutic services, maintenance, housekeeping);~~
- (4) ~~techniques of providing adequate professional, therapeutic, supportive, and administrative services;~~
- (5) ~~knowledge, function, and relationship of the following departments:~~
 - (a) ~~nursing;~~
 - (b) ~~housekeeping;~~
 - (c) ~~dietary;~~
 - (d) ~~laundry;~~
 - (e) ~~pharmaceutical services;~~
 - (f) ~~social services;~~
 - (g) ~~business office;~~
 - (h) ~~recreation;~~
 - (i) ~~medical records;~~
 - (j) ~~admitting;~~
 - (k) ~~physical therapy;~~
 - (l) ~~occupational therapy;~~
 - (m) ~~medical and dental services;~~
 - (n) ~~laboratories;~~
 - (o) ~~x-ray;~~
 - (p) ~~maintenance.~~

Statutory Authority G.S. 90-278; 90-285.

.0709 GUIDELINES FOR RULE .0701(9)

The following shall be considered as guidelines with respect to the subject area of Rule .0701(9) of this Section, ~~community interrelationships:~~

- (1) ~~community medical care, rehabilitative, and social services resources;~~
- (2) ~~other community resources:~~
 - (a) ~~religious institutions;~~
 - (b) ~~schools;~~

- (c) ~~service agencies;~~
- (d) ~~government agencies;~~
- (3) ~~third party payment organizations;~~
- (4) ~~comprehensive health planning agencies;~~
- (5) ~~volunteers and auxiliaries.~~

Statutory Authority G.S. 90-278; 90-285.

SECTION .0900 - LICENSES

.0901 ISSUANCE

Every person who is issued a valid license by the Board shall immediately upon issuance thereof be deemed registered with the Board and be issued a certificate of registration. A licensee must notify the Board in writing within 15 days of any change of address (home and work).

Statutory Authority G.S. 90-278; 90-279; 90-285.

.0903 RENEWAL

(a) The licensee shall biennially apply to the Board for a new certificate of registration to be displayed with the permanent license and report any facts requested by the Board on forms provided by the Board.

(b) The form will include the name of the licensee, address, the place of the applicant's practice, continuing education credits, and any other information which the Board may feel it needs to act upon the application.

(c) As a courtesy, the Board will send renewal notices to the last address on record; it is the individual licensee's responsibility to keep this information current with the Board office.

Statutory Authority G.S. 90-285; 90-286.

.0912 RECIPROCITY/ENDORSEMENT

(a) The Board may issue a ~~provisional~~ license ~~for one year, without the national examination,~~ to a nursing home administrator who holds a nursing home administrator license issued by the proper authorities of any other state, upon payment of the current licensing fee, successful completion of the state examination, and submission of evidence satisfactory to the Board as to the following:

- (1) such applicant for licensure must have personal qualifications, ~~and education,~~ training or experience at least substantially equivalent to those required in this state;
- (2) such applicant must be licensed in another state that gives similar recognition and reciprocity/endorsement

to nursing home administrator licenses of this state; and

- (3) such applicant for license by reciprocity/endorsement holds a valid license as a nursing home administrator in the state from which he is transferring, and has never had an administrator's license revoked for cause; and can certify that he has worked full time as a licensed nursing home administrator for at least one year within the two year period immediately preceding the application by reciprocity/endorsement.

(b) An applicant for reciprocity/endorsement should submit a completed application, background resume, certified college transcript(s), three letters of reference, and a seventy-five dollar (\$75.00) application fee, and appear before the Board for an oral interview.

An applicant for reciprocity/endorsement shall submit a completed application, background resume, certified college transcript(s), three reference forms (one of which must be from a previous employer) from individuals who shall certify to the good moral character of the applicant as defined in Rule .0303 of this Chapter, licensing questionnaire(s) from every state where the applicant has held a license, a seventy-five dollar (\$75.00) application fee, and appear before the Board for a personal interview.

(e) Once a provisional license has been issued, the licensee is to submit to the Board quarterly reports, on a form to be obtained from the Board, until a full license is issued.

(d) After the provisional license period is completed and all requirements have been satisfied:

- (1) the owner(s) of the facility or facilities in which the reciprocity/endorsement applicant has served his/her one year provisional period as an administrator or assistant administrator must file a report certifying that the facility or facilities operated by the applicant during the provisional period were operated in a professional and efficient manner without significant violations of local, state and federal rules and regulations for which the reciprocity/endorsement applicant may reasonably be held responsible;

- (2) records of the Division of Facility Services must show that during the provisional period the facility or facilities served by the applicant had no

significant violations of local, state and federal rules and regulations for which the reciprocity/endorsement applicant may reasonably be held responsible;

- (3) the Board will then issue a full nursing home administrator's license to the reciprocity/endorsement applicant.

(c) (e) The Board shall have the power, after due notice and an opportunity to be heard at a hearing, to revoke or suspend the nursing home administrator license issued to any person under this Rule upon evidence satisfactory to the Board that the duly constituted authorities of any other state have lawfully revoked or suspended the nursing home administrator license issued to such person by such state.

(d) All persons who hold a valid provisional license or who have completed the requirements for a provisional license as of the amended effective date of this Rule shall be issued a full license upon submission to the Board their provisional license or payment of the licensing fee is applicable.

Statutory Authority G.S. 90-280; 90-285; 90-287.

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Board of Pharmacy intends to amend rules cited as 21 NCAC 46 .1317, .1503, .1601, .1802, .2201, .2501; and adopt rules cited as 21 NCAC 46 .1605, .1809, .3001.

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

The public hearing will be conducted at 9:30 a.m. on June 21, 1993 at the Holiday Inn, Four Seasons, Greensboro, North Carolina.

Reason for Proposed Action:

21 NCAC 46 .1317 - To allow a pharmacy intern working under a pharmacist preceptor or supervising pharmacist to perform all acts constituting the practice of pharmacy.

21 NCAC 46 .1503 - To prohibit a pharmacist who has been found in violation or pled guilty or no contest or been found guilty by a court of competent jurisdiction of a violation of laws, rules, or regulations governing the practice of pharmacy

and the distribution of drugs from serving as a preceptor without approval by the Board.

21 NCAC 46 .1601 - To require all pharmacists-managers or their staff to complete a self-inspection form when applying for renewal of pharmacy permits.

21 NCAC 46 .1605 - To authorize the Board to charge persons requesting verification for reinstatement of a pharmacy license or permit a fee of \$15.00 per verification.

21 NCAC 46 .1802 - To allow a pharmacist to dispense drug quantities in excess of the face amount of a prescription for a non-controlled substance, up to the total amount authorized.

21 NCAC 46 .1809 - To permit a pharmacist, who receives a request for a prescription refill and is unable to obtain readily refill authorization from the prescriber, to dispense a one-time emergency refill of up to a 72-hour supply of a prescribed medication, provided certain conditions are met.

21 NCAC 46 .2201 - To define contact programs and to require the content of continuing education courses to have the purpose of increasing the participant's professional competence and proficiency as a pharmacist.

21 NCAC 46 .2501 - To allow the Board to approve an alternative supervision arrangement of unlicensed personnel if the public health, safety, and welfare will not be adversely affected.

21 NCAC 46 .3001 - To provide a process by which permit holders can properly dispose of outdated, improperly labeled, adulterated, damaged or unwanted drugs or drug containers.

Comment Procedures: Persons wishing to present oral data, views or arguments on a proposed rule or rule change, may file a notice with the Board at least 10 days prior to the public hearing at which the person wishes to speak. Comments should be limited to 10 minutes. The Board's address is P.O. Box 459, Carrboro, NC 27510. Any person may file written submission of comments or argument at any time up to and including June 21, 1993.

CHAPTER 46 - BOARD OF PHARMACY

SECTION .1300 - GENERAL DEFINITIONS

.1317 DEFINITIONS

The definitions of various terms used in these rules are found in Article 4A of Chapter 90 of the General Statutes, or are as follows:

(1) Approved School or College of Pharma-

cy. A school or college of pharmacy accredited by the American Council on Pharmaceutical Education, or a foreign school with a professional pharmacy degree program of at least five years approved by the Board.

(2) Auxiliary Drug Inventory. A secure, segregated, supplementary source for drugs to be used solely for the purpose of providing adequate drug availability when the pharmacy is closed or the pharmacist is unavailable.

(3) Board. The North Carolina Board of Pharmacy.

(4) Emergency Drugs. Those drugs whose prompt use and immediate availability are generally regarded by physicians as essential in the proper treatment of unforeseen adverse changes in a patient's health or well-being.

(5) Executive Director. The Secretary-Treasurer and Executive Director of the Board.

(6) Graduate of an Approved School or College of Pharmacy. A person who has received an undergraduate professional degree in pharmacy from an approved school or college of pharmacy, or a person who has graduated from a foreign professional school of pharmacy and has successfully completed the Foreign Pharmacy Graduate Equivalency Examination offered by the National Association of Boards of Pharmacy and the Test of English as a Foreign Language.

(7) Indulgence in the Use of Drugs. The use of narcotic drugs or other drugs affecting the central nervous system or the use of intoxicating beverages to an extent as to deprive the user of reasonable self-control or the ability to exercise such judgment as might reasonably be expected of an average prudent person.

(8) Institutional Pharmacy. A pharmacy maintained in a hospital, clinic, nursing home, rest home, sanatorium, non-federal governmental institution, industrial health facility, or other like health service under the supervision of a pharmacist; or the central area in a hospital, clinic, or other health care facility where drugs are procured, stored, processed, or issued, or where pharmaceutical services are performed.

(9) Limited Service Pharmacy Permit. A

pharmacy permit issued by the Board to an applicant that wishes to render in an institutional setting pharmaceutical services not limited to scope and kind but to time and conditions under which such services are rendered.

- (10) Pharmacist. Any person within the definition set forth in G.S. 90-85.3(p), including any druggist.
- (11) Pharmacist-Manager. The person who accepts responsibility for the operation of a pharmacy in conformance with all statutes and regulations pertinent to the practice of pharmacy and distribution of drugs by signing the permit application, its renewal or addenda thereto.
- (12) Pharmacy. Any place within the definition set forth in G.S. 90-85.3(g), including any apothecary or drugstore.
- (13) Pharmacy Intern. Any person who is duly registered with the Board under the internship program of the Board to acquire pharmacy experience. ~~The term does not include but not including~~ those students enrolled in approved academic internship programs. A pharmacy intern working under a pharmacist preceptor or supervising pharmacist may perform all acts constituting the practice of pharmacy.
- (14) President. The President of the Board.
- (15) Two Years College Work. Attendance at a college accredited by a recognized accreditation agency for two academic years of not less than eight and one-half months each and the completion of work for credit leading to a baccalaureate degree or its equivalent and that would permit the student to advance to the next class.
- (16) Undergraduate Professional Degree in Pharmacy. A B.S. or Pharm. D. degree.
- (17) Vice-President. The Vice-President of the Board.

Statutory Authority G.S. 90-85.3; 90-85.6; 90-85.8; 90-85.13; 90-85.14; 90-85.15; 90-85.21; 90-85.38; 90-85.40.

SECTION .1500 - ADMISSION REQUIREMENTS: EXAMINATIONS

.1503 EXPERIENCE IN PHARMACY

(a) An applicant for license must show that he has received 1500 hours of practical experience

under the supervision of a licensed pharmacist which has been acquired after the satisfactory completion of two years of college work. At least 1000 hours of this experience must be acquired in a community or hospital pharmacy or other place approved by the Board in the manner prescribed in (b) of this Rule. No period of experience of less than two consecutive weeks of not less than 30 hours per week, or more than 50 hours per week of actual hours worked with a maximum of ten hours per day, will be credited toward this requirement. Hours acquired concurrent with pharmacy college attendance with no period of experience of less than two consecutive weeks of not less than 10 hours per week or more than 20 hours per week of actual hours worked will be credited toward this requirement. Experience obtained in clinical programs through schools, or in Board approved demonstration projects concurrent with pharmacy school attendance, is acceptable only for actual hours certified by the school up to a maximum of 50 hours per week. Any experience obtained in government, the pharmaceutical industry, or other non-traditional pharmacy-related locations while under the preceptorship of a licensed pharmacist is acceptable up to a maximum of 500 hours. Non-traditional internship experience would be any pharmacy related practical experience that is not primarily associated with pharmaceutical care activities in community and hospital pharmacy practice.

(b) All practical pharmacy experience to be acceptable must be acquired under the general conditions approved by the Board as follows:

- (1) All practical pharmacy experience must be validated through registration in the internship program administered by the Board.
- (2) Persons working under the supervision of registered pharmacists and expecting to qualify for the registered pharmacist examination must notify the Board within five days of the beginning and the ending of such employment.
- (3) The Board shall not allow credit for claims of practical experience required under the pharmacy laws, unless such claims can be corroborated by records on file in the Board's office showing the beginning and ending of the practical experience claimed as supplied by the applicant during this training period.
- (4) Practical experience shall be credited only when it has been obtained in a

location holding a pharmacy permit, or a location approved by the Board for that purpose.

(c) The pharmacist intern, or student, and the pharmacist preceptor, or supervising pharmacist, shall at all times comply with the Board's rules and the laws governing the practice of pharmacy and the distribution of drugs. Failure of the pharmacist intern to do so is grounds to disqualify the period of experience from counting toward the minimum requirements. A pharmacist preceptor who causes or permits a pharmacist intern to violate the Board's rules or the laws governing the practice of pharmacy and the distribution of drugs forfeits his right to supervise such experience for a period of time determined by the Board. A pharmacist who has been found in violation or pled guilty or no contest or been found guilty by a court of competent jurisdiction of a violation of laws, rules, or regulations governing the practice of pharmacy and the distribution of drugs cannot serve as a preceptor without approval by the Board.

(d) The Board may accept training in pharmacy gained in another state pursuant to internship registration in this or another state if the Board is satisfied that such training is equivalent.

Statutory Authority G.S. 90-85.6; 90-85.14; 90-85.15; 90-85.38.

SECTION .1600 - LICENSES AND PERMITS

.1601 PHARMACY PERMITS

(a) Applications for pharmacy permits, whether original or renewal, shall be made upon forms provided by the Board. The Board shall not issue any original or annual renewal pharmacy permit until the Board is satisfied that:

- (1) Adequate qualified personnel has been secured by the management of the store to properly render pharmaceutical service in the manner prescribed by law.
- (2) Such personnel shall be maintained during that period for which the permit is issued.
- (3) Any and all unlicensed clerks have been instructed that they may render pharmaceutical service only as an aid to and under the immediate supervision of a registered pharmacist.
- (4) The following minimum technical equipment is maintained:
 - (A) Graduates. Capable of accurately

measuring volumes from 1 ml to at least 500 ml;

- (B) Mortars and pestles:
 - (i) one--glass;
 - (ii) one--"Wedgwood";
- (C) Stirring Rods. Two--assorted sizes, glass or rubber;
- (D) Ointment slab or suitable substitute;
- (E) Class A prescription balances and appropriate weights, suitable for all required weighings, at least one of which must be sensitive to six mg;
- (F) Suitable facilities for recording and filing prescriptions as required by G.S. 90-85.26;
- (G) Spatulas:
 - (i) stainless steel, at least three assorted sizes;
 - (ii) non-metallic, one of suitable size;
- (H) Useable Supplies. Adequate quantity of each and equipped with safety closures where required:
 - (i) prescription bottles, 1 to 32 fluid ounces;
 - (ii) dropper bottles, 1/2 to 2 fluid ounces;
 - (iii) assorted pill and tablet containers;
 - (iv) empty capsules, No. 00 to No. 3;
 - (v) powder papers;
 - (vi) ointment jars, assorted;
 - (vii) prescription labels;
 - (viii) all appropriate auxiliary labels;
- (I) Suitable heating apparatus;
- (J) Refrigerator;
- (K) Reference library, as follows:
 - (i) the latest edition of the United States Pharmacopeia (USP) and National Formulary and supplements thereto or a standard commentary thereon;
 - (ii) copy of the pharmacy laws of North Carolina, including the North Carolina Controlled Substances Act and the rules adopted pursuant thereto, and the North Carolina Pharmacy Practice Act and the rules of the Board;
 - (iii) a copy of the Federal Controlled Substances Act and the regulations adopted pursuant thereto;
 - (iv) a Schedule V controlled substances register (where these preparations are sold other than on prescriptions);

- (v) a medical dictionary;
- (vi) current editions of generally accepted reference books on the following subjects:
 - (I) drug interactions;
 - (II) clinical pharmacology, and
 - (III) USP Dispensing Information or its equivalent,
 - (IV) if IV admixture services are provided, a reference on Parenteral Incompatibilities.

- (5) The pharmacy is equipped with proper sanitary appliances including lavatory facilities with hot and cold running water, is adequately lighted, and is kept in a clean, orderly, and sanitary condition.
- (6) All prescription medications are labeled in accordance with G.S. 106-134 and G.S. 106-134.1.

(b) In addition to the requirements for issuance and renewal of a pharmacy permit imposed by a statute and by other rules of the Board, a permit shall not be issued or renewed to any person to operate a pharmacy wherein the prescriptions of medical practitioners are compounded or dispensed and distributed when such distribution is effected by mail and the practitioner-pharmacist-patient relationship does not exist, until the Board is satisfied that:

- (1) The pharmacy maintains records of prescriptions compounded or dispensed and distributed in manner that is readily retrievable;
- (2) During the pharmacy's regular hours of operation but not less than six days per week, for a minimum of forty hours per week, a toll-free telephone service is provided to facilitate communication between patients and a pharmacist at the pharmacy who has access to the patient's records. This toll-free number must be disclosed on the label affixed to each container of dispensed drugs;
- (3) The pharmacy complies with all lawful orders, directions, and requests for information from the Boards of pharmacy of all states in which it is licensed and all states into which it distributes prescription drugs;
- (4) The pharmacy complies with all USP and FDA requirements regarding the storage, packaging, and shipping of prescription medications.

The pharmacist-manager and all other pharmacists

employed in the pharmacies permitted pursuant to this Paragraph shall be subject to all Federal and State statutes and regulations concerning the dispensing of prescription medications including, but not limited to, 21 NCAC 46 .1801 and .1805 and 21 CFR 1306.01, 1306.05, and 1306.21. Provided, however, that this Rule shall not apply to the occasional mailing of prescription drugs to bona fide customers of any pharmacy when the practitioner-pharmacist-patient relationship is present.

(c) The Board shall not issue an original or renewal permit to any person to operate a drugstore or pharmacy as a department in or a part of any other business serving the general public (except hospitals, nursing homes, and similar institutions subject to the provisions of .0300 of this Chapter) unless such pharmacy facility:

- (1) is physically separated from such other business;
- (2) is separately identified to the public both as to name and any advertising;
- (3) completes all transactions relative to such pharmacy within the registered facility; and
- (4) meets the same requirements for registration as all other pharmacies.

(d) Permits to operate pharmacies, whether original or renewal, shall be issued to the pharmacist-manager of such pharmacy pursuant to a joint application of the owner and pharmacist-manager for the conduct and management of said pharmacy. The issuance of said permit shall not be complete and the permit shall not be valid until it has been countersigned by the pharmacist-manager as represented in the application. The permit so issued is valid only so long as the pharmacist-manager to whom it was issued assumes the duties and responsibilities of pharmacist-manager. Permits may be reissued at any time to a successor pharmacist-manager pursuant to the proper amendment of the application for the permit.

(e) The Board shall provide a self-inspection form on the back of the annual pharmacy permit renewal application form. The self-inspection form shall be completed by the pharmacist-manager or by pharmacist staff responsible to the pharmacist-manager and shall be returned to the Board office. The self-inspection form shall contain a certification that the self-inspection has been completed and shall contain space to indicate when any deficiencies will be corrected. Making false representations in connection with the self-inspection shall be grounds for disciplinary action.

Statutory Authority G.S. 90-85.6; 90-85.21.

.1605 CHARGE FOR VERIFICATION FOR REINSTATEMENT

The Board shall charge persons requesting verification for reinstatement of a pharmacy license or permit a fee of fifteen dollars (\$15.00) per verification.

Statutory Authority G.S. 90-85.6; 90-85.17; 90-85.21; 150B-19(5)(e).

SECTION .1800 - PRESCRIPTIONS

.1802 PRESCRIPTION REFILLS

(a) Authorization for prescription refills is presumed to be within the prescribed dosage or normal therapeutic use. Refilling prescriptions more frequently than the prescribed dosage would require, or refilling prescriptions in significant excess of normal therapeutic use, may be considered as negligence under G.S. 90-85.38(a)(9).

(b) If deemed appropriate in the pharmacist's professional judgment, a patient may receive upon request drug quantities in excess of the face amount of a prescription for a non-controlled substance, up to the total amount authorized. The pharmacist shall not dispense in excess of the face amount of a prescription for a controlled substance or psychotherapeutic drug without authorization from the prescriber.

Statutory Authority G.S. 90-85.6; 90-85.32.

.1809 EMERGENCY PRESCRIPTION REFILLS

In the event a pharmacist receives a request for a prescription refill and the pharmacist is unable to obtain readily refill authorization from the prescriber, the pharmacist may dispense a one-time emergency refill of up to a 72-hour supply of the prescribed medication, provided that:

- (1) The prescription is not for a Schedule II controlled substance;
- (2) The medication is essential to the maintenance of life or to the continuation of therapy in a chronic condition;
- (3) In the pharmacist's professional judgment, the interruption of therapy might reasonably produce undesirable health consequences or may cause physical or mental discomfort;
- (4) The dispensing pharmacist creates a written order containing all of the

prescription information required by Section .2300 of these Rules and signs that order;

- (5) The dispensing pharmacist notifies the prescriber of the emergency dispensing within a reasonable time after such dispensing.

Statutory Authority G.S. 90-85.6; 90-85.32.

SECTION .2200 - CONTINUING EDUCATION

.2201 HOURS: RECORDS: PROVIDERS: CORRESPONDENCE: RECIPROCITY

(a) As a condition of license renewal, each practicing pharmacist holding an active license shall report on renewal forms the hours of continuing education obtained during the preceding year. Annual accumulation of ten hours is considered satisfactory to meet the quantitative requirement of this Rule.

(b) All records, reports of accredited hours and certificates of credit shall be kept at the pharmacist's regular place of practice for verification by inspectors during regular or other visits. The Board reserves the right to require submission of such documentation on a random basis. Pharmacists who do not practice regularly at one location shall produce such records within 24 hours of a request from Board authorized personnel. All records of hours and certificates of credit shall be preserved for at least three years.

(c) All continuing education shall be obtained from a provider approved by the Board. ~~Not more than 50 percent of the continuing education credits can be obtained through correspondence, self-study or other non-contact programs in any calendar year.~~ In order to receive credit, continuing education courses should have the purpose of increasing the participant's professional competence and proficiency as a pharmacist. At least five hours of the continuing education credits must be obtained through contact programs in any calendar year. Contact programs are those programs in which there is an opportunity for live two-way communication between the presenter and attendee.

(d) Continuing education shall not serve as a barrier to reciprocity; however all licensees by reciprocity must observe the continuing education standards specified in (a), (b) and (c) of this Rule within the first renewal period after licensure in this state.

Statutory Authority G.S. 90-85.6; 90-85.17; 90-85.18.

SECTION .2500 - MISCELLANEOUS PROVISIONS

.2501 SUPERVISION

In Except as provided herein, in order to properly exercise the supervision of unlicensed personnel required by these Rules, the responsible pharmacist must physically review the prescription order and the dispensed product before the product is delivered to the patient or person acting on the patient's behalf. If the public health, safety, and welfare will not be adversely affected, the Board may approve an alternative supervision arrangement under such terms and conditions as it deems appropriate.

Statutory Authority G.S. 90-85.6; 90-85.40(a).

SECTION .3000 - DISPOSAL OF UNWANTED DRUGS

.3001 PROCEDURE FOR DISPOSING OF DRUGS

(a) All registrants under G.S. 90-85.21 shall develop and implement policies and procedures to insure that all out-dated, improperly labeled, adulterated, damaged or unwanted drugs or drug containers with worn, illegible or missing labels are destroyed or disposed of so as to render them unusable.

(b) Any permit holder in possession of outdated, adulterated or unwanted drugs other than controlled substances may destroy such drugs by introduction to the sewer system, incineration at an Environmental Protection Agency-approved facility or by any other means approved by the Board which will assure protection against unauthorized possession or use. Destructions under this Paragraph taking place at the permit holder's premises shall be jointly witnessed by at least two licensed pharmacists and documented. Destructions under this Paragraph at an approved facility or by any other Board-approved means shall be witnessed and documented as set forth in Paragraph (c) of this Rule.

(c) Any permit holder in possession of any controlled substance and desiring or required to dispose of such substance may file a written request on a form provided by the Board for authority and instructions to dispose of such substance. Not more than twice a year, destructions under this Section may take place at the

permit holder's premises and may be jointly witnessed by at least two licensed pharmacists approved by the Board. All destructions of controlled substances shall be documented and the document shall be retained by the permit holder for a period of at least three years. Copies of the document shall be sent to the Drug Enforcement Administration.

Statutory Authority G.S. 90-85.6; 90-85.21.

Notice is hereby given in accordance with G.S. 150B-21.2 that the State Board of Examiners of Plumbing, Heating and Fire Sprinkler Contractors intends to amend rules cited as 21 NCAC 50 .0106, .0306, .0402 - .0403, .0407, .0506, .1006, .1101; and adopt rules cited as 21 NCAC 50 .0310 - .0311, .0412, .0510.

The proposed effective date of this action is August 2, 1993.

The public hearing will be conducted at 8:30 a.m. on June 8, 1993 at the State Board of Examiners of Plumbing, Heating and Fire Sprinkler Contractors, 801 Hillsborough Street, Suite 403, Raleigh, NC 27603.

Reason for Proposed Action:

21 NCAC 50 .0106 - To provide the current address and location of the Board's office.

21 NCAC 50 .0306 - Rule contradicts amendment to G.S. 87-21(e).

21 NCAC 50 .0310 - To clarify the requirements of licensure by reciprocity.

21 NCAC 50 .0311 - To provide a requirement that applicants for licensure provide proper identification at the times of application and examination.

21 NCAC 50 .0402 - To clarify that permits must be obtained prior to the commencement of and the meaning of the statutory requirement of appropriate license in connection with submission of bids.

21 NCAC 50 .0403 - To clarify that a licensee may not contract beyond his license classification.

21 NCAC 50 .0407 - To clarify the responsibility of corporations, partnerships and businesses licensed by reason of the qualification of an individual connected with the firm to comply with the provisions of Article 2, Chapter 87 of the

General Statutes and to the rule adopted by the Board.

21 NCAC 50 .0412 - *To provide guidance as to the type of conduct for which the Board may discipline a licensee.*

21 NCAC 50 .0506 - *To revise and update the list of some of the activities which constitute minor repairs and alterations exempted from licensure.*

21 NCAC 50 .0510 - *To clarify the relationship of compensation to the determination of licensure requirements.*

21 NCAC 50 .1006 - *To list and explain certain informal procedures in use by the Board in connection with administrative proceedings.*

21 NCAC 50 .1101 - *To recognize, recodify and establish the fees for examination and for issuance of license of various types.*

Comment Procedures: *Persons wishing to present oral data, views or argument on a proposed rule or rule change may file a notice with the Board at least 10 days prior to the public hearing at which the person wishes to speak. Comments should be limited to 10 minutes. The address of the Board is 801 Hillsborough St., Suite 403, Raleigh, NC 27603. Written comments or arguments may be mailed to the Board by June 14, 1993.*

CHAPTER 50 - BOARD OF EXAMINERS OF PLUMBING, HEATING AND FIRE SPRINKLER CONTRACTORS

SECTION .0100 - ORGANIZATION

.0106 LOCATION OF OFFICE

The office of the State Board of Examiners of Plumbing, Heating and Fire Sprinkler Contractors is located at 806 Raleigh Building, 5 West Hargett Street, Raleigh, North Carolina. The mailing address is P.O. Box 110, Raleigh, North Carolina, 27602; the State Board of Examiners of Plumbing, Heating and Fire Sprinkler Contractors, 801 Hillsborough Street, Suite 403, Raleigh, NC 27603. The office hours are 8:30 a.m. to 5:00 p.m., Monday through Friday.

Statutory Authority G.S. 87-16; 87-18.

SECTION .0300 - EXAMINATIONS

.0306 APPLICATIONS: ISSUANCE OF LICENSE

(a) All applicants for regular examinations shall

file an application in the office of the executive secretary on or before the date set out on the examination application form, which date will be at least 30 days prior to the examination.

(b) Applicants for the October 1990 examination shall present evidence at the time of application on forms provided by the Board to establish six months full-time experience in the installation, maintenance, service or repair of plumbing, heating or fire sprinkler systems related to the category for which license is sought, whether or not license was required for the work performed. One year of experience will be required of applicant for the April 1991 examinations, 18 months experience for the October 1991 examination, and two years of experience for the April 1992 examination and examinations conducted thereafter. Up to one-half the experience may be in academic or technical training directly related to the field of endeavor for which examination is requested. The Board will pro rate part-time work of less than 40 hours per week or part-time academic work of less than 15 semester or quarter hours.

(c) Applicants who obtain a license will receive a certificate issued by the Board, bearing the license number assigned to the qualifying individual.

~~(d) The license number shall not be assigned or transferred to any other individual.~~

Statutory Authority G.S. 87-18; 87-21(b).

.0310 APPLICATION FOR LICENSURE BY RECIPROCITY

The Board may grant, in its discretion, license by reciprocity pursuant to reciprocal licensing agreements worked out with various states after mutual review of the applicable licensing standards and examinations.

Statutory Authority G.S. 87-18; 87-21(g).

.0311 IDENTIFICATION OF APPLICANTS

The Board may require any applicant seeking licensure to submit proof of identification at the time of submitting the application and at the time of the examination. For purposes of this Rule, a valid driver's license, an identification card issued by the Department of Motor Vehicles or a passport shall constitute proper identification.

Statutory Authority G.S. 87-18; 87-21(b).

SECTION .0400 - GENERAL PROCEDURES

.0402 PERMITS

(a) A licensed contractor shall obtain permit from the local Code Enforcement official prior to the commencement of any work for which a license is required by the Board.

(b) A licensed contractor shall not authorize permits to be obtained or allow his license number to appear on permits except for work over which he will provide general supervision until the completion of the work, for which he holds the contract and for which he receives all contractual payments.

Statutory Authority G.S. 87-18; 87-26.

.0403 USE OF LICENSE

(a) A licensed contractor shall not permit the use of his license by any other person.

(b) A contractor licensed by the Board shall not bid or contract installations requiring license of a type or classification which the licensee does not have except as a part of a documented joint venture and not by attempting to subcontract the installation with a licensee holding the proper qualification.

Statutory Authority G.S. 87-18; 87-23; 87-26.

.0407 CORPORATIONS, PARTNERSHIPS AND TRADE NAMES

(a) A license may be issued or renewed in the name of a corporation, partnership or business with a trade name upon compliance with the provisions of G.S. 87-26, verified by the execution of forms furnished by the Board.

(b) Additional licensees may be added to licenses issued in the above manner upon verifications of compliance with the provisions of G.S. 87-26. In the event a licensee terminates his association with a corporation, partnership, or business with a trade name, he shall immediately notify the executive secretary of the Board.

(c) A person who has a license which has been expired less than three years may be added to an active license issued in the name of a corporation, partnership or business with a trade name, upon written request, completion of forms provided by the Board and payment of the fee set forth in Rule .1102 of this Chapter.

(d) The license number assigned to a corporation, partnership, or business with a trade name shall be that of the first licensee listed on the license.

(e) A corporation, partnership or business with a trade name which is issued a license is subject to

the provisions of G.S. 87, Article 2 and to these Rules.

Statutory Authority G.S. 87-18; 87-22; 87-26.

.0412 GUIDELINES ON DISCIPLINARY ACTIONS

(a) The provisions of G.S. 87, Article 2, the rules of the Board and the matters referenced therein are part of the guidelines by which the conduct of an entity subject to the authority of the Board are evaluated.

(b) The Board may suspend a license or impose probation provisions for violations of 21 NCAC 50 .0402, 21 NCAC 50 .0403, 21 NCAC 50 .0404 and 21 NCAC 50 .0405.

(c) The Board may suspend a contractor's license or impose probationary terms when a licensee fails to comply with the supervision requirements of 21 NCAC 50 .0404, 21 NCAC 50 .0406 or 21 NCAC 50 .0505. Multiple violations within the same proceeding may result in revocation.

(d) The Board may suspend or revoke a license where it is found that the licensee has failed to comply with the minimum standards of competence as set forth in 21 NCAC 50 .0505(b). The Board may condition the subsequent reinstatement of license upon passing of the Board's examination or completion of specified educational courses. The Board may impose additional conditions of reinstatement.

(e) The Board may suspend or revoke the license of a contractor where it is found that the contractor abandoned a job or after obtaining funds from the owner.

(f) As a part of these provisions, the Board may revoke the license of any licensee where it is found that the contractor through a violation of G.S. 87, Article 2 has increased the risk of exposure to carbon monoxide, fire, or damage resulting therefrom, the release of sewage, methane gas, or contamination of the potable water supply.

(g) The foregoing provisions are illustrative guidelines of sanctions imposed by the Board and are not intended to limit the authority of the Board or the variety of facts for which action may be required in a particular situation.

Statutory Authority G.S. 87-18; 87-23.

SECTION .0500 - POLICY STATEMENTS AND INTERPRETATIVE RULES

.0506 MINOR REPAIRS AND

ALTERATIONS

(a) The connection of a factory-installed and inspected mobile home drainage system to an existing approved premises sewer system, which premises sewer system extends from the septic tank or municipal sewer system, constitutes a minor repair or replacement. The connection of a factory-installed mobile home water system to an existing approved potable water supply on the premises constitutes a minor repair or replacement.

(b) The initial installation or the subsequent replacement of a hot water heater in any structure requires a license in plumbing contracting except that the replacement of a hot water heater, with no change in fuel or energy source, energy use rate, routing or sizing of venting or piping, constitutes a minor replacement within the meaning of G.S. 87-21(c).

(c) The installation of a water purification system which interrupts the potable water supply does not constitute a minor repair or replacement within the meaning of G.S. 87-21(c).

(d) Any connection, repair or alteration which requires interruption of the potable water supply or risks contamination of the potable water supply is not a minor repair, replacement or alteration.

(e) Any connection, repair or alteration which if poorly performed creates substantial risk of fire or exposure to carbon monoxide, open sewage or other gases is not a minor repair, replacement or alteration.

(f) The failure to enumerate above any specific type of repair, replacement or alteration shall not be construed in itself to render said repair, replacement or alteration as minor within the meaning of G.S. 87-21(c).

Statutory Authority G.S. 87-18; 87-21(a)(1); 87-21(a)(5); 87-21(c).

.0510 LICENSE REQUIREMENTS GENERALLY

An individual may not perform any work which is within the scope of G.S. 87-21(1), 87-21(2), 87-21(3), 87-21(4), or 87-21(11), and not otherwise excluded by G.S. 87-21(c), for any other individual, firm, body corporate or body politic no matter the form or arrangement of compensation unless the individual or another providing general supervision of the work has been issued the appropriate license by the Board.

Statutory Authority G.S. 87-18; 87-21(c); 87-21(g)(5).

SECTION .1000 - CONTESTED CASES

.1006 INFORMAL PROCEDURES

(a) The Board and party or parties may agree in advance at a pre-hearing conference to simplify the hearing by: decreasing the number of issues to be contested at the hearing; accepting the validity of certain proposed evidence; accepting the findings in some certain other case with relevance to the case at hand; or agreeing to such other matters as may expedite the hearing.

(b) Prior to commencement to a contested case hearing, the Board may invite a licensee to participate in an informal conference with one or more board members. An informal conference ordinarily takes place when it appears there may not be probable cause to hold a formal hearing.

(c) As a part of the contested case hearing process, the Board may elect to conduct a summary proceeding in a contested case. The procedure for a summary proceeding is substantially as follows:

- (1) After issuance of a notice of hearing in accordance with 21 NCAC 50 .1004, the matter is considered by a single board member without a record. Each party may tender affidavits, documents and a closing statement. Live testimony will not be received.
- (2) Each party may present a recommendation as to the terms of a Recommended Order. The presiding board member will consider the materials and recommendations and issue a Recommended Decision. If there is no objection within a specific time, a Summary Order will be received by a majority of the Board with a recommendation for adoption by the staff, the Board member involved and the respondent.
- (3) Any party who does not agree with the recommended decision may notify the Board. The matter will then be heard de novo by a majority of the Board or as otherwise provided by 21 NCAC 50 .1005. The de novo hearing shall be conducted as other contested case hearings are conducted pursuant to 21 NCAC 50 .1000. The Board member who conducted the summary proceedings shall be disqualified from the de novo hearing.

Statutory Authority G.S. 87-18; 87-23; 150B-22.

SECTION .1100 - FEES

.1101 EXAMINATION FEES

~~An examination fee of thirty-five dollars (\$35.00) must accompany an application for examination.~~

(a) An application to reissue or transfer license to a different corporation, partnership or individual name requires a fee of twenty-five dollars (\$25.00).

(b) An application to issue or transfer license to the license of an existing licensee requires a fee of twenty-five dollars (\$25.00).

(c) An application for license by examination requires a fee of thirty-five dollars (\$35.00) for the examination and a fee for issuance of license as set forth in 21 NCAC 50 .1102 or this Rule.

Statutory Authority G.S. 87-18; 87-22.1.

* * * * *

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Real Estate Commission intends to amend rules cited as 21 NCAC 58B .0101, .0201, and .0301.

The proposed effective date of this action is August 2, 1993.

The public hearing will be conducted at 9:00 a.m. on June 17, 1993 at the Office of the North Carolina Real Estate Commission, 1313 Navaho Drive, Raleigh, N.C. 27609.

Reason for Proposed Action: To clarify procedures and provisions when there are one or more existing registered developers at a time share project.

Comment Procedures: Comments regarding the rules may be made orally or submitted in writing at the public hearing. Written comments not submitted at the hearing may be delivered to the North Carolina Real Estate Commission, Post Office Box 17100, Raleigh, North Carolina 27619, so as to be received by the hearing date.

CHAPTER 58 - REAL
ESTATE COMMISSION

SUBCHAPTER 58B - TIME SHARES

SECTION .0100 - TIME SHARE PROJECT
REGISTRATION

.0101 APPLICATION FOR
REGISTRATION

(a) Every application for time share project registration shall be filed at the Commission's ~~offices~~ office upon a form prescribed by the Commission. Every such application shall contain or have appended thereto:

- (1) information concerning the developer's title or right to use the real property on which the project is located, including a title opinion provided by an independent attorney performed within 30 days preceding the date of application;
- (2) information concerning owners of time shares at the project other than the developer;
- (3) a description of the improvements and amenities located at the project, including a description of the number and type of time share units;
- (4) a description of the time share estate to be sold or conveyed to purchasers;
- (5) information concerning the developer and his financial ability to develop the project, and information concerning the marketing and managing entities and their relationship to the developer;
- (6) the developer's name and address, past real estate development experience and such other information necessary to determine the moral character of those selling and managing the project;
- (7) copies of all documents to be distributed to time share purchasers at the point of sale or immediately thereafter; and
- (8) such information as may be required by G.S. 93A-52.

The form shall also describe the standards for its proper completion and submission.

(b) In accordance with G.S. 93A-52, an application for time share registration shall be considered to be properly completed when it is wholly and accurately filled out and when all required documents are appended to it and appear to be in compliance with the provisions of the Time Share Act, and, where the project is a condominium, the Condominium Act or Unit Ownership Act.

(c) An entity which owns time shares at a time share project where there are one or more existing registered developers may also apply to the Commission for registration of its time shares, provided

that the entity does not control a registered developer, is not controlled by a registered developer, and is not in common control of the project with a registered developer.

Statutory Authority G.S. 47A; 47C; 93A-51; 93A-52(a).

SECTION .0200 - PUBLIC OFFERING STATEMENT

.0201 GENERAL PROVISIONS

(a) Information contained in a public offering statement shall be accurate on the day it is supplied to a purchaser. Before any public offering statement is supplied to a purchaser, the developer shall file a copy of the statement with the Commission.

(b) In addition to the information required to be contained in a public offering statement by G.S. 93A-44, every public offering statement shall disclose to the purchaser of a time share complete and accurate information concerning:

- (1) the real property type of the time share program, whether tenancy-in-common, condominium or other, and a description of the estate the purchaser will own, the term of that estate and the remainder interest, if any, once the term has expired;
- (2) the document creating the time share program, a statement that it is the document which governs the program and a reference to the location where the purchaser may obtain or examine a copy of the document;
- (3) whether or not the property is being converted to a time share from some other use and, if so, a statement to that effect and disclosure of the prior use of the property;
- (4) the maximum number of time shares in the project, each recreational and other commonly used facility offered, and who or what will own each facility, if the project is to be completed in one development or construction phase;
- (5) if the project is planned in phased construction or development, the complete plan of phased offerings, including the maximum number of time shares which may be in the project, each recreational and other commonly used facility, who or what will own each facility, and the developer's repre-

sentations regarding his commitment to build out the project;

- (6) the association of owners or other entity which will ultimately be responsible for managing the time share program, the first date or event when the entity will convene or commence to conduct business, each owner's voting right, if any, and whether and for how long the developer, as time share owner, will control the entity;
- (7) the location where owners may inspect the articles and bylaws of the owners association, or other organizational documents of the entity and the books and records it produces;
- (8) whether the entity has lien rights against time share owners for failure to pay assessments;
- (9) whether or not the developer has entered into a management contract on behalf of the managing entity, the extent to which the managing entity's powers are delegated to the manager and the location where a copy of the management contract may be examined;
- (10) whether or not the developer will pay assessments for time shares which it owns and a statement that the amount of assessments due the managing entity from owners will change over time, as circumstances may change; ~~and~~
- (11) whether or not the developer sponsors or will sponsor a rental or resale program and, if so, a summary of the program or programs; and
- (12) the developer's role at the project, if the developer is a separate entity from any other registered developer of the time share project.

(c) The inclusion of false or misleading statements in a public offering statement shall be grounds for disciplinary action by the Commission.

Statutory Authority G.S. 93A-44(8); 93A-51.

SECTION .0300 - CANCELLATION

.0301 PROOF OF CANCELLATION

(a) The postmark date affixed to any written notice of a purchaser's intent to cancel his time share purchase shall be presumed by the Commission to be the date the notice was mailed to the developer. Evidence tending to rebut this presumption shall be admissible at a hearing before

the Commission.

(b) Upon receipt of a purchaser's written notice of his intent to cancel his time share purchase, the developer, or his agent or representative, shall retain the notice and any enclosure, envelope or other cover in the developer's files at the project, and shall produce the file upon the Commission's request.

(c) When there is more than one registered developer at a time share project and a purchaser gives written notice of his intent to cancel his time share purchase that is received by a developer or sales staff other than the one from whom his time share was purchased, the developer or sales staff receiving such notice shall promptly deliver it to the proper developer who shall then honor the notice if it was timely sent by the purchaser.

Statutory Authority G.S. 93A-51; 93A-54(d).

TITLE 26 - OFFICE OF ADMINISTRATIVE HEARINGS

Notice is hereby given in accordance with G.S. 150B-21.2 that the Office of Administrative Hearings intends to amend rules cited as 26 NCAC 1 .0103, .0202; 2A .0102, .0401; 2B .0103, .0104, .0401; 4 .0008 and repeal rule cited as 26 NCAC 2A .0701.

The proposed effective date of this action is August 2, 1993.

The public hearing will be conducted at 10:00 a.m. on June 14, 1993 at the Lee House, Hearing Room #1, 422 North Blount Street, Raleigh, NC.

Reason for Proposed Action:

26 NCAC 1 .0103 - to include the cost for documents requested on computer diskette and to provide notice that cost may be subject to N.C. sales tax.

26 NCAC 1 .0202 - to correct a citation that has been renumbered.

26 NCAC 2A .0102 - to include the cost for the NCAC publications.

26 NCAC 2A .0401 - to clarify what type size is acceptable for filing.

26 NCAC 2A .0701 - to repeal rule establishing requirements for filing electronically for publication in the Administrative Code (NCAC).

26 NCAC 2B .0103 - to correctly identify the

information provided on the Register Publication Schedule.

26 NCAC 2B .0104 - to provide notice that the cost may be subject to N.C. sales tax.

26 NCAC 2B .0401 - to specify the electronic format for agencies who choose to file proposed rules electronically.

26 NCAC 4 .0008 - to establish procedures for filing civil rights contested case petitions in the event of failed conciliation.

Comment Procedures: Comments may be submitted in writing or in person at the public hearing or in writing prior to June 14, 1993 to Elaine Steinbeck, APA Coordinator, P.O. Drawer 27447, Raleigh, NC 27611-7447.

CHAPTER 1 - GENERAL

SECTION .0100 - GENERAL

.0103 COST FOR COPIES

(a) Copies in ~~looseleaf form~~ of any public documents filed in the Office of Administrative Hearings are available in the following forms:

- (1) looseleaf form at a cost of two dollars and fifty cents (\$2.50) for up to ten pages and fifteen cents (\$0.15) per page for each page in excess of ten ; and
- (2) 3 1/2 inch or 5 1/4 inch diskette at a cost of five dollars (\$5.00) per diskette if the document is available in electronic form.

(b) Certified copies of any public document filed in the Office of Administrative Hearings are available at a cost of one dollar (\$1.00) per certification in addition to the looseleaf copying cost set out in ~~Paragraph (a)~~ Subparagraph (a)(1) of this Rule. Diskette certification is not available.

(c) Transcripts or tapes are available of contested case hearings. Reference should be made to Rule 26 NCAC 3 .0022 for procedures for requesting and costs of transcripts or tapes.

(d) North Carolina sales tax shall be added if applicable.

Statutory Authority G.S. 150B-21.25; 150B-37.

SECTION .0200 - PETITION FOR RULE-MAKING - DECLARATORY RULINGS

.0202 DECLARATORY RULINGS: AVAILABILITY

Declaratory rulings pursuant to G.S. ~~150B-17~~ 150B-4 will be issued by the Office of Administrative Hearings upon written request only on the validity of a rule of the Office of Administrative Hearings or on the applicability of a rule or order of the Office of Administrative Hearings to stipulated facts. A declaratory ruling will not be issued on a matter requiring an evidentiary proceeding.

Statutory Authority G.S. 150B-4.

CHAPTER 2 - RULES DIVISION

SUBCHAPTER 2A - NCAC

SECTION .0100 - PUBLICATION

.0102 AVAILABILITY OF THE NCAC

~~(a) The Office of Administrative Hearings has available for public inspection all past and current rules filed under the provisions of General Statute Chapter 150B.~~

~~(b) The North Carolina Administrative Code is available in two forms as follows:~~

~~(1) Copies of individual rules are available at a duplicating cost as established in 26 NCAC 1 .0103.~~

~~(2) A compilation which is supplemented monthly. The full compilation or individual volumes may be purchased at prices established in accordance with G.S. 150B-21.25.~~

~~(c) A cost as established in 26 NCAC 1 .0103 is charged for certifying any copies of the NCAC.~~

(a) The Office of Administrative Hearings has available for public inspection all past and current rules filed under the provisions of G.S. 150B. Copies are available at a cost as established in 26 NCAC 1 .0103.

(b) Monthly supplemented bound looseleaf compilations are available for a year's subscription at the following costs plus N.C. sales tax if applicable. Renewal for supplement service for one year is one-half the cost of a new subscription plus N.C. sales tax if applicable.

<u>Volume</u>	<u>Title</u>	<u>Chapter</u>	<u>Subject</u>	<u>New Subscription</u>
<u>1 - 53</u>	<u>1 - 26</u>		<u>All titles</u>	<u>\$750.00</u>
<u>1</u>	<u>1</u>		<u>Administration</u>	<u>90.00</u>
<u>2</u>	<u>2</u>	<u>1 - 24</u>	<u>Agriculture</u>	<u>75.00</u>
<u>3</u>	<u>2</u>	<u>25 - 52</u>	<u>Agriculture</u>	<u>75.00</u>
<u>4</u>	<u>3</u>		<u>Auditor</u>	<u>10.00</u>
<u>5</u>	<u>4</u>	<u>1 - 2</u>	<u>ECD (includes ABC)</u>	<u>45.00</u>
<u>6</u>	<u>4</u>	<u>3 - 20</u>	<u>ECD</u>	<u>90.00</u>
<u>7</u>	<u>5</u>	<u>1 - 2</u>	<u>Correction</u>	<u>60.00</u>
<u>8</u>	<u>5</u>	<u>3 - 4</u>	<u>Correction</u>	<u>30.00</u>
<u>9</u>	<u>6</u>		<u>Council of State</u>	
	<u>7</u>		<u>Cultural Resources</u>	<u>60.00</u>
<u>10</u>	<u>8</u>		<u>Elections</u>	<u>10.00</u>
<u>11</u>	<u>9</u>		<u>Governor/Lt. Governor</u>	<u>45.00</u>
<u>12</u>	<u>10</u>	<u>1 - 2</u>	<u>Human Resources</u>	<u>30.00</u>
<u>13</u>	<u>10</u>	<u>3A - 3K</u>	<u>Human Resources</u>	<u>90.00</u>
<u>14</u>	<u>10</u>	<u>3L - 3R</u>	<u>Human Resources</u>	
			<u>(includes CON)</u>	<u>45.00</u>
<u>15</u>	<u>10</u>	<u>3S - 3W</u>	<u>Human Resources</u>	<u>30.00</u>
<u>16</u>	<u>10</u>	<u>4 - 6</u>	<u>Human Resources</u>	<u>30.00</u>
<u>17</u>	<u>10</u>	<u>7</u>	<u>Human Resources</u>	<u>30.00</u>
<u>18</u>	<u>10</u>	<u>8 - 9</u>	<u>Human Resources</u>	<u>30.00</u>
<u>19</u>	<u>10</u>	<u>10</u>	<u>Human Resources</u>	<u>30.00</u>

PROPOSED RULES

<u>20</u>	<u>10</u>	<u>11 - 14</u>	<u>Human Resources</u>	<u>60.00</u>
<u>21</u>	<u>10</u>	<u>15 - 17</u>	<u>Human Resources</u>	<u>45.00</u>
<u>22</u>	<u>10</u>	<u>18</u>	<u>Human Resources</u>	<u>75.00</u>
<u>23</u>	<u>10</u>	<u>19 - 30</u>	<u>Human Resources</u>	<u>90.00</u>
<u>24</u>	<u>10</u>	<u>31 - 33</u>	<u>Human Resources</u>	<u>30.00</u>
<u>25</u>	<u>10</u>	<u>34 - 41</u>	<u>Human Resources</u>	<u>60.00</u>
<u>26</u>	<u>10</u>	<u>42</u>	<u>Human Resources</u>	<u>45.00</u>
<u>27</u>	<u>10</u>	<u>43 - 51</u>	<u>Human Resources</u>	<u>90.00</u>
<u>28</u>	<u>11</u>		<u>Insurance</u>	<u>90.00</u>
<u>29</u>	<u>12</u>		<u>Justice</u>	<u>90.00</u>
<u>30</u>	<u>13</u>	<u>1 - 6</u>	<u>Labor</u>	<u>30.00</u>
<u>31</u>	<u>13</u>	<u>7</u>	<u>OSHA</u>	<u>45.00</u>
<u>32</u>	<u>13</u>	<u>8 - 16</u>	<u>Labor</u>	<u>45.00</u>
<u>33</u>	<u>14A</u>		<u>Crime Control and</u>	
			<u>Public Safety</u>	<u>45.00</u>
<u>34</u>	<u>15A</u>	<u>1 - 2</u>	<u>EHNHR (includes EMC)</u>	<u>90.00</u>
<u>35</u>	<u>15A</u>	<u>3 - 6</u>	<u>EHNHR</u>	<u>45.00</u>
<u>36</u>	<u>15A</u>	<u>7</u>	<u>Coastal Management</u>	<u>45.00</u>
<u>37</u>	<u>15A</u>	<u>8 - 9</u>	<u>EHNHR</u>	<u>30.00</u>
<u>38</u>	<u>15A</u>	<u>10</u>	<u>Wildlife</u>	<u>45.00</u>
<u>39</u>	<u>15A</u>	<u>11 - 18</u>	<u>EHNHR</u>	<u>90.00</u>
<u>40</u>	<u>15A</u>	<u>19 - 26</u>	<u>EHNHR</u>	
			<u>(includes Breathalyzer)</u>	<u>75.00</u>
<u>41</u>	<u>16</u>		<u>Education</u>	<u>30.00</u>
<u>42</u>	<u>17</u>	<u>1 - 6</u>	<u>Revenue</u>	<u>75.00</u>
<u>43</u>	<u>17</u>	<u>7 - 11</u>	<u>Revenue</u>	<u>60.00</u>
<u>44</u>	<u>18</u>		<u>Secretary of State</u>	<u>30.00</u>
<u>45</u>	<u>19A</u>		<u>Transportation</u>	<u>90.00</u>
<u>46</u>	<u>20</u>		<u>Treasurer</u>	<u>45.00</u>
<u>47</u>	<u>21</u>	<u>1 - 16</u>	<u>Licensing Boards</u>	<u>75.00</u>
<u>48</u>	<u>21</u>	<u>17 - 37</u>	<u>Licensing Boards</u>	<u>75.00</u>
<u>49</u>	<u>21</u>	<u>38 - 70</u>	<u>Licensing Boards</u>	
	<u>22</u>		<u>Administrative Procedures</u>	<u>75.00</u>
<u>50</u>	<u>23</u>		<u>Community Colleges</u>	<u>10.00</u>
<u>51</u>	<u>24</u>		<u>Independent Agencies</u>	<u>10.00</u>
<u>52</u>	<u>25</u>		<u>State Personnel</u>	<u>60.00</u>
<u>53</u>	<u>26</u>		<u>Administrative Hearings</u>	<u>10.00</u>

(c) Monthly supplemented electronic compilations in WordPerfect 5.2, DOS 5.0 or succeeding versions, condensed text with PKZIP on a 3½ inch (1.44 Mb) high density diskette, are available for a year's subscription at the following costs plus N.C. sales tax if applicable:

<u>TITLE</u>	<u>YEAR</u> <u>SUBSCRIPTION</u>
<u>Titles 1 - 26</u>	<u>450.00</u>
<u>Title 1</u>	<u>60.00</u>
<u>Title 2</u>	<u>60.00</u>
<u>Title 3</u>	<u>10.00</u>
<u>Title 4</u>	<u>60.00</u>
<u>Title 5</u>	<u>60.00</u>
<u>Title 6</u>	<u>30.00</u>
<u>Title 7</u>	<u>30.00</u>
<u>Title 8</u>	<u>10.00</u>
<u>Title 9</u>	<u>45.00</u>
<u>Title 10</u>	<u>360.00</u>
<u>Title 11</u>	<u>60.00</u>

Title 12	60.00
Title 13	60.00
Title 14A	45.00
Title 15A	300.00
Title 16	30.00
Title 17	120.00
Title 18	30.00
Title 19A	60.00
Title 20	45.00
Title 21	120.00
Title 22 (Repealed)	
Title 23	10.00
Title 24	10.00
Title 25	60.00
Title 26	10.00
T15A.02 & T15A.13	120.00

(d) A looseleaf unbound compilation without supplement service is available at a cost of four hundred fifty dollars (\$450.00) plus N.C. sales tax if applicable. Supplement service is available at a cost of one hundred and twenty-five dollars (\$125.00) per year plus N.C. sales tax if applicable.

(e) An electronic compilation without supplement service is available at a cost of fifty dollars (\$50.00) plus N.C. sales tax if applicable. The electronic format is WordPerfect 5.2, DOS 5.0 or succeeding versions, condensed with PKZIP and contained on a 3½ inch (1.44 Mb) high density diskette.

Statutory Authority G.S. 150B-21.18; 150B-21.25.

SECTION .0400 - PHYSICAL FORMAT

.0401 GENERAL TYPING INSTRUCTIONS

(a) The general typing instructions are as follows:

- (1) an 8-1/2 by 11 inch sheet of paper (no letterhead, carbon copies or onion-skin accepted);
- (2) one side of the sheet only, with a one inch margin on all sides; and
- (3) black ink; use ~~standard~~ no less than 10 and no larger than 12 point type only; do not use type of an unusual nature.

(b) The sheet may not be turned around in the typewriter to accommodate wide charts. ~~Charts or figures may be included in the body of a rule only if they can be typed within a 65 space maximum (including all blank spaces).~~

Statutory Authority G.S. 150B-21.19.

SECTION .0700 - ELECTRONIC FILINGS

.0701 RULES FILED THROUGH ATMS COMPUTER SYSTEM

~~(a) If any agency is connected to the State Computer Center, rules may be filed through the ATMS computer system.~~

~~(b) The agency shall also submit a completed~~

~~typed Submission for Filing form and an original copy of the rule filed, as required by this Subchapter. The rule shall be in the computer system in proper format upon filing.~~

~~(e) In using this process, the agency shall submit with the filing an Electronic Filing form. The Office of Administrative Hearings shall return a copy of the form notifying the contact person of the transmittal date. At this time, the agency may delete the document from its storage.~~

Statutory Authority G.S. 150B-21.19.

SUBCHAPTER 2B - NORTH CAROLINA REGISTER

SECTION .0100 - PUBLICATION

.0103 SUBMISSION AND PUBLICATION SCHEDULE

(a) In order to be acceptable for publication, submissions for proposed administrative rules and executive orders shall be submitted to the Office of Administrative Hearings by the closing date for the issue as determined under Paragraph (c) of this Rule.

(b) An agency may file submissions by facsimile (fax) transmission by 5:30 p.m. on the closing date for the issue as determined under Paragraph (c) of this Rule. In order to be acceptable for publica-

tion, the original submission must be received by the Office of Administrative Hearings within five business days following the faxed transmission.

(c) The North Carolina Register will be published on the first and fifteenth of each month if the first or fifteenth of the month is not a Saturday, Sunday or State holiday for employees mandated by the State Personnel Commission. If the first or fifteenth of any month is a Saturday, Sunday or a holiday for State employees, the North Carolina Register issue for that day will be published on the day of that month closest to (either before or after) the first or fifteenth respectively that is not a Saturday, Sunday or holiday for State employees. The last day for filing for any issue of the North Carolina Register is 15 days before the issue date excluding Saturdays, Sundays and holidays for State employees, except that the last date for electronic filing is ten days before the issue date excluding Saturdays, Sundays and holidays for State employees. In computing the time prescribed or allowed by this Rule, the day of publication of the North Carolina Register is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday or State holiday, in which event the period runs until the preceding day which is not a Saturday, Sunday or State holiday. A half holiday shall be considered as other days and not as a holiday. A table of publication deadlines and schedules to include the issue date, last day for filing, last day for electronic filing, earliest date for public hearing, ~~earliest date for adoption by the agency, last day of required comment period,~~ and earliest effective date for at least the next 12 issues will be published in each issue of the North Carolina Register.

Statutory Authority G.S. 150B-21.17.

.0104 AVAILABILITY OF THE NORTH CAROLINA REGISTER

The North Carolina Register is published twice monthly by the Office of Administrative Hearings and is available at a cost of one hundred and five dollars (\$105.00) plus N.C. sales tax if applicable per year subscription. Requests for subscriptions should be directed to the Office of Administrative Hearings, P.O. Drawer 27447, Raleigh, N. C. 27611-7447, (919) 733-2678.

Statutory Authority G.S. 150B-21.25.

SECTION .0400 - ELECTRONIC FILINGS

.0401 ELECTRONIC FILINGS AND FORMAT

~~(a) If an agency is connected to the State Computer Center, submissions for publication in the North Carolina Register may be transferred electronically through the ATMS computer system.~~

~~(b) The agency shall submit the notice form and original copy of the statement of the subject matter or the rule as proposed as required in this Subchapter. The statement of the subject matter or the rule as proposed shall be in the computer system in proper format upon submission to the Office of Administrative Hearings.~~

~~(c) In using this process, the agency shall submit with the filing an Electronic Filing form. The Office of Administrative Hearings shall return a copy of the form notifying the contact person of the transmittal date. Upon receipt of the form containing the transmittal date, the agency may delete the document from its storage.~~

(a) In order to be considered an electronic filing, an agency shall submit an electronic version of the proposed rule(s) in addition to the filing requirements in this Subchapter.

(b) The electronic form shall be a 3 1/2 inch (1.44 Mb) or 5 1/4 inch (1.2 Mb) high density diskette compatible with or convertible to Word-Perfect 5.2, DOS 5.0 or succeeding versions. A list of compatible and convertible software is available from OAH.

(c) The filed diskette shall identify the name of the document to be retrieved and the software used.

(d) An edited copy of the proposed rule(s) and the filed diskette shall be returned to the agency.

(e) OAH will refuse to accept for publication any notice in which the diskette is not compatible or convertible to the publication software.

Statutory Authority G.S. 150B-21.17.

CHAPTER 4 - CIVIL RIGHTS DIVISION

.0008 CONTESTED CASE HEARING

~~(a) Any cause determination that has not resulted in settlement or conciliation constituting full relief will be heard as a contested case by an Administrative Law Judge in the Hearings Division. The charging party shall commence the proceedings by filing a petition for a contested case hearing as provided in G.S. 7A-759, G.S. 150B, Article 3, and a final decision will be issued which is binding upon the parties. If the charging party has not filed a contested case petition within 60 days of Notice, the Civil Rights Division shall transfer the~~

charging party's file to EEOC. If the charging party files a timely petition, OAH shall conduct a hearing and issue a final decision which is binding upon the parties.

(b) An administrative law judge may enter a stay pending the outcome of the case where appropriate or required. Pending the investigation, conciliation or settlement of a deferred charge, an Administrative Law Judge shall enter a stay in any related or ancillary contested case proceedings involving the charging party. If the charging party initiates a contested case as provided in Paragraph (a) of this Rule, the stay shall be lifted and the related proceedings shall be consolidated or joined when appropriate and tried before the presiding Administrative Law Judge.

(c) The OAH investigative report shall be made available to all parties as provided in Section 83 of the EEOC Compliance Manual, Volume 1 (October, 1987) incorporated herein by reference as well as subsequent amendments thereto. Copies of Section 83 are available upon request from the Office of Administrative Hearings, 424 N. Blount Street, Raleigh, NC 27601 at no charge.

(d) (e) At the conclusion of the contested case hearing, the investigation report, the final decision in the contested case, and the case file will be forwarded to EEOC.

Statutory Authority G.S. 7A-759; 150B-21.6.

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).

ADMINISTRATION

Environmental Policy Act

<i>1 NCAC 25 .0213 - Environmental Policy Act Advisory Committee</i>	<i>RRC Objection</i>	<i>04/15/93</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>04/15/93</i>
<i>1 NCAC 25 .0401 - Method of Compliance</i>	<i>RRC Objection</i>	<i>04/15/93</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>04/15/93</i>
<i>1 NCAC 25 .0506 - Review Process</i>	<i>RRC Objection</i>	<i>04/15/93</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>04/15/93</i>
<i>1 NCAC 25 .0603 - Format and Content</i>	<i>RRC Objection</i>	<i>04/15/93</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>04/15/93</i>

COMMERCE

Banking Commission

<i>4 NCAC 3F .0402 - Required and Permissible Investments</i>	<i>RRC Objection</i>	<i>01/21/93</i>
<i>Agency Withdrew Rule</i>	<i>Obj. Cont'd</i>	<i>02/18/93</i>
		<i>03/19/93</i>

Cemetery Commission

<i>4 NCAC 5B .0103 - Hearings</i>	<i>RRC Objection</i>	<i>04/15/93</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>04/15/93</i>
<i>4 NCAC 5D .0101 - Report</i>	<i>RRC Objection</i>	<i>04/15/93</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>04/15/93</i>
<i>4 NCAC 5D .0201 - Report</i>	<i>RRC Objection</i>	<i>04/15/93</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>04/15/93</i>
<i>4 NCAC 5D .0202 - Delivery</i>	<i>RRC Objection</i>	<i>04/15/93</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>04/15/93</i>

Savings Institutions Division: Savings Institutions Commission

<i>4 NCAC 16A .0105 - Restrictions: Payment of Dividends & Repurchase of Stock</i>	<i>RRC Objection</i>	<i>03/18/93</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>03/18/93</i>
<i>4 NCAC 16G .0311 - Required Provisions in Plan of Conversion</i>	<i>RRC Objection</i>	<i>03/18/93</i>
<i>Agency Revised Rule</i>	<i>RRC Objection</i>	<i>03/18/93</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>04/15/93</i>

ENVIRONMENT, HEALTH, AND NATURAL RESOURCES

Adult Health

<i>15A NCAC 16A .1208 - Use of Program Funds</i>	<i>RRC Objection</i>	<i>03/18/93</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>03/18/93</i>

Coastal Management

<i>15A NCAC 7H .0308 - Specific Use Standards for Ocean Hazard Areas</i>	<i>RRC Objection</i>	<i>11/19/92</i>
<i>Rule Returned to Agency</i>		<i>12/17/92</i>
<i>Rule Returned to Agency</i>	<i>RRC Objection</i>	<i>01/21/93</i>
<i>Agency Filed Rule for Codification Over RRC Objection</i>	<i>Eff.</i>	<i>03/01/93</i>
<i>15A NCAC 7H .1205 - Specific Conditions</i>	<i>RRC Objection</i>	<i>03/18/93</i>
<i>Rule Returned to Agency</i>		<i>04/15/93</i>

Environmental Health

<i>15A NCAC 18A .1948 - Site Classification</i>	<i>RRC Objection</i>	<i>03/18/93</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>03/18/93</i>

Environmental Management

<i>15A NCAC 2H .1103 - Definitions</i>	<i>RRC Objection</i>	<i>02/18/93</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>03/18/93</i>
<i>15A NCAC 2H .1110 - Implementation</i>	<i>RRC Objection</i>	<i>02/18/93</i>
<i>Agency Responded</i>	<i>Obj. Cont'd</i>	<i>03/18/93</i>

Laboratory Services

<i>15A NCAC 20D .0234 - Criteria & Procedures: Decert./Denial/Downgrading</i>	<i>RRC Objection</i>	<i>03/18/93</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>04/15/93</i>

Solid Waste Management

<i>15A NCAC 13A .0013 - The Hazardous Waste Permit Program - Part 270</i>	<i>RRC Objection</i>	<i>03/18/93</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>03/18/93</i>

Wildlife Resources and Water Safety

<i>15A NCAC 10I .0001 - Definitions</i>	<i>RRC Objection</i>	<i>10/15/92</i>
<i>Agency Responded</i>	<i>Obj. Cont'd</i>	<i>11/19/92</i>
<i>Agency Responded</i>	<i>Obj. Cont'd</i>	<i>12/17/92</i>
<i>Rule Returned to Agency</i>		<i>01/21/93</i>

HUMAN RESOURCES

Children's Services

<i>10 NCAC 41E .0514 - Child Care & Development: Health</i>	<i>RRC Objection</i>	<i>04/15/93</i>
<i>10 NCAC 41G .0705 - Medical Program</i>	<i>RRC Objection</i>	<i>04/15/93</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>04/15/93</i>
<i>10 NCAC 41Q .0201 - Personnel</i>	<i>RRC Objection</i>	<i>04/15/93</i>

Departmental Rules

<i>10 NCAC 1M .0002 - Complaints</i>	<i>RRC Objection</i>	<i>04/15/93</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>04/15/93</i>
<i>10 NCAC 1M .0003 - Investigation</i>	<i>RRC Objection</i>	<i>04/15/93</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>04/15/93</i>

Facility Services

10 NCAC 3C .2020 - Definitions	RRC Objection	04/15/93
Agency Revised Rule	Obj. Removed	04/15/93
10 NCAC 3C .2021 - Physician Reqs/Inpatient Rehabilitation Facilities or Units	RRC Objection	04/15/93
Agency Revised Rule	Obj. Removed	04/15/93
10 NCAC 3C .2030 - Physical Facility Reqs/Inpatient Rehab Facilities or Units	RRC Objection	04/15/93
Agency Revised Rule	Obj. Removed	04/15/93
10 NCAC 3C .2033 - Deemed Status/Inpatient Rehabilitation Facilities or Units	RRC Objection	04/15/93
Agency Revised Rule	Obj. Removed	04/15/93
10 NCAC 3H .1150 - Definitions	RRC Objection	04/15/93
Agency Revised Rule	Obj. Removed	04/15/93
10 NCAC 3H .1151 - Physician Reqs/Inpatient Rehabilitation Facilities or Units	RRC Objection	04/15/93
Agency Revised Rule	Obj. Removed	04/15/93
10 NCAC 3H .1160 - Physical Facility Reqs/Inpatient Rehab Facilities or Units	RRC Objection	04/15/93
Agency Revised Rule	Obj. Removed	04/15/93
10 NCAC 3H .1163 - Deemed Status/Inpatient Rehabilitation Facilities or Units	RRC Objection	04/15/93
Agency Revised Rule	Obj. Removed	04/15/93

Medical Assistance

10 NCAC 50B .0203 - Application Processing Standards	RRC Objection	03/18/93
Agency Revised Rule	Obj. Removed	03/18/93

INDEPENDENT AGENCIES

N.C. Housing Finance Agency

24 NCAC 1M .0202 - Eligibility	RRC Objection	10/15/92
No Response from Agency	Obj. Cont'd	11/19/92
No Response from Agency	Obj. Cont'd	12/17/92
Agency Revised Rule	Obj. Removed	01/21/93
24 NCAC 1M .0204 - Selection Procedures	RRC Objection	10/15/92
No Response from Agency	Obj. Cont'd	11/19/92
No Response from Agency	Obj. Cont'd	12/17/92
Agency Revised Rule	Obj. Removed	01/21/93
24 NCAC 1M .0205 - Administration	RRC Objection	10/15/92
No Response from Agency	Obj. Cont'd	11/19/92
No Response from Agency	Obj. Cont'd	12/17/92
Agency Repealed Rule	Obj. Removed	01/21/93
24 NCAC 1M .0206 - Program Fees	RRC Objection	10/15/92
No Response from Agency	Obj. Cont'd	11/19/92
No Response from Agency	Obj. Cont'd	12/17/92
Agency Withdrew Rule		01/21/93
24 NCAC 1M .0301 - Goal and Objectives	RRC Objection	10/15/92
No Response from Agency	Obj. Cont'd	11/19/92
No Response from Agency	Obj. Cont'd	12/17/92
Agency Revised Rule	Obj. Removed	01/21/93
24 NCAC 1M .0302 - Eligibility Requirements	RRC Objection	10/15/92
No Response from Agency	Obj. Cont'd	11/19/92
No Response from Agency	Obj. Cont'd	12/17/92
Agency Revised Rule	Obj. Removed	01/21/93
24 NCAC 1M .0303 - Threshold Review Criteria	RRC Objection	10/15/92
No Response from Agency	Obj. Cont'd	11/19/92
No Response from Agency	Obj. Cont'd	12/17/92

<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>01/21/93</i>
24 NCAC 1M .0306 - Funding Commitment	<i>RRC Objection</i>	<i>10/15/92</i>
<i>No Response from Agency</i>	<i>Obj. Cont'd</i>	<i>11/19/92</i>
<i>No Response from Agency</i>	<i>Obj. Cont'd</i>	<i>12/17/92</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>01/21/93</i>
24 NCAC 1M .0401 - Goals and Objectives	<i>RRC Objection</i>	<i>10/15/92</i>
<i>No Response from Agency</i>	<i>Obj. Cont'd</i>	<i>11/19/92</i>
<i>No Response from Agency</i>	<i>Obj. Cont'd</i>	<i>12/17/92</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>01/21/93</i>
24 NCAC 1M .0402 - Eligibility Requirements	<i>RRC Objection</i>	<i>10/15/92</i>
<i>No Response from Agency</i>	<i>Obj. Cont'd</i>	<i>11/19/92</i>
<i>No Response from Agency</i>	<i>Obj. Cont'd</i>	<i>12/17/92</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>01/21/93</i>
24 NCAC 1M .0403 - Threshold Review Criteria	<i>RRC Objection</i>	<i>10/15/92</i>
<i>No Response from Agency</i>	<i>Obj. Cont'd</i>	<i>11/19/92</i>
<i>No Response from Agency</i>	<i>Obj. Cont'd</i>	<i>12/17/92</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>01/21/93</i>
24 NCAC 1M .0404 - Ranking Criteria	<i>RRC Objection</i>	<i>10/15/92</i>
<i>No Response from Agency</i>	<i>Obj. Cont'd</i>	<i>11/19/92</i>
<i>No Response from Agency</i>	<i>Obj. Cont'd</i>	<i>12/17/92</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>01/21/93</i>
24 NCAC 1M .0405 - Agency Board Approval	<i>RRC Objection</i>	<i>10/15/92</i>
<i>No Response from Agency</i>	<i>Obj. Cont'd</i>	<i>11/19/92</i>
<i>No Response from Agency</i>	<i>Obj. Cont'd</i>	<i>12/17/92</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>01/21/93</i>

INSURANCE

Actuarial Services

11 NCAC 16 .0303 - Annual Filing	<i>RRC Objection</i>	<i>04/15/93</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>04/15/93</i>

Consumer Services

11 NCAC 4 .0428 - Enforcement	<i>RRC Objection</i>	<i>03/18/93</i>
<i>Agency Revised Rule</i>	<i>RRC Objection</i>	<i>03/18/93</i>
<i>Agency Repealed Rule</i>	<i>Obj. Removed</i>	<i>04/15/93</i>

Financial Evaluation Division

11 NCAC 11A .0602 - Licensure	<i>RRC Objection</i>	<i>11/19/92</i>
<i>Agency Revised Rule</i>	<i>RRC Objection</i>	<i>11/19/92</i>
<i>Rule Returned to Agency</i>		<i>12/17/92</i>
<i>Agency Filed Rule for Codification Over RRC Objection</i>	<i>Eff.</i>	<i>12/29/92</i>
11 NCAC 11B .0508 - Foreign Company Securities: Verifiable Capital/Surplus	<i>RRC Objection</i>	<i>03/18/93</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>03/18/93</i>
11 NCAC 11B .0607 - Application - Employers	<i>RRC Objection</i>	<i>03/18/93</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>04/15/93</i>
11 NCAC 11B .0608 - Deposits: Bonds: Excess Insurance - Employers	<i>RRC Objection</i>	<i>03/18/93</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>03/18/93</i>
11 NCAC 11B .0610 - Application - Groups	<i>RRC Objection</i>	<i>03/18/93</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>04/15/93</i>
11 NCAC 11H .0002 - License - Steps	<i>RRC Objection</i>	<i>03/18/93</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>03/18/93</i>

<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>03/18/93</i>
<i>21 NCAC 42E .0203 - Consultant: Advisor, Staff Optometrist/Ind Contractor</i>	<i>RRC Objection</i>	<i>03/18/93</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>03/18/93</i>
<i>21 NCAC 42L .0005 - Written Answers to the Notice of Hearing</i>	<i>RRC Objection</i>	<i>03/18/93</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>03/18/93</i>
<i>21 NCAC 42M .0006 - Termination</i>	<i>RRC Objection</i>	<i>03/18/93</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>03/18/93</i>

REVENUE**Individual Income Tax Division**

<i>17 NCAC 6B .0107 - Extensions</i>	<i>RRC Objection</i>	<i>08/20/92</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>09/17/92</i>
<i>17 NCAC 6B .0115 - Additions to Federal Taxable Income</i>	<i>RRC Objection</i>	<i>08/20/92</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>09/17/92</i>
<i>17 NCAC 6B .0116 - Deductions from Federal Taxable Income</i>	<i>RRC Objection</i>	<i>08/20/92</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>09/17/92</i>
<i>17 NCAC 6B .0117 - Transitional Adjustments</i>	<i>RRC Objection</i>	<i>08/20/92</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>09/17/92</i>
<i>17 NCAC 6B .3406 - Refunds</i>	<i>RRC Objection</i>	<i>08/20/92</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>09/17/92</i>

STATE PERSONNEL**Office of State Personnel**

<i>25 NCAC 1D .0511 - Reduction in Force Priority Consideration</i>	<i>RRC Objection</i>	<i>03/18/93</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>03/18/93</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).

10 NCAC 3H .0315(b) - NURSING HOME PATIENT OR RESIDENT RIGHTS

Dolores O. Nesnow, Administrative Law Judge with the Office of Administrative Hearings, declared Rule 10 NCAC 3H .0315(b) void as applied in *Barbara Jones, Petitioner v. North Carolina Department of Human Resources, Division of Facility Services, Licensure Section, Respondent* (92 DHR 1192).

15A NCAC 3O .0201(a)(1)(A) - STDS FOR SHELLFISH BOTTOM & WATER COLUMN LEASES

Julian Mann III, Chief Administrative Law Judge with the Office of Administrative Hearings, declared Rule 15A NCAC 3O .0201(a)(1)(A) void as applied in *William R. Willis, Petitioner v. North Carolina Division of Marine Fisheries, Respondent* (92 EHR 0820).

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.

<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>ALJ</u>	<u>DATE OF DECISION</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
ADMINISTRATION				
McLaurin Parking Co. v. Administration	92 DOA 1662	Morrison	04/02/93	8:3 NCR 320
ALCOHOLIC BEVERAGE CONTROL COMMISSION				
Alcoholic Beverage Control Comm. v. Ann Oldham McDowell	92 ABC 0260	Morgan	04/01/93	
Alcoholic Beverage Control Comm. v. Gary Morgan Neugent	92 ABC 1086	Becton	03/22/93	
Alcoholic Beverage Control Comm. v. Kirby Ronald Eldridge	92 ABC 1153	Chess	04/26/93	
Alcoholic Beverage Control Comm. v. Larry Isaac Hailstock	92 ABC 1483	Reilly	04/07/93	
Alcoholic Bev. Control Comm. v. Mild & Wild, Inc., Sheila Scholz	93 ABC 1475	Nesnow	03/23/93	
COMMERCE				
Lester Moore v. Weatherization Assistance Program	93 COM 0105	Gray	03/08/93	
CRIME CONTROL AND PUBLIC SAFETY				
George W. Paylor v. Crime Victims Compensation Comm.	91 CPS 1286	Morgan	04/27/93	
Anthony L. Hart v. Victims Compensation Comm.	92 CPS 0937	Chess	03/01/93	
Jennifer Ayers v. Crime Victims Compensation Comm.	92 CPS 1195	Reilly	03/19/93	
Janie L. Howard v. Crime Victims Compensation Comm.	92 CPS 1787	Reilly	03/26/93	
Moses H. Cone Mem Hosp v. Victims Compensation Comm.	93 CPS 0152	Nesnow	04/02/93	8:3 NCR 327
ENVIRONMENT, HEALTH, AND NATURAL RESOURCES				
Charles L. Wilson v. Environment, Health, & Natural Resources	91 EHR 0664	Morgan	03/23/93	
Uteley C. Stallings v. Environment, Health, & Natural Resources	92 EHR 0062	Gray	03/15/93	
Safeway Removal, Inc. v. Environment, Health, & Natural Res.	92 EHR 0826	West	03/12/93	8:1 NCR 83
Elizabeth City/Pasquotank Cty Mun Airport Auth v. EHNRR	92 EHR 1140	Gray	04/13/93	
City of Salisbury v. Environment, Health, & Natural Resources	92 EHR 1472	Morrison	04/22/93	
Willie M. Watford v. Hertford Gates District Health Department	92 EHR 1600	Chess	03/24/93	
Angela Power, Albert Power v. Children's Special Health Svcs.	93 EHR 0008	Becton	03/24/93	
Mustafa E. Essa v. Environment, Health, & Natural Resources	93 EHR 0146	Gray	03/29/93	
HUMAN RESOURCES				
O.C. Williams v. Human Resources	91 CSE 0036*2	Morgan	03/30/93	
O.C. Williams v. Human Resources	91 CSE 1158*2	Morgan	03/30/93	
Randy Chambliss v. Human Resources	91 CSE 1187	Morgan	04/28/93	
Jeffery D. Williams v. Human Resources	91 CSE 1231	Morgan	04/28/93	
William A. Dixon v. Human Resources	91 CSE 1277	Morrison	03/04/93	
Gregory L. Washington v. Human Resources	92 CSE 0075	Morgan	04/01/93	
Dwayne Allen v. Human Resources	92 CSE 0196	Morgan	03/31/93	
Edwin Ivester v. Human Resources	92 CSE 0268	Nesnow	03/30/93	
Barbara W. Catlett v. Human Resources	92 DCS 0577	West	03/15/93	
Leon Barbee v. Human Resources	92 DHR 0658	Morrison	04/30/93	8:4 NCR 392
Barbara Jones v. Human Resources	92 DHR 1192	Nesnow	04/02/93	8:3 NCR 313
Ida Diane Davis v. Human Resources	92 DCS 1200	Gray	03/29/93	
Edward E. Brandon v. Human Resources	92 CSE 1237	Gray	04/16/93	

* Consolidated cases.

CONTESTED CASE DECISIONS

<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>ALJ</u>	<u>DATE OF DECISION</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
Darrell W. Russell v. Human Resources	92 CSE 1249	Becton	04/20/93	
Michelle D. Mobley v. Human Resources	92 CSE 1256	Nesnow	04/15/93	
Byron Christopher Williams v. Human Resources	92 CSE 1270	Nesnow	04/26/93	
Joyce P. Williams v. Human Resources	92 DHR 1275	Gray	03/15/93	
Eric Stanley Stokes v. Human Resources	92 CSE 1316*	Reilly	03/25/93	
Lyndell Greene v. Human Resources	92 CSE 1346	Nesnow	04/16/93	
Leroy Snuggs v. Human Resources	92 CSE 1360	Morrison	04/15/93	
James P. Miller III v. Human Resources	92 CSE 1361	Gray	04/16/93	
Larry L. Crowder v. Human Resources	92 CSE 1396	Reilly	04/15/93	
Carlos Bernard Davis v. Human Resources	92 CSE 1404	Reilly	04/15/93	
Timothy Brian Eller v. Human Resources	92 CSE 1414	Reilly	04/20/93	
Charles S. Ferrer v. Human Resources	92 CSE 1416	Mann	04/15/93	
Ronald H. Lockley v. Human Resources	92 CSE 1418	Nesnow	04/20/93	
Rene Thomas Rittenhouse v. Human Resources	92 CSE 1421	Nesnow	04/20/93	
Thomas Edward Williamson v. Human Resources	92 CSE 1422	Reilly	04/20/93	
Roy Chester Robinson v. Human Resources	92 CSE 1423	Reilly	04/15/93	
William E. Ingram v. Human Resources	92 CSE 1450	Reilly	04/15/93	
Romeo F. Skapple v. Human Resources	92 CSE 1545	Gray	04/26/93	
Jeffrey L. Garrett v. Human Resources	92 CSE 1557	Gray	04/22/93	
Brian C. Gilmore v. Human Resources	92 CSE 1576	Gray	04/26/93	
Isaac Maxwell v. Human Resources	92 CSE 1589	Reilly	04/26/93	
Jo Ann Kinsey v. NC Memorial Hospital Betty Hutton, Volunteer Svc.	92 DHR 1612	Chess	03/08/93	
Amy Clara Williamson v. NC Mein Hosp Betty Hutton, Volunteer Svc.	92 DHR 1613	Chess	03/08/93	
Betty Butler v. Human Resources	92 DHR 1614	Chess	03/09/93	
Billy Smith v. Human Resources	92 CSE 1629	Reilly	03/25/93	
Anthony Curry v. Human Resources	92 CSE 1631	Reilly	03/25/93	
Larry W. Golden v. Human Resources	92 CSE 1633	Reilly	03/25/93	
Eric Stanley Stokes v. Human Resources	92 CSE 1652*	Reilly	03/25/93	
Samuel Benson v. Office of Admin. Hearings for Medicaid	93 DHR 0010	Becton	03/11/93	
INSURANCE				
Carolyn M. Hair v. St Employees Comprehensive Major Medical	92 INS 1464	Chess	03/10/93	
JUSTICE				
Marilyn Jean Britt v. Criminal Justice Ed. & Training Stds. Comm.	92 DOJ 1088	Morrison	03/16/93	
Tim McCoy Deck v. Criminal Justice Ed. & Training Stds. Comm.	92 DOJ 1367	Chess	04/01/93	
Sherri Ferguson Revis v. Sheriffs' Ed. & Training Stds. Comm.	92 DOJ 1756	Gray	03/23/93	
Mark Thomas v. Sheriffs' Ed. & Training Standards Commission	93 DOJ 0151	West	04/21/93	
LABOR				
Greensboro Golf Center, Inc. v. Labor	92 DOL 0204	Nesnow	04/15/93	
MORTUARY SCIENCE				
Board of Mortuary Science v. Triangle Funeral Chapel, Inc.	92 BMS 1169	Reilly	04/29/93	8:4 NCR 396
STATE PERSONNEL				
Brenda G. Mitchell v. Correction	91 OSP 0625	West	03/08/93	8:1 NCR 75
Clayton Brewer v. North Carolina State University	91 OSP 0941	West	04/02/93	8:3 NCR 306
Donnie M. White v. Correction	91 OSP 1236	Morgan	04/05/93	
Renee E. Shepherd v. Winston-Salem State University	91 OSP 1391	Morgan	04/28/93	
Willie Granville Bailey v. Winston-Salem State University	92 OSP 0285	Morrison	03/10/93	
Julia Spinks v. Environment, Health, & Natural Resources	92 OSP 0313	Becton	04/12/93	8:4 NCR 382
James B. Price v. Transportation	92 OSP 0375	Gray	04/13/93	
I. Cary Nailling v. UNC-CH	92 OSP 0394	Becton	04/20/93	
Deborah Barber v. Correction	92 OSP 0396	Chess	03/04/93	
Laverne B. Hill v. Transportation	92 OSP 0431*	West	03/08/93	
Jimmy D. Wilkins v. Transportation	92 OSP 0432*	West	03/08/93	
Glinda C. Smith v. Wildlife Resources Commission	92 OSP 0653	Morrison	03/12/93	
Larry O. Nobles v. Human Resources	92 OSP 0732	Mann	04/23/93	
Willie Thomas Hope v. Transportation	92 OSP 0947	Morgan	03/23/93	
Suzanne Ransley Hill v. Environment, Health, & Nat. Res.	92 OSP 0992	Reilly	03/18/93	8:2 NCR 224
John B. Sauls v. Wake County Health Department	92 OSP 1142	Reilly	03/08/93	8:1 NCR 88
Joseph Henry Bishop v. Environment, Health, & Natural Res.	92 OSP 1243	Reilly	03/05/93	

<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>ALJ</u>	<u>DATE OF DECISION</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
Brenda K. Campbell v. Employment Security Commission	92 OSP 1505	Morrison	03/17/93	
James B. Price v. Transportation	92 OSP 1657	Mann	03/19/93	
Betty Bradsher v. UNC-CH	92 OSP 1733	Becton	03/30/93	
Jamal Al Bakkat-Morris v. Glenn Sexton (DSS)	92 OSP 1741	Becton	03/24/93	
Brenda Kay Barnes v. Human Resources	92 OSP 1768	Morrison	03/17/93	
Larry G. Riddle v. Correction, Division of Prisons	92 OSP 1774	Gray	04/26/93	
Stevie E. Dunn v. Polk Youth Center	92 OSP 1789	Becton	04/19/93	
Barbara A. Johnson v. Human Resources	93 OSP 0103	Morrison	03/17/93	
Carrie P. Smith v. County of Stanly	93 OSP 0109	Becton	04/01/93	
George W. Allen v. Human Resources, Correction, Agri & EHNH	93 OSP 0111	Reilly	04/16/93	
William G. Fisher v. St Bd of Ed, Albermarle City Schools & Bd of Ed	93 OSP 0134	Becton	04/20/93	
Clifton E. Simmons v. Correction	93 OSP 0159	Morrison	04/21/93	
Irving S. Rodgers v. C.A. Dillon, Division of Youth Services	93 OSP 0177	West	04/21/93	
STATE TREASURER				
Herman D. Brooks v. Bd of Trustees /Teachers' & St Emp Ret Sys	91 DST 0566	Gray	04/13/93	
Henrietta Sandlin v. Teachers' & State Emp Comp Major Medical Plan	92 DST 0305	Morgan	04/12/93	
Mary Alyce Carnichael v. Bd/Trustees/Teachers' & St Emp Ret Sys	92 DST 1506	Chess	04/08/93	
TRANSPORTATION				
Yates Construction Co., Inc. v. Transportation	92 DOT 1800	Morgan	03/25/93	

3. In her role as Clerk III, a secretary position within the Marketing Division at the Zoo, the Petitioner was, among other things, responsible for the following:

Screening and routing all U.S. and State courier mail to all Zoo divisions and processing outgoing mail, including bulk mailings; back up to the Zoo receptionist in stuffing new releases, tourism, and other Marketing Division mailings; sending out group information packets, processing registration forms, arranging for tickets, keeping account of group monies collected, and logging group information into the ledger as directed by the Group Program Coordinator; developing knowledge of Zoo history, exhibits, and operations; preparing media information kits, assisting with special events, and with registration of media at press conferences; escorting media and VIP's when requested by the Public Relations Coordinator; responding to ninety-five percent (95%) of requests within five working days, using proper business letter form, and correct spelling and punctuation; completing forms, making reservations, and ensuring that division, department, and state regulations are followed, and that forms contain no more than four errors per draft and no more than three errors per finished document; completing travel logs, coordinating service needs for the safety and maintenance of vehicles at least once a month; maintaining a schedule of those who relieve the Zoo's full-time receptionist during breaks, vacations, or periods of illness; making certain that the Marketing Division reception area was kept clean and that materials in the storage closet and filing cabinet were stored neatly for easy access; accurately typing news releases and drafts to final form; answering the main phone line of the Marketing Division and transferring calls to proper staff; keeping an updated copy of all promotions, news releases, and publicity materials in a ringed binder; and providing clerical assistance for the Marketing Officer when needed.

4. During the time period that the Petitioner worked for the Respondent and at all times pertinent to this action, while she was working under the Marketing Director, Elise Light, the Petitioner received a performance rating of proficient or better, except for once when she received a "needs improvement," on all of her WPPR's from the 1980 time period forward until her dismissal, including her last WPPR dated April 1, 1990 through September 30, 1990 which was signed by the Petitioner and Ms. Light on October 4, 1990.
5. The Petitioner was first employed by the Zoo in 1980 as a temporary employee. In 1983, The Petitioner took a permanent position as a Clerk II in the Public Information Office which was headed by Elise Light. The Petitioner's Clerk II position was later upgraded to a Clerk III position. In 1986, Elise Light became the Marketing Director and a Secretary IV position was established in what was now the Marketing Office. The Secretary IV position was established as an administrative assistant position with the ultimate objective being that the person in that position would aid the marketing officer by conducting special events.
6. During the Summer of 1986, while in the Clerk III position, Ms. Light allowed the Petitioner to supervise a temporary seasonal employee, Gay Brewer.
7. The Petitioner applied for the Secretary IV position.
8. Ms. Light recommended the Petitioner for the Secretary IV position despite the allegations, which she accepted to be true, that the Petitioner was rude to Gay Brewer and attempted to give Ms. Brewer work which had been assigned to the Petitioner, and despite Ms. Light's opinion that the Petitioner did not prove to be a successful supervisor.
9. In October, 1986, the Petitioner was promoted to the Secretary IV position. As a Secretary IV, the Petitioner was the administrative assistant to the Marketing Director and responsible for the office management of all Marketing Division administrative matters; and worked with a Clerk III to provide total division clerical support. Specifically, the Secretary IV's duties included the following: (1) routinely performs selected file and retrieval duties in direct support of the Marketing Director; routinely types correspondence, reports, promotional proposals, memorandums, brochure copy, news releases, public service announcements, and other materials from drafts prepared by the Marketing

Director; proofreads material for Zoological Park and Visitor Relations brochures, news releases, radio and television scripts and other materials prepared for distribution to the public; (2) attend conferences and meetings to take notes and minutes to be transcribed into a typed report; (3) compose responses to letters of complaint, compliment and requests for information from individuals planning to visit the Zoological Park; complete forms requesting information about the Zoo for directories, government agencies, tourism publications; compile information and compose Zoo history and arrange for annual publication of updated history; compose letters to accompany mailings of quantities of Zoo brochures to welcome centers, chambers of commerce, libraries and others; (4) assist the Marketing Director with special projects; respond to requests for information from the general public, business firms, government agencies and others in writing, by telephone and in person; assist Public Relations Officer in escorting reporters and photographers around the Zoo and supervising promotional events such as a Zoo and Aquarium Month; assist Visitor Relations Coordinator in escorting corporate and organization officials and supervising group activities such as the statewide meeting of the North Carolina Girl Scout Council; handle reception and telephone duties for the Zoo administrative offices during the Clerk III's lunch hour and in her absence, as needed; (5) review media billings for accuracy and performance of Zoo advertising, review and forward for payment billings for other Marketing Division expenditures.

10. In February, 1987, Rod Hackney began working at the Zoo as the Public Relations Coordinator and a new Clerk III, Judy Hilliard was hired. Greta Lint was transferred from the Public Information Officer position to that of group programs coordinator.
11. As between Ms. Hilliard and the Petitioner, the Petitioner was to type for Ms. Light and Ms. Hilliard was to type for Ms. Lint and assist Mr. Hackney. Mr. Hackney did his own typing.
12. In 1988, Ms. Hilliard complained to Ms. Light that the Petitioner was giving her work that the Petitioner should have done herself, and Ms. Hilliard felt she could no longer handle the Petitioner's work as well as her own. Ms. Light's attempts to mediate between the Petitioner and Ms. Hilliard were unsuccessful.
13. Notwithstanding the problems which the Petitioner had interacting with Ms. Brewer and Ms. Hilliard, Ms. Light never confronted the Petitioner with the alleged problems regarding work distribution until the interpersonal problems in both situations were extreme and had gotten out of hand.
14. Ms. Light eventually gave the task of supervising the Clerk III position to Mr. Hackney and increased the Petitioner's special events assignments to balance out her loss of supervisory responsibilities.
15. The dismissal document, dated November 2, 1990, reflects that the Petitioner was given an oral warning on July 19, 1989 for job performance; a written warning on November 20, 1989 for job performance; a final written warning on May 22, 1990 for job performance; and the Petitioner's dismissal was also for job performance.
16. Attached to the November 2, 1990 letter of dismissal was a memorandum to the Petitioner from Elise D. Light and James R. Hackney. The memorandum was composed primarily by Ms. Light.
17. Throughout the disciplinary process covering the years of 1988, 1989, and 1990, only one of the Petitioner's WPPR's reflected some of the problems that she was allegedly having such as her inability to work with the Clerk III; not being able to speak articulately; not completing assignments on time; making numerous typographical errors in work; failing to complete mailing on time; being rude to visitors and to people on the telephone; failing to answer the phone; being generally difficult for her co-workers to get along with; taking excessive sick leave and time off of work during the day; and displaying a threatening and hostile attitude toward co-workers.
18. In January, 1989, at the Zoo director's suggestion, the Petitioner and Ms. Light met with the Respondent's employee relations director, Joe Stroup, who attempted to mediate the problems that

the Petitioner and Ms. Light were having working together.

19. Up until the January, 1989, meeting with Mr. Stroup, the problems Ms. Light had with the Petitioner concerned interpersonal relationships within the Marketing Division office.
20. Although the mediation session with Mr. Stroup appeared to end on a positive note, the Petitioner testified that while she and Ms. Light were leaving the building, Ms. Light said that she would eventually "get" the Petitioner.
21. Following the January, 1989, meeting with Mr. Stroup, the Petitioner began to receive a series of disciplinary warnings citing poor job performance.
22. After each of the warnings the Petitioner received, she attempted to respond to the charges. In addition to attempting to respond to Ms. Light's criticism, the Petitioner attempted to change her circumstances by voluntarily taking a demotion from Secretary IV to Clerk III in February, 1990.
23. As the Clerk III, the Petitioner no longer had responsibility for assisting with the special events or providing secretarial support for Ms. Light. Mr. Hackney became the Petitioner's supervisor.
24. Although the Petitioner got along with Mr. Hackney, she was not aware that in May, 1990, specifically on May 12, 1990, Mr. Hackney was aware that the Petitioner's position was "terminal" and he expected her to be dismissed soon. Mr. Hackney wrote this information in a memorandum to a former Zoo employee, Camille Cunnup. Upon questioning on the witness stand about these events, Mr. Hackney first denied in absolute terms that he would have ever said that the Petitioner was "terminal"; but upon being shown the May 12, 1990, memorandum, Mr. Hackney changed his testimony and said he did not recall writing the memo. Even after seeing the document, Mr. Hackney said he did not recall the reasons why he would have said that the Petitioner was "terminal."
25. Mr. Hackney was not a credible witness.
26. During further testimony at trial, Mr. Dwight Holland, the former Zoo Curator, and Ms. Dorothy Lilly, the Zoo director's secretary, both testified that Greta Lint told each of them that Ms. Light was conspiring to set the Petitioner up for firing.
27. Ms. Lint did not deny that she had told either Mr. Holland or Ms. Lilly that Ms. Light was conspiring to fire the Petitioner. When questioned during the hearing, she only responded that if Mr. Holland and Ms. Lilly testified that she had said such, she would not dispute it.
28. Ms. Light went to see Ms. Lint at her home in order to solicit information from Ms. Lint which she could include in the Petitioner's final written warning.
29. The final sequence of warnings against the Petitioner all took place approximately six months apart and usually involved work that was generated directly from Ms. Light, and not from the Petitioner's supervisor, Mr. Hackney, or anyone else.
30. At the time of her dismissal and throughout the time of her working for the Respondent, the Petitioner was the only African-American working in the Marketing Office of the Zoo. She was also the only African-American working in the Zoo's administrative offices.
31. With the exception of Elise Light, Rod Hackney, Gay Brewer, and Judy Hilliard, none of the persons who worked with the Petitioner at the Zoo testified that they had problems getting along with the Petitioner or problems understanding the Petitioner's diction. None of them ever observed the activities which were testified to by Ms. Light and Mr. Hackney, such as the Petitioner's excessive typographical errors, absences from work during the day, rudeness to fellow workers, threatening attitude toward fellow workers, and a general failure to perform her duties. This included the

testimony of Dorothy Lilly, Lynn Adams, Rod Craven, R.B. York, Dwight Holland, and Karen Sandifer.

32. On November 2, 1990, the Respondent terminated the Petitioner's employment as a Clerk III for job performance. The reasons for the termination as stated by the Respondent included the Petitioner's failure to complete the typing in a timely manner of a 3-page speech to be given by Ms. Light, failure to complete in a timely manner the typing of three letters, failure to complete in a timely, professional manner the typing of review comments on three WPPR's, failure to timely complete the typing of mailing labels, and failure to timely return a check for brochures. All of these assignments were given to the Petitioner by Ms. Light.
33. The Petitioner never discussed her health in any great detail with Ms. Light. Ms. Light was aware, however, that the Petitioner suffered from headaches and she gave the Petitioner information regarding migraine headaches. There is no evidence that Ms. Light asked the Petitioner for further details regarding her health problems, or that the Petitioner refused to provide information when requested to do so.
34. After the Petitioner was terminated, she was succeeded in the Clerk III position by a white women.
35. The Marketing Office, at the time of the Petitioner's employment, was responsible for \$1,000,000 a year in free advertising for the Zoo. The Marketing Office's primary job is to raise attendance at the Zoo, which in turn provides Zoo revenue. The objective of the free advertising obtained for the Zoo by the Marketing Office is to raise attendance. Due to budget cuts and the resulting pressure to increase Zoo revenue, the atmosphere in the Marketing Office was extremely tense.

The AAZPA Speech

36. On Monday, October 15, 1990, Ms. Light gave the Petitioner a copy of a speech she had typed on her computer at home but had not been able to get her computer to paginate the speech properly. The copy of the speech that the Petitioner was given was on one long sheet of paper and the print was very light. The Petitioner was instructed to make the speech fit on separate pages. The Petitioner asked Ms. Light for the disk that she had used to write the speech. Ms. Light told the Petitioner that the disk was at her home because she needed it there for other work and that the Petitioner could "cut and paste" to make the paragraphs fit if that would work. Ms. Light informed the Petitioner that she needed the speech by Wednesday, October 17, 1990. The Petitioner cut and pasted the speech so that it was on three and one half separate pages and then made a copy which she gave to Ms. Light the next day.
37. On Thursday, October 18, 1990, Ms. Light returned the speech to the Petitioner indicating that she did not think the speech would reproduce well because it was so light. Ms. Light suggested that the Petitioner should simply retype the speech and gave the Petitioner a copy of AAZPA guidelines for the Petitioner to follow in retyping the speech which she now wanted completed by Friday, October 19, 1990.
38. While she was substituting for the Director's secretary, the Petitioner retyped the speech on a computer in the Director's secretary's office on October 19, 1990. She had some problems with the margins using a software known as DW4 and asked a fellow employee who was familiar with the program for assistance. The Petitioner returned the speech to Ms. Light on Friday, October 19, 1990 at approximately 3:45 p.m.

The Letters

39. During the week beginning October 15, 1990, Ms. Light gave the Petitioner a letter to type and at the same time informed the Petitioner that other letters would be forthcoming. The Petitioner typed the letter given her on October 17, 1990. The Petitioner was never given the other letters that Ms.

Light said would be forthcoming and which Ms. Light gave to Ms. Lilly to type when the Petitioner was out on sick leave on Monday, October 22, 1990.

The WPPR's

40. The Petitioner was given the task of typing Work Planning and Performance Reviews (WPPR's) for Rod Hackney, Chris Bulla, and Rod Hackney during the week beginning October 22, 1990. Ms. Light testified that she was not sure now whether it was the beginning or the end of the review cycle, but she thought it was the end and all the Petitioner had to type were end comments which would have been brief and should not have taken the Petitioner any longer than twenty minutes. According to the Petitioner's own WPPR, the review period ended September 30, 1990. Therefore, any WPPR's the Petitioner would have been typing during the week of October 22, 1990, would have been for the new review cycle beginning October 1, 1990.
41. Because of her other responsibilities, especially providing phone coverage, the Petitioner was rarely ever able to type any documents straight through from beginning to end without interruption.
42. The Petitioner was given Rod Hackney's WPPR during the afternoon on October 23, 1990. She began typing Mr. Hackney's WPPR during the afternoon on October 24, 1990.
43. On October 24, 1990, Ms. Light gave the Petitioner Chris Bulla's WPPR at approximately 4:15 p.m. with a note attached informing the Petitioner that the WPPR needed to be completed by noon the next day. At the time the Petitioner received Ms. Bulla's WPPR, she was processing the afternoon mail and already had other assignments from Mr. Hackney, Ms. Bulla, Ms. Lint, and Ms. Light. In addition, she knew she would have to process the morning mail the next day, plus meet with Mr. Hackney regarding her own WPPR during the morning. The Petitioner wrote Ms. Light a note informing her that it would be impossible for her to meet the noon deadline for Ms. Bulla's WPPR and suggested that maybe Ms. Bulla could type her own WPPR or the Petitioner could get Ms. Bulla's WPPR to Ms. Light by noon on Friday, October 26, 1990. The Petitioner and Ms. Light negotiated a compromise deadline of 5:00 p.m., Thursday, October 25, 1990.
44. The Petitioner gave Ms. Light Mr. Hackney's and Ms. Bulla's WPPR's at approximately 4:40 p.m. on Thursday, October 25, 1990. At that time, Ms. Light handed the Petitioner Ms. Lint's WPPR and asked her if she could complete it by 5:00 p.m. The Petitioner informed Ms. Light that she would begin typing Ms. Lint's WPPR, and if she could not complete it by 5:00 p.m., she would get it to her the next morning.
45. On October 26, 1990, the Petitioner had to resolve a problem regarding payroll checks that had not arrived in the Courier mail. She then completed Ms. Lint's WPPR and gave it to Ms. Light by 9:30 a.m.
46. The deadline for submitting WPPR's for the October 1, 1990 through June 30, 1991 review cycle to the Zoo's Personnel Department was October 26, 1990.
47. The Respondent contends that the WPPR's prepared by the Petitioner were very unprofessional and messy. The Petitioner contends that the quality of work on the WPPR's was comparable to that prepared by other divisions of the Zoo. There were no exhibits presented during the hearing which would enable a finder of facts to resolve the issue of the quality of the Petitioner's work as related to the preparation of the WPPR's.

Labels for Public Service Announcements

48. The Petitioner was responsible for ordering special mailers and typing labels for 50 boxes of radio public service announcement tapes. The requisition for the special mailers is dated October 23, 1990, and indicates the mailers for this project were needed as soon as possible. Ms. Light initialed the

requisition.

49. The mailers were ordered on October 25, 1990 and 100 of the 125 ordered were received on October 26, 1990. The other 25 mailers were received on October 29, 1990.
50. The Petitioner typed the labels for the fifty special mailers and filed them.
51. On Saturday, October 27, 1990, Ms. Light found the public service announcements and the label list on the Petitioner's desk. She did not find the labels and did not ask the Petitioner about the labels during the three hours that both she and the Petitioner were in the office the next day, Sunday, October 28, 1990.
52. Since Ms. Light did not see the labels on the Petitioner's desk with the announcements and label list, she assumed that the Petitioner had not typed them.
53. The Petitioner took the labels to the receptionist who was to process the mailing on Monday, October 29, 1990.
54. The Petitioner did not type the labels on Monday, October 29, 1990 as alleged in the November 2, 1990 memo from Ms. Light and Mr. Hackney. Except for the time spent doing the morning and afternoon mail, the Petitioner devoted Monday to helping the Marketing Office move to its new location.
55. There was no evidence presented regarding a specific date by which the public service announcements had to be sent.

The Brochures Check

56. The Marketing Office received a \$15.00 check for brochures which had been sent to an organization. Since the Zoo was no longer charging for brochures, the Petitioner gave the check to Ms. Light with a note asking whether she should process the check or send it back.
57. Ms. Light wrote the Petitioner and Mr. Hackney a note on November 1, 1990 in which she stated that the check and cover letter had disappeared during the move and directing the Petitioner and Mr. Hackney to tell anyone who calls about the check to void the check.
58. The memo written by Ms. Light on November 1, 1990, does not mention finding the check on the Petitioner's desk on October 27, 1990. The memo also does not mention that Ms. Light had previously instructed the Petitioner to call the person who had sent the check and offer to return the check and that the Petitioner had failed to do what she had been instructed to do as is alleged in the November 2, 1990 memo regarding the reasons for the Petitioner's dismissal.
59. Ms. Light offered no explanation for the inconsistencies reflected in documents she wrote about the check incident on November 1 and 2, 1990.

The Signing of the Petitioner's WPPR's

60. The Zoo had an October 5, 1990, deadline for getting its WPPR's to the Respondent in Raleigh, and Ms. Light had been instructed that all WPPR's had to be in the Zoo's personnel office by October 1, 1990.
61. The Petitioner and her supervisor, Rod Hackney, reviewed her WPPR and calculated a preliminary score in the highly proficient range on Friday, September 28, 1990. Thereafter, Mr. Hackney finalized the WPPR by typing in the ratings and totalling the Petitioner's final score which was 242, a very high proficient rather than the highly proficient they had calculated during the joint review.

Mr. Hackney signed the Petitioner's WPPR on September 28, 1990.

62. It is alleged in the November 2, 1990 dismissal memo that the Petitioner refused to sign her WPPR on Monday, October 1, 1990 and did not sign it until Ms. Light called her at home on October 3, 1990 and threatened her with insubordination if she did not come in and sign the WPPR the next day.
63. The Petitioner testified, and her time sheet corroborates her testimony, that she was absent from work due to illness on October 1, 1990. The Petitioner was also absent from work on October 2 and 3. Thus, there was no opportunity for the Petitioner to refuse to sign her WPPR on those dates.
64. The Petitioner signed her WPPR for the April 1, 1990 through September 30, 1990 review cycle on October 4, 1990.
65. On October 25, 1990, the Petitioner met with Mr. Hackney to go over the performance expectations for the next review cycle. The Petitioner told Mr. Hackney that she would like for the WPPR to reflect that her signature did not mean that she agreed with the WPPR's expectations. Mr. Hackney agreed to check with the Zoo's personnel office to see if the Petitioner's request could be met and he indicated that he would get back with the Petitioner once he had a response from personnel. Mr. Hackney did not contact the Petitioner about her WPPR again prior to her dismissal on November 2, 1990.
66. The Petitioner did not refuse to sign the WPPR for the review cycle beginning October 1, 1990.
67. It is clear from their demeanor throughout the hearing and from their testimony that there is a great deal of animosity between the Petitioner and Ms. Light.

Based on the foregoing Findings of Fact, the undersigned Administrative Law Judge makes the following:

CONCLUSIONS OF LAW

Just Cause

1. A State employee may be discharged for inadequate performance of duties provided that the employee has received the requisite number of warnings. Leiphart v. School of the Arts, 80 N.C. App. 339, 342 S.E.2d 914, cert. denied, 318 N.C. 507, 349 S.E.2d 862 (1986). In attempting to show just cause for a discharge, an agency must show that the employee has not performed with reasonable care, diligence, and attention. Job assignments must be reasonable and the employee must have failed to make a reasonable effort to meet them. Walker v Department of Human Resources, 100 N.C. App. 498, 397 S.E.2d 350, cert. denied, 328 N.C. 98, 402 S.E.2d 430 (1990).
2. The Petitioner's assignments (make a speech conform to publishing guidelines, type letters, type three WPPR's, type mailing labels, and return a check) appear on their face to be reasonable assignments. However, the reasonableness of the assignments and of the Petitioner's efforts to perform the assignments must be evaluated in the context of the Petitioner's other office responsibilities.
3. Much of the basis for determining the issue of reasonableness in this case turns upon the credibility of the two main protagonists, the Petitioner and Elise Light. Several factors lead to the conclusion that the Petitioner is the more credible of the two. Some of those factors are: a) Inconsistencies between Ms. Light's testimony and documents introduced, as illustrated by the brochures check incident, raise doubts about the accuracy of her evaluation of the Petitioner's performance; b) The total lack of credibility of Ms. Light's primary corroborating witness, Rod Hackney, after being confronted with a damaging memo written by him; c) A significant number of other Zoo employees did not have the problems working with the Petitioner or understanding the Petitioner's diction that Ms. Light had; d) The Petitioner's actions in documenting events were consistent with the actions of

a reasonable person who believed they were being harassed; e) Ms. Light's actions in giving work directly to the Petitioner after she was demoted to Secretary III even though Mr. Hackney was Petitioner's supervisor and prior to Petitioner resuming the Secretary III position, the Secretary IV was responsible for providing secretarial services to Ms. Light.

4. None of the "deadlines" that the Petitioner allegedly missed were in actuality missed because either the Petitioner and Ms. Light continued to negotiate regarding the ultimate deadline or no deadline ever existed for completion of the task assigned.
5. As far as the Respondent's complaints about the quality of the Petitioner's work, no evidence other than Ms. Light and Mr. Hackney's testimony was produced. No examples of the Petitioner's deficient work product between October 1, 1990 and her dismissal on November 2, 1990 was introduced in evidence. Without some documentary evidence to corroborate Ms. Light's and Mr. Hackney's allegations, their testimony is not credible and the Respondent has failed to show by the greater weight of the evidence that the Petitioner's work product was messy and unprofessional.
6. There is no evidence to support the Respondent's allegation that the Petitioner deliberately delayed signing her WPPR's.

Register Editor's Note: There is no Conclusion of Law #7 or #8.

9. The Respondent has failed to show by the greater weight of the evidence that the Petitioner was not making a reasonable effort to perform the tasks assigned to her which formed the basis for her dismissal for inadequate job performance.
10. The Respondent did not have just cause to dismiss the Petitioner from her employment as a Secretary III.

Racial Discrimination

11. Where discrimination is an issue, the Petitioner bears the ultimate burden of proof. The Petitioner has failed to show that a discriminatory reason more likely than not motivated the Respondent's decision to dismiss her. The evidence indicates that it is possible that racial animus motivated Ms. Light's actions, but it is equally possible that the animosity between the Petitioner and Ms. Light had some other basis. Evidence which merely lets the trier of fact choose between two advocated versions of the truth is not sufficient for an employee to discharge his/her burden of proof on the discrimination issue.
12. The Petitioner has not proven that the Respondent unlawfully discriminated against her.

RECOMMENDED DECISION

The State Personnel Commission will make the Final Decision in this contested case. It is recommended that the Commission adopt the Findings of Fact and Conclusions of Law set forth above and reinstate the Petitioner to her position as Clerk III at the N.C. Zoological Park with back and front pay; attorney's fees; and expungement of any negative material in her personnel file from October 1, 1990 until the date of her 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 Statutes section 150B-36(b).

NOTICE

Before the State Personnel Commission makes the FINAL DECISION, it is required by North Carolina General Statutes section 150B-36(a) 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.

The agency is required by North Carolina General Statutes section 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.

This the 12th day of April, 1993.

Brenda B. Becton
Administrative Law Judge

**N.C. DEPARTMENT OF HUMAN RESOURCES,
DIVISION OF MEDICAL ASSISTANCE,
Respondent.**

This contested case was heard by Fred G. Morrison Jr., Senior Administrative Law Judge, Office of Administrative Hearings, on January 29, 1993, in Raleigh, North Carolina, upon appeal from Respondent's denial of continuing private-duty nursing benefits for the Petitioner.

Petitioner was represented at the hearing by Cyndi Haden, Staff Attorney, North Central Legal Assistance Program. Respondent was represented by Claude Whitener, Associate Attorney General.

FOR THE PETITIONER:

Dr. Sheri Keitz
Petitioner's Physician

Elizabeth Louise Barnard
Registered Nurse

Patricia Ann Sumpter
Registered Nurse

FOR THE RESPONDENT:

Olivia Hill
Registered Nurse

1. The Petitioner is a fifty-year old male who has received private-duty nursing services through the Medicaid Program.
2. The Petitioner was hospitalized at Duke University Medical Center from 1990 to 1991, and was out of the hospital for only several days over that entire year.
3. Upon Petitioner's discharge from the hospital in October 1991, and continuing to March 2, 1992, the Respondent provided private duty nursing benefits for Petitioner for eight (8) hours per day, seven (7) days per week. Duke University Medical Center paid for private duty nursing care for Petitioner for eight hours per day, seven days per week. These services were and are medically necessary.
4. On March 2, 1992, Respondent notified Petitioner that Respondent would no longer provide private duty nursing care to Petitioner.
5. Petitioner appealed the reduction in benefits through the Respondent's appeal process. The Petitioner

has continued to receive benefits from the Respondent pending this appeal.

6. On April 10, 1992, a Reconsideration Review was held on Petitioner's appeal. The Hearing Officer upheld Respondent's decision.
7. Petitioner appealed the Hearing Officer's decision to the Office of Administrative Hearings on June 2, 1992.
8. Dr. Sheri Keitz is the medical resident personally responsible for Petitioner's primary care. She has treated Petitioner since October, 1991. She was qualified as an expert witness.
9. Doctor Keitz testified that the Petitioner has the following medical complications during the period that is on appeal:
 - a) diabetes, which is difficult to manage;
 - b) paraplegia, following surgery to the spine;
 - c) very severe and extensive Stage IV decubitus ulcers;
 - d) osteomyelitis, caused by the methacillin resistant staff (sic) aureus bacteria;
 - e) intermittent bleeding, caused by arteriovenous malformations in the duodenum;
 - f) chronic anemia;
 - g) poor nutrition that requires tube feeding;
 - h) essential thrombosis cytosis, a disorder of the platelets; and
 - i) chronic foley catheterization.

Doctor Keitz testified that it was her professional opinion that Petitioner needs sixteen (16) hours of private-duty nursing care daily.

10. Doctor Keitz testified that private-duty nursing care was necessary to have someone to whom, "I can give orders to over the phone to administer or change or add medicine when he needs that" (and) "... someone who is really at the level of being able to do appropriate evaluation in a patient who is potentially unstable at times."
11. Doctor Keitz testified that the Petitioner's condition is not very stable, due to his intermittent bleeding, and susceptibility to infection due to the skin breakdown, diabetes, and foley catheterization. She stated that the diabetes impairs healing.
12. Elizabeth Barnard is a registered nurse with ten years experience. Nurse Barnard was qualified as an expert witness. Nurse Barnard provided direct patient care to Petitioner from October 1992 to January 1993.
13. Nurse Barnard testified that it was her professional opinion that Petitioner required sixteen (16) hours of private-duty nursing care daily.
14. Nurse Barnard testified that Petitioner's medical problems interact with each other as follows:
 - a) Petitioner's fluid loss interferes with his electrolytes;

- b) Petitioner has multiple possible sources of infection through his wounds, urinary track catheterization, gastronomy tube and Hickman catheter; and
 - c) Infection will affect the blood sugar requiring increased insulin.
- 15. Nurse Barnard testified that Petitioner needed constant assessment by a nurse.
 - 16. Nurse Barnard testified that Petitioner's blood sugars are very unpredictable, and that he has five finger stick tests each day. Nurse Barnard also testified that Petitioner receives varying amounts of insulin by injections five (5) times each day.
 - 17. Nurse Barnard testified further that due to Petitioner's paraplegia, it would be impossible for him to self-administer varying amounts of insulin.
 - 18. Nurse Barnard and Nurse Hill each testified that the North Carolina Board of Nursing regulations mandate that a registered nurse or licensed practical nurse administer insulin.
 - 19. Ms. Patricia Ann Sumpter is a registered nurse with sixteen (16) years of experience. She is currently an Administrator and Director of Health Care Services.
 - 20. Ms. Sumpter was qualified as an expert witness as a nurse and person with knowledge in the field of providing services to patients such as Petitioner.
 - 21. Nurse Sumpter testified that in her professional opinion, Petitioner required private-duty nursing care from seven in the morning (7:00 AM) to eleven at night (11:00 PM), or sixteen (16) hours per day.
 - 22. Ms. Olivia Hill testified for the Respondent. Ms. Hill is a licensed nurse working as a supervisor of the Specialized Care Services Unit of the Division of Medical Assistance.
 - 23. Nurse Hill testified that she felt that Petitioner did not meet the criteria for sixteen hours of private-duty nursing care daily.
 - 24. The original determination to terminate services was based on a review of doctor's orders, nursing assessments and nursing notes. Nurse Hill visited Petitioner, but did not perform a hands-on assessment.

CONCLUSIONS OF LAW

- 1. The controlling legal principle in this case is the Respondent's policy on private-duty nursing enunciated in 10 N.C. Admin. Code, Chapter 26-B, Section 0121.
- 2. 10 N.C. Admin. Code, Chapter 26-B, Section 0121(c) provides for the evaluation of the necessity for private-duty nursing as follows:

Private duty nursing services are considered medically necessary when the person must require substantial and complex nursing care by a licensed nurse. Professional judgment and a thorough evaluation of the medical complexity and psychosocial needs of the patient are involved in determining the need for PDN. The following situations represent the usual types of cases that may require PDN, though the list is not meant to be all inclusive: . . .

- 3. Based on the testimony of all the witnesses, it is concluded as a matter of law that Petitioner's medical condition requires continuing skilled nursing care and Petitioner qualifies for benefits under the above cited provision. Therefore, the Petitioner is entitled to continue to receive eight hours a day, seven days a week of Medicaid-funded private duty nursing services.

Based on the foregoing Findings of Fact and Conclusions, the Senior Administrative Law Judge makes the following:

RECOMMENDED DECISION

It is hereby recommended that Petitioner was eligible for and should continue to receive private-duty nursing benefits from Respondent for eight (8) hours per day, seven (7) days per week.

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 North Carolina Department of Human Resources.

This the 30th day of April, 1993.

Fred G. Morrison Jr.
Senior Administrative Law Judge

Robinson. Mr. Robinson showed Mr. Grooms the caskets that were on display and told Mr. Grooms that he would make arrangements for a casket at the best price available. Mr. Robinson determined the price of the casket and services to be \$3,360.00. Mr. Grooms spoke to a lady, presumably Ms. Hill, who filled out and signed the contract on behalf of the respondent. Payments were made to Mr. Robinson who gave Mr. Grooms the receipts.

3. In May, 1992, Mr. Robinson informed Ms. Hill of the arrangements that he had made with Mr. John Ferrell's family. In the presence of the family, she filled out a contract using the information supplied by Mr. Robinson. About the same time, Mr. Robinson directed her to fill out a contract for Mrs. Peace's funeral according to information supplied by Mr. Robinson. Ms. Hill was not present when the arrangements were made by Mr. Robinson and accepted by the family.
4. Ms. Hill was employed by Mr. Robinson in April, 1992, after a difficult search for a manager. Although licensed to practice funeral service, Ms. Hill had never made a funeral arrangement on her own. A former manager offered assistance to Ms. Hill, but Ms. Hill remained unable to perform her duties. Ms. Hill did not know that the cemetery set the prices for lots. Mr. Robinson made the funeral arrangements with the families of Mrs. Peace and Mr. Ferrell because of the inexperience of Ms. Hill and the inability to promptly replace Ms. Hill. Ms. Hill resigned about the end of May, 1992.

CONCLUSIONS OF LAW

1. Mr. Robinson violated G.S. 90-210.25(f) by practicing the profession of funeral directing and funeral service without having complied with the licensing provisions of G.S. Chapter 90, Article 13A.
2. The petitioner may suspend or revoke an establishment permit when an owner or officer, such as Mr. Robinson, violates any provision of G.S. Chapter 90, Article 13A, such as G.S. 90-210.25(f). In deciding whether to suspend or revoke a permit, the petitioner must consider the facts in each case. Although Mr. Robinson violated the law, mitigating factors were that the manager, due to inexperience, was unable to make the funeral arrangements and that Mr. Robinson, as owner and officer, believed it was necessary for him to make the arrangements.

PROPOSAL FOR DECISION

It is proposed that the respondent's establishment permit be suspended for thirty days.

NOTICE

The final decision in this contested case shall be made by the Board of Mortuary Science. Each party has the right to file exceptions and proposed findings of fact and to present oral and written arguments to this agency.

This the 29th day of April, 1993.

Robert Roosevelt Reilly, 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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3	Auditor	Barber Examiners	6
4	Economic & Community Development	Certified Public Accountant Examiners	8
5	Correction	Chiropractic Examiners	10
6	Council of State	General Contractors	12
7	Cultural Resources	Cosmetic Art Examiners	14
8	Elections	Dental Examiners	16
9	Governor	Dietetics/Nutrition	17
10	Human Resources	Electrical Contractors	18
11	Insurance	Electrolysis	19
12	Justice	Foresters	20
13	Labor	Geologists	21
14A	Crime Control & Public Safety	Hearing Aid Dealers and Fitters	22
15A	Environment, Health, and Natural Resources	Landscape Architects	26
		Landscape Contractors	28
16	Public Education	Marital and Family Therapy	31
17	Revenue	Medical Examiners	32
18	Secretary of State	Midwifery Joint Committee	33
19A	Transportation	Mortuary Science	34
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*21	Occupational Licensing Boards	Nursing Home Administrators	37
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