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# *The* **NORTH CAROLINA REGISTER**

IN THIS ISSUE . . . . .

## **EXECUTIVE ORDER**

### **IN ADDITION**

Voting Rights Act  
Final Decision Letter

### **PROPOSED RULES**

Community Colleges  
Cosmetic Art Examiners  
Environment, Health, and Natural Resources  
Human Resources  
Labor  
Refrigeration Examiners

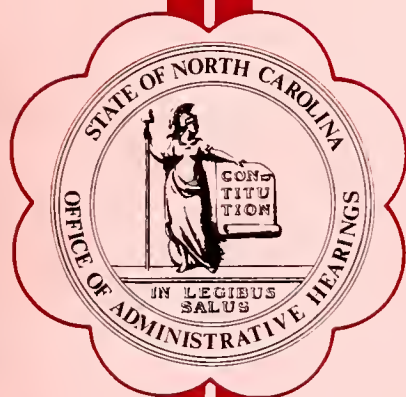
### **RRC OBJECTIONS**

### **RULES INVALIDATED BY JUDICIAL DECISION**

### **CONTESTED CASE DECISIONS**

**ISSUE DATE:** November 15, 1993

**Volume 8 • Issue 16 • Pages 1513 - 1568**



# 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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## ISSUE CONTENTS

<b>I. EXECUTIVE ORDER</b>	
Executive Order 32 . . . . .	1513
<b>II. IN ADDITION</b>	
Voting Rights Act . . . . .	1514
Tax Review Board . . . . .	1516
<b>III. PROPOSED RULES</b>	
<b>Community Colleges</b>	
Community Colleges . . . . .	1527
<b>Environment, Health, and         Natural Resources</b>	
Vital Records . . . . .	1525
<b>Human Resources</b>	
Facility Services . . . . .	1519
<b>Labor</b>	
Office of Occupational Safety and Health . . . . .	1523
<b>Licensing Boards</b>	
Cosmetic Art Examiners . . . . .	1526
Refrigeration Examiners . . . . .	1526
<b>IV. LIST OF RULES CODIFIED . . .</b>	1535
<b>V. RRC OBJECTIONS . . . . .</b>	1540
<b>VI. RULES INVALIDATED BY     JUDICIAL DECISION . . . . .</b>	1543
<b>VII. CONTESTED CASE DECISIONS</b>	
Index to ALJ Decisions . . . . .	1544
Text of Selected Decisions	
93 ABC 0433 . . . . .	1553
93 OSP 0493 . . . . .	1558
93 ABC 0601 . . . . .	1560
<b>VIII. CUMULATIVE INDEX . . . . .</b>	1566

# NORTH CAROLINA REGISTER

## *Publication Schedule*

*(July 1993 - May 1994)*

Volume and Issue Number	Issue Date	Last Day for Filing	Last Day for Electronic Filing	Earliest Date for Public Hearing <i>15 days from notice</i>	* End of Required Comment Period <i>30 days from notice</i>	Last Day to Submit to RRC	** Earliest Effective Date
8:7	07/01/93	06/10/93	06/17/93	07/16/93	08/02/93	08/20/93	10/01/93
8:8	07/15/93	06/23/93	06/30/93	07/30/93	08/16/93	08/20/93	10/01/93
8:9	08/02/93	07/12/93	07/19/93	08/17/93	09/01/93	09/20/93	11/01/93
8:10	08/16/93	07/26/93	08/02/93	08/31/93	09/15/93	09/20/93	11/01/93
8:11	09/01/93	08/11/93	08/18/93	09/16/93	10/01/93	10/20/93	12/01/93
8:12	09/15/93	08/24/93	08/31/93	09/30/93	10/15/93	10/20/93	12/01/93
8:13	10/01/93	09/10/93	09/17/93	10/18/93	11/01/93	11/22/93	01/01/94
8:14	10/15/93	09/24/93	10/01/93	11/01/93	11/15/93	11/22/93	01/01/94
8:15	11/01/93	10/11/93	10/18/93	11/16/93	12/01/93	12/20/93	02/01/94
8:16	11/15/93	10/22/93	10/29/93	11/30/93	12/15/93	12/20/93	02/01/94
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8:18	12/15/93	11/24/93	12/01/93	12/30/93	01/14/94	01/20/94	03/01/94
8:19	01/03/94	12/08/93	12/15/93	01/18/94	02/02/94	02/21/94	04/01/94
8:20	01/14/94	12/21/93	12/30/93	01/31/94	02/14/94	02/21/94	04/01/94
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8:22	02/15/94	01/25/94	02/10/94	03/02/94	03/17/94	03/21/94	05/01/94
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8:24	03/15/94	02/22/94	03/10/94	03/30/94	04/14/94	04/20/94	06/01/94
9:1	04/04/94	03/11/94	03/18/94	04/19/94	05/04/94	05/20/94	07/01/94
9:2	04/15/94	03/24/94	03/31/94	05/02/94	05/16/94	05/20/94	07/01/94
9:3	05/02/94	04/11/94	04/18/94	05/17/94	06/01/94	06/20/94	08/01/94
9:4	05/16/94	04/25/94	05/02/94	05/31/94	06/15/94	06/20/94	08/01/94

*Note: Time is computed according to the Rules of Civil Procedure, Rule 6.*

*\* An agency must accept comments for at least 30 days after the proposed text is published or until the date of any public hearing, whichever is longer. See G.S. 150B-21.2(f) for adoption procedures.*

*\*\* 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.*

*Revised 07/93*



**EXECUTIVE ORDER NUMBER 32  
GOVERNOR'S ADVISORY COMMISSION  
ON MILITARY AFFAIRS**

WHEREAS, the United States Armed Forces play a vital role in the economy and culture of North Carolina; and

WHEREAS, the United States Armed Forces are facing drastic changes in their size, composition and mission,

NOW, THEREFORE, by the power vested in me as Governor by the laws and Constitution of North Carolina, **IT IS ORDERED:**

**Section 1. ESTABLISHMENT**

The Governor's Advisory Commission on Military Affairs is hereby re-established. It shall be comprised of at least fifteen (15) members appointed by the Governor who shall serve for terms of three (3) years at the pleasure of the Governor. In addition to the appointed members, the following twelve (12), or their designees, shall serve as ex-officio, non-voting members:

- (1) Secretary of Administration;
- (2) Secretary of Transportation;
- (3) Secretary of Environment, Health, and Natural Resources;
- (4) Secretary of Crime Control and Public Safety;
- (5) Secretary of Commerce;
- (6) Base commanders of Fort Bragg, Camp Lejeune, Cherry Point and the Elizabeth City Coast Guard Air Station;
- (7) Wing Commanders of the 4th and 23rd Wing; and
- (8) Adjutant General of the North Carolina National Guard.

The Governor shall designate one of the voting members as Chairperson.

**Section 2. MEETINGS**

The Commission shall meet regularly at the call of the Chairperson or the Governor.

**Section 3. DUTIES**

The Commission shall have the following duties:

- (a) Provide a forum for the discussion of issues concerning major military installations in the State, active and retired military personnel, and their families.
- (b) Promote cooperation and understanding between the military components, the communities, our congressional delega-

tion, the general public, and State, federal, and local governments.

- (c) Advise the Governor on measures and activities which would support and assist North Carolina military families and promote defense installations within the State.

**Section 4. ADMINISTRATION**

Support staff for the Commission shall be provided by the Department of Crime Control and Public Safety. Members shall serve without compensation, but may receive reimbursement, contingent upon the availability of funds, for travel and subsistence in accordance with N.C.G.S. 138-5, 138-6, 120-3.1.

**Section 5. EFFECT ON OTHER EXECUTIVE ORDERS**

Martin Administration Executive Order Number 151, as amended by Executive Orders 163 and 170, and as extended by 185, is hereby rescinded.

This Order shall be effective immediately.

Done in the Capital City of Raleigh, North Carolina, this the 21st day of October, 1993.

*This Section contains public notices that are required to be published in the Register or have been approved by the Codifier of Rules for publication.*

U.S. Department of Justice

Civil Rights Division

Voting Section

P.O. Box 66128

Washington, D.C. 20035-6128

JPT:GS:CGM:emr  
DJ 166-012-3  
93-2827

October 14, 1993

Richard J. Rose, Esq.  
Poyner & Spruill  
P. O. Box 353  
Rocky Mount, North Carolina 27802-0353

Dear Mr. Rose:

This refers to two annexations [Nos. 194 and 195 (1993)] and their designation to single-member districts of the City of Rocky Mount in Edgecombe and Nash Counties, North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your submission on August 16, 1993.

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

Sincerely,

James P. Turner  
Acting Assistant Attorney General  
Civil Rights Division

By:

Steven H. Rosenbaum  
Chief, Voting Section

U.S. Department of Justice

Civil Rights Division

JPT:GS:RA:emr:lrj  
DJ 166-012-3  
93-3065

Voting Section  
P.O. Box 66128  
Washington, D.C. 20035-6128

October 27, 1993

Michael Crowell, Esq.  
Tharrington, Smith & Hargrove  
P. O. Box 1151  
Raleigh, North Carolina 27602-1151

Dear Mr. Crowell:

This refers to the procedures for conducting the November 2, 1993, special bond election for the City of Laurinburg in Scotland County, North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your submission on August 30, 1993.

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

Sincerely,

James P. Turner  
Acting Assistant Attorney General  
Civil Rights Division

By:

Steven H. Rosenbaum  
Chief, Voting Section

STATE OF NORTH CAROLINA

BEFORE THE TAX REVIEW BOARD

COUNTY OF WAKE

In the matter of:

The Proposed Assessment of  
 Additional Sales and Use Tax for  
 the Period 1 February 1985 through  
 30 September 1989 by the Secretary  
 of Revenue against **TMP Video  
 Communications Corporation.**

ADMINISTRATIVE

DECISION NUMBER: 276

THIS MATTER was heard before the undersigned duly appointed and acting members of the Tax Review Board at its regular meeting in the City of Raleigh on 10 September 1993, upon Petition of **TMP Video Communications Corporation** (hereinafter "Petitioner") for review of a Final Decision of the Deputy Secretary of Revenue sustaining a proposed assessment of additional sales and use tax for the period 1 February 1985 through 30 September 1989. The Petitioner was represented at the hearing by Luke D. Hyde and Herbert L. Hyde, attorneys at law; the Department of Revenue was represented at the hearing by Marilyn R. Mudge, Assistant Attorney General.

At the outset of the hearing, the Petitioner sought to introduce into evidence a videotape which the Petitioner asserted would provide important information about the Petitioner's business with regard to the issues raised in this matter. Counsel for the Department of Revenue objected to the introduction of this videotape on the grounds that it was not part of the record of proceedings before the Deputy Secretary of Revenue. Counsel for the Petitioner then asked that the matter be remanded to the Deputy Secretary in order for the Deputy Secretary to review the videotape and make additional findings and conclusions if appropriate.

AND IT APPEARING TO THE BOARD that this matter involves difficult questions concerning the application of the sales and use tax law to a business affected by rapidly changing technology;

AND IT FURTHER APPEARING TO THE BOARD that the interests of justice would be best served by allowing the Deputy Secretary of Revenue to consider additional evidence in order to fully develop the record with regard to the nature of the Petitioner's business;

IT IS THEREFORE ORDERED that the Petitioner's case is remanded to the Deputy Secretary of Revenue, where the Petitioner shall have the opportunity to present additional evidence to be taken and ruled upon by the Deputy Secretary.

Entered in the City of Raleigh this 28th day of October, 1993.

TAX REVIEW BOARD

\_\_\_\_\_  
 Harlan E. Boyles, Chairman  
 State Treasurer

\_\_\_\_\_  
 John E. Thomas  
 Chairman, Utilities Commission

\_\_\_\_\_  
 Jeff D. Batts



STATE OF NORTH CAROLINA

BEFORE THE TAX REVIEW BOARD

COUNTY OF WAKE

In the matter of:

The Proposed Assessment of

Additional Sales and Use Tax for

the Period 1 September 1989 through

31 July 1991 by the Secretary of

Revenue against **Down East****Rent-A-John, Incorporated.**

ADMINISTRATIVE

DECISION NUMBER: 277

THIS MATTER was heard before the undersigned duly appointed and acting members of the Tax Review Board at its regular meeting in the City of Raleigh on 10 September 1993, upon the issues raised in the Motion to Dismiss Appeal filed by the Department of Revenue on 30 August 1993. The Taxpayer, **Down East Rent-A-John, Incorporated**, was represented at the hearing by Darris W. Koontz and Thomas H. Cook Jr., attorneys at law; also present on behalf of the Taxpayer were John Smith, George Koontz, and Margie Bulris. The Department of Revenue was represented at the hearing by Marilyn R. Mudge, Assistant Attorney General; also present on behalf of the Department was William Smith. The hearing was limited to the matters raised in the Motion to Dismiss Appeal filed 30 August 1993, the Response and Countermotion filed 3 September 1993, and the Motion to Extend Time to File Petition and Permit Filing of Petition filed 10 September 1993.

The Board considered the following documents filed in this matter:

1. Notice of Intent, filed 4 May 1992.
2. Board acknowledgement of Item 1, advising that the Petition in this matter should be filed within 60 days after the date prescribed for filing the Notice of Intent, filed 13 May 1992.
3. Letter to J. Ward Purrington, Secretary of Revenue, dated 8 January 1993, with fifteen (15) pages of attachments, filed 11 January 1993.
4. Letter from C. B. McLean Jr., Board Executive Secretary, to Mr. John C. Smith Jr., President of Down East Rent-A-John, Inc., acknowledging receipt of Item 3.
5. Letter from William C. Smith to John C. Smith Jr., dated 27 January 1993 (copy to Board), filed 27 January 1993.
6. Notice of hearing, dated 6 August 1993.
7. Letter from Darris W. Koonce to Board, filed 13 August 1993.
8. Motion to Dismiss Appeal, filed 30 August 1993.
9. Response and Countermotion, filed 3 September 1993.
10. Affidavit of Betty P. Ward, filed 10 September 1993.
11. Affidavit of Jean T. Tripp, filed 10 September 1993.

12. Affidavit of Darris W. Koontz, filed 10 September 1993.
13. Affidavit of John C. Smith, filed 10 September 1993.
14. Affidavit of George E. Koontz, filed 10 September 1993.
15. Affidavit of Margie M. Bulris, filed 10 September 1993.
16. Certification of Betty K. Mohn, filed 10 September 1993.
17. Motion to Extend Time to File Petition and Permit Filing of Petition, filed 10 September 1993.

After carefully considering the arguments of counsel and the affidavits and matters of record in this appeal, the Board makes the following Findings of Fact:

1. The Taxpayer, on 4 May 1993, filed with the Board a one-page notice of intent dated 30 April 1992 and purporting to be signed by John C. Smith, president of Down East Rent-A-John, Incorporated. The notice of intent made reference to a final decision of the Deputy Secretary of Revenue rendered 7 April 1992.
2. On 13 May 1992, the Board issued a letter to the Taxpayer acknowledging receipt of the notice of intent, and advising the Taxpayer that the original petition should be filed within sixty (60) days after the date prescribed for filing the notice of intent.
3. The Taxpayer did not file a petition to the Tax Review Board within the time prescribed by G.S. 105-241.2(a).

Based on its Findings of Fact set forth above, the Board makes the following Conclusions of Law:

1. The time limits specified in G.S. 105-241.1(a) are jurisdictional in nature; the Board has no authority to consider petitions not filed within the time prescribed by law.
2. Because the Taxpayer did not file a petition within the time prescribed by G.S. 105-241.2(a), the Taxpayer's appeal must be dismissed.

IT IS THEREFORE ORDERED that the Taxpayer's appeal be, and it is hereby, **DISMISSED**.

Entered in the City of Raleigh this 28th day of October, 1993.

TAX REVIEW BOARD

\_\_\_\_\_  
Harlan E. Boyles, Chairman  
State Treasurer

\_\_\_\_\_  
John E. Thomas  
Chairman, Utilities Commission

\_\_\_\_\_  
Jeff D. Batts

**TITLE 10 - DEPARTMENT OF  
HUMAN RESOURCES**

*Notice is hereby given in accordance with G.S. 150B-21.2 that the Division of Facility Services intends to adopt rules cited as 10 NCAC 3R .4201 - .4207.*

*The proposed effective date of this action is February 1, 1994.*

*The public hearing will be conducted at 2:00 p.m. on December 15, 1993 at the Council Building, Room 201, 701 Barbour Drive, Raleigh, NC 27603.*

*Reason for Proposed Action: To implement recent legislative changes which require all hospices, hospice inpatient facilities and hospice residential care facilities to submit applications for review and to obtain a certificate of need.*

*Comment Procedures: All written comments must be received by Mr. Jackie R. Sheppard, APA Coordinator, DFS, PO Box 29530, Raleigh, NC 27626-0530, telephone (919) 733-2342, no later than December 15, 1993. Written comments submitted after the deadline will not be considered.*

**CHAPTER 3 - FACILITY SERVICES**

**SUBCHAPTER 3R - CERTIFICATE OF  
NEED REGULATIONS**

**SECTION .4200 - CRITERIA AND  
STANDARDS FOR HOSPICES, HOSPICE  
INPATIENT FACILITIES, AND HOSPICE  
RESIDENTIAL CARE FACILITIES**

**.4201 DEFINITIONS**

The following definitions shall apply to all rules in this Section:

- (1) "Bereavement counseling" means counseling provided to a hospice patient's family or significant others to assist them in dealing with issues of grief and loss.
- (2) "Caregiver" means the person whom the patient designates to provide the patient with emotional support, physical care, or both.
- (3) "Care plan" means a plan as defined in 10 NCAC 3T .0102 of the Hospice Li-

censing Rules.

- (4) "Continuous care" means care as defined in 42 CFR 418.204, the Hospice Medicare Regulations.
- (5) "Home-like" means furnishings of a hospice inpatient facility or a hospice residential care facility as defined in 10 NCAC 3T .1110 of the Hospice Licensing Rules.
- (6) "Homemaker services" means services provided to assist the patient with personal care, maintenance of a safe and healthy environment and implementation of the patient's care plan.
- (7) "Hospice" or "hospice home care program" means any coordinated program of home care as defined in G.S. 131E-176(13a).
- (8) "Hospice inpatient facility" means a facility as defined in G.S. 131E-176(13b).
- (9) "Hospice residential care facility" means a facility as defined in G.S. 131E-176(13c).
- (10) "Hospice service area" means:
  - (a) the single county in which the hospice or hospice inpatient facility will be established if the application is submitted to address the need identified for a single county as set forth in the applicable State Medical Facilities Plan (SMFP); or
  - (b) the contiguous counties for which the hospice or hospice inpatient facility will provide services if the application is submitted to address the need identified for a contiguous grouping of counties as defined in the applicable SMFP; or
  - (c) the single county in which the hospice residential care facility will be located.
- (11) "Hospice services" or "hospice home care services" means services as defined in G.S. 131E-201.
- (12) "Hospice staff" means personnel as defined in 10 NCAC 3T .0102 of the Hospice Licensing Rules.
- (13) "Inpatient care" means care provided as defined in 10 NCAC 3T .0501(6) of the Hospice Licensing Rules.
- (14) "Interdisciplinary team" means personnel as defined in G.S. 131E-201.
- (15) "Palliative care" means treatment as defined in G.S. 131E-201.
- (16) "Respite care" means care provided as defined in 42 CFR 418.98.



Statutory Authority G.S. 131E-177(1).

#### .4202 INFORMATION REQUIRED OF APPLICANT

(a) An applicant proposing to develop a hospice or hospice home care program shall complete the application form for Home Health Agency and Hospice Services. An applicant proposing to develop hospice inpatient facility beds or hospice residential care facility beds shall complete the application form for Hospice Inpatient and Hospice Residential Care Services.

(b) An applicant proposing to develop a hospice or hospice home care program, hospice inpatient facility beds, or hospice residential care facility beds shall provide the following information:

- (1) the county or counties included in the hospice service area for the proposed project in accordance with the definition in Rule .4201 of this Section;
- (2) the projected number of patient care days, by service type, to be provided in each of the first eight quarters following completion of the project and the methodology and assumptions used to make the projection;
- (3) the projected average annual cost per patient care day, by service type, for each of the first two operating years following completion of the project;
- (4) the names of the anticipated sources of referrals and copies of proposed patient referral agreements with health and social services providers located within the hospice service area; and
- (5) documentation that a written plan for bereavement counseling shall be initiated upon the first offering of hospice services and shall be completed prior to the provision of bereavement care.

(c) An applicant proposing to develop a hospice or hospice home care program shall also provide the following information:

- (1) an unduplicated count of the number of hospice home care patients projected to be served in each of the first eight quarters following completion of the project and the methodology and assumptions used to make the projections;
- (2) the projected number of hospice home care visits to be provided for each of the following services in each of the first eight quarters following completion

of the project and the methodology and assumptions used to make the projections:

- (A) nursing services;
- (B) social work services;
- (C) certified nursing assistant or home health aide services;
- (D) counseling services, including dietary, spiritual, and family counseling;
- (E) bereavement counseling services; and
- (F) volunteer services; and
- (3) documentation that the hospice or hospice home care program shall be licensed within one year after issuance of the certificate of need.
- (d) An applicant proposing to develop hospice inpatient or hospice residential care facility beds shall also provide the following information:
  - (1) a description of the means by which hospice home care services will be provided;
  - (2) copies of the proposed contractual agreements with the licensed hospice or hospice home care provider that will provide the hospice home care services;
  - (3) a copy of the admission policies, including the criteria that will be used to select persons for admission and to assure that terminally ill patients are served in their own homes as long as possible; and
  - (4) documentation that a home-like setting will be provided in the facility.

Statutory Authority G.S. 131E-177(1).

#### .4203 REQUIRED PERFORMANCE STANDARDS

(a) An applicant proposing to develop hospice inpatient facility beds or hospice residential care facility beds shall demonstrate that:

- (1) the average occupancy rate of the licensed beds in the facility is projected to be at least 50% for the last six months of the first operating year following completion of the project;
- (2) the average occupancy rate for the licensed beds in the facility is projected to be at least 75% for the second operating year following completion of the project; and
- (3) each existing facility which is located in the hospice service area and which has licensed beds of the type proposed by the applicant attained an occupancy rate



of at least 75% for the twelve month period reported on that facility's most recent Licensure Renewal Application Form.

(b) An applicant proposing to add beds to an existing hospice inpatient facility or hospice residential facility shall document that the average occupancy of the licensed beds in the existing facility was at least 75% for the nine months immediately preceding the submittal of the proposal.

(c) An applicant proposing to develop a hospice or hospice home care program shall demonstrate that no less than 80% of the total patient care days provided to Medicaid and Medicare patients will be provided in the patient's residence in accordance with 42 CFR 418.

*Statutory Authority G.S. 131E-177(1).*

#### **.4204 REQUIRED SUPPORT SERVICES**

(a) An applicant proposing to develop a hospice, hospice inpatient facility beds, or hospice residential care facility beds shall demonstrate that the following services will be provided by the applicant to the patient and the patient's family or significant others:

- (1) nursing services;
- (2) social work services;
- (3) counseling services including dietary, spiritual, and family counseling;
- (4) bereavement counseling services;
- (5) volunteer services; and
- (6) physician services.

(b) An applicant shall demonstrate that the services listed in Paragraph (a) of this Rule will be available 24 hours a day, seven days a week.

(c) An applicant proposing to develop a hospice, hospice inpatient facility beds, or hospice residential care facility beds shall provide documentation that the following services, when ordered by the attending physician and specified in the care plan, will either be provided directly by the hospice or provided through a contract arranged by the hospice:

- (1) hospice inpatient care,
- (2) physical therapy,
- (3) occupational therapy,
- (4) speech therapy,
- (5) home health aide services,
- (6) medical supplies or equipment,
- (7) respite care,
- (8) homemaker services, and
- (9) continuous care.

(d) An applicant proposing to develop a hospice

inpatient facility or a hospice residential care facility shall provide documentation that pharmaceutical services will be provided directly by the facility or by contract.

(e) For each of the services listed in Paragraphs (c) and (d) of this Rule which are proposed to be provided by contract, the applicant shall provide a copy of a letter from the proposed provider expressing their willingness to enter into a contract or shall submit a copy of the contract.

*Statutory Authority G.S. 131E-177(1).*

#### **.4205 REQUIRED STAFFING AND STAFF TRAINING**

(a) An applicant proposing to develop a hospice, hospice inpatient facility beds, or hospice residential care facility beds shall document that staffing for hospice services will be provided in a manner consistent with G.S. Chapter 131E, Article 10.

(b) The applicant shall demonstrate that:

- (1) the staffing pattern will be consistent with licensure requirements as specified in 10 NCAC Subchapter 3T, Hospice Licensing Rules;
- (2) training for all hospice staff and volunteers will meet the requirements as specified in 10 NCAC 3T .0402, Hospice Licensing Rules;
- (3) a volunteer program will be established and operated in accordance with 10 NCAC 3T .0400 and .0500 and 42 CFR 418.70;
- (4) an interdisciplinary team will be established which includes, at a minimum, a physician, a licensed nurse, a social worker, a clergy member, and a trained hospice volunteer, as specified in G.S. 131E-201;
- (5) a qualified health care professional will coordinate the hospice interdisciplinary team to assure implementation of an integrated care plan and the continuous assessment of the needs of the patient and the patient's family or significant others;
- (6) a written care plan will be developed by the attending physician, the medical director or physician designee, and the interdisciplinary team before care is provided to a patient and the patient's family or significant others;
- (7) meetings of the interdisciplinary care

team and other appropriate personnel will be held on a frequent and regular basis, at least once every two weeks, for the purpose of care plan review and staff support; and

- (8) each interdisciplinary team member will be provided orientation, training, and continuing education programs appropriate to their responsibilities and to the maintenance of skills necessary for the physical care of the patient and the psychosocial and spiritual care of the patient and the patient's family or significant others.

Statutory Authority G.S. 131E-177(1).

#### .4206 ACCESSIBILITY

(a) The applicant shall demonstrate that it will offer palliative care to terminally ill persons and their families regardless of age, gender, nationality, race, creed, sexual orientation, disability, or diagnosis.

(b) The applicant shall describe the mechanism that it will use to assure that the projected number of medically underserved and indigent persons will be served.

(c) The applicant shall provide a written description of its billing procedures, including the credit and collection policies that will be utilized.

(d) The applicant shall document that the health care community in the hospice service area including, but not limited to the Departments of Social Services and Health, have been invited to comment on the proposed project, particularly with regard to the referral mechanisms and admissions policies for the medically underserved population.

(e) If an applicant is proposing to develop a licensed hospice home care program, licensed hospice inpatient beds in a freestanding facility, or licensed hospice beds in a health service facility when the hospice home care services are not provided through a contract, then the applicant shall document that it will be certified for participation in the Medicaid and Medicare program.

(f) The applicant shall document it will equal or exceed the average percent of patient days of care in the combined categories of Medicare, Medicaid, and medically indigent patients that are provided by the existing facilities of the same licensure category which are located in the hospice service area.

Statutory Authority G.S. 131E-177(1).

#### .4207 DATA REPORTING REQUIREMENTS

The applicant shall agree to provide, upon the request of the Division of Facility Services, the following types of data and information, in accordance with data format and reporting requirements formulated by the Division of Facility Services:

- (1) demographic data on patients treated;
- (2) financial data; and
- (3) clinical data.

Statutory Authority G.S. 131E-177(1).

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*Notice is hereby given in accordance with G.S. 150B-21.2 that the Division of Facility Services intends to adopt rules cited as 10 NCAC 3R .6001 - .6004.*

*The proposed effective date of this action is March 1, 1994.*

*The public hearing will be conducted at 10:00 a.m. on December 15, 1993 at the Division of Facility Services, Room 201, Council Bldg., 701 Barbour Drive, Raleigh, NC.*

*Reason for Proposed Action: To adopt the permanent version of temporary rules 10 NCAC 3R .6001 through .6004 which were adopted pursuant to HB 729 (Health Care Reform Bill).*

*Comment Procedures: All written comments must be submitted to Jackie Sheppard, APA Coordinator, Division of Facility Services, PO Box 29530, Raleigh, NC 27626-0530, telephone (919) 733-2342, up to and including December 15, 1993.*

*Editor's Note: These Rules were filed as temporary adoptions effective October 25, 1993 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner.*

#### SECTION .6000 - CERTIFICATE OF PUBLIC ADVANTAGE PROGRAM

##### .6001 CERTIFICATE OF PUBLIC ADVANTAGE

The Division of Facility Services is responsible for carrying out the responsibilities of the Depart-



ment in administering Article 9A of Chapter 131E of the General Statutes entitled the Certificate of Public Advantage.

*Statutory Authority G.S. 131E-192.11.*

#### **.6002 APPLICATION FILING FEE**

(a) Applicants for a Certificate of Public Advantage shall submit with their application a fee of three thousand seven hundred and fifty dollars (\$3,750) for each provider which is participating in the application, provided that the total fee may not exceed fifteen thousand dollars (\$15,000). No application may be considered by the Department until this fee is paid.

(b) If during the course of the review, either the Department or the Attorney General determines that the application is of such a complex nature that expertise from outside the Department needs to be engaged in order to arrive at a decision, the applicants will be required to provide the necessary funds for the Department or the Attorney General or both to contract with appropriate consultants to investigate the impact of the proposed action. Any such additional payment is limited to the difference between the amount of the fee submitted with the application and fifteen thousand dollars (\$15,000).

(c) Failure by the applicants to pay an additional fee as determined by Paragraph (b) of this Rule will result in the denial of the application.

*Statutory Authority G.S. 131E-192.11.*

#### **.6003 FILING FEE - PERIODIC REPORTS**

(a) Required biennial reports from holders of Certificates of Public Advantage shall be submitted to the Department on or before the anniversary date of the Certificate and shall be accompanied by a filing fee of five hundred dollars (\$500) to offset the cost of reviewing and maintaining the report.

(b) The Department may assess an additional fee not to exceed two thousand dollars (\$2,000), such fee to reflect costs of investigating and assessing the continued advantage of having the Certificate in place and the holder's compliance with conditions imposed by the Certificate. Costs to be included in calculating the additional fee include, but are not limited to, the time of employees of the Department and the Attorney General in reviewing the report, costs of any consultant contracts or reports or data purchased for the purpose of conducting the review, and costs of telephone calls, mailings, clerical support and other office expenditure made in support of the review process.

(c) Failure by the holder to pay the assessed filing fees will result in the loss of the Certificate of Public Advantage.

*Statutory Authority G.S. 131E-192.11.*

#### **.6004 PUBLIC HEARING**

Within 45 days of the receipt of an application for a Certificate of Public Advantage the Department shall hold a public hearing which will afford the right to any citizen to express his or her views regarding the application. There shall be notice of the hearing published in at least one newspaper of general circulation serving the geographic area affected not less than 10 days prior to the hearing.

*Statutory Authority G.S. 131E-192.11.*

### **TITLE 13 - DEPARTMENT OF LABOR**

*Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Department of Labor intends to amend rule cited as 13 NCAC 7F .0101, with changes from the proposed text noticed in the Register, Volume 8, Issue 2, pages 892 - 893.*

*The proposed effective date of this action is February 1, 1994.*

*Reason for Proposed Action: There is a need for a new level of training within 29 CFR 1910.120 - Hazardous Waste Operations and Emergency Response, for protection of the public from threat of environmental harm and property or bodily injury.*

*Comment Procedures: Written comments will be accepted until December 15, 1993. Direct all correspondence to Jill F. Cramer, NCDOL/OSHA, 413 N. Salisbury Street, Raleigh, NC 27603-5942.*

*Editor's Note: An agency may not adopt a rule that differs substantially from the text of a proposed rule published in the Register, unless the agency publishes the text of the proposed different rule and accepts comments on the new text for at least 30 days after the publication of the new text.*

### **CHAPTER 7 - OFFICE OF OCCUPATIONAL SAFETY AND HEALTH**

SUBCHAPTER 7F - STANDARDS

SECTION .0100 - GENERAL INDUSTRY  
STANDARDS

.0101 GENERAL INDUSTRY

(a) The provisions for the Occupational Safety and Health Standards for General Industry, Title 29 of the Code of Federal Regulations Part 1910, are adopted by reference except that within Subpart H - Hazardous Materials, 29 CFR 1910.120, Hazardous waste operations and emergency response, 29 CFR 1910.120(q)(6) is amended by adding a new level of training:

*"(vi) ~~First responder operations plus level. This level of training is for public sector firefighters responding to hazardous substances emergencies involving only gasoline, diesel fuel, or liquid propane gas (LPG) where the situation requires more than the defensive actions allowed first responders at operations level (i.e. plugging/patching a fuel tank or shutting LPG valves at roadside emergencies).~~ First responders at operations plus level are individuals who respond to hydrocarbon fuel tank leaks where the leaking tanks contain a hydrocarbon fuel which is used to propel the vehicle on which the tank is located. Only those vehicles designed for highway use or those used for industrial, agricultural or construction purposes are covered. First responders at the operations plus level shall have received at least training equal to first responder operations level and, in addition, shall receive training or have had sufficient experience to objectively demonstrate competency in the following areas and the employer shall so certify:*

- (A) Know how to select and use proper specialized personal protective equipment provided to the first responder at operations plus level;
- (B) Understand basic hazardous materials terms as they pertain to hydrocarbon fuels;
- (C) Understand hazard and risk assessment techniques that pertain to gasoline, diesel fuel, ~~and LPG;~~ propane and other hydrocarbon fuels;
- (D) Be able to perform control, containment, and/or confinement operations for gasoline, diesel fuel, ~~and LPG~~ propane and other hydrocarbon fuels

within the capabilities of the available resources and personal protective equipment; and

- (E) Understand and know how to implement decontamination procedures for hydrocarbon fuels."

(b) The parts of the Code of Federal Regulations incorporated by reference in this Subchapter shall not automatically include any subsequent amendments thereto, except as follows:

- (1) Subpart J -- General Environmental Controls -- typographical and clarifying corrections at 1910.146, Permit- Required Confined Spaces, published in 58 FR (June 29, 1993) pages 34844 - 34851 and adopted by the North Carolina Department of Labor on September 24, 1993; corrections are to final rule for Permit-Required Confined Spaces as originally published in 58 FR 4462 (January 14, 1993).
- (2) Subpart Z -- Toxic and Hazardous Substances:
  - (A) Revocation of exposure limits in "Final rule limits" columns of Table Z-1-A at 1910.1000, Air Contaminants, published in 58 FR (June 30, 1993) pages 35338 - 35351 and adopted by the North Carolina Department of Labor on September 24, 1993.
  - (B) Typographical and technical corrections at 1910.1027, Cadmium, published in 58 FR (April 23, 1993) pages 21778 - 21787 and adopted by the North Carolina Department of Labor on September 24, 1993; corrections are to final rule for Occupational Exposure to Cadmium as originally published in 57 FR 42101 (September 14, 1992).

(c) Copies of the applicable Code of Federal Regulations sections referred to in this Subchapter are available to the public. Please refer to 13 NCAC 7A.0302 for the costs involved and from whom copies may be obtained.

*Statutory Authority G.S. 95-131; 95-133; 150B-21.6.*



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

*Notice is hereby given in accordance with G.S. 150B-21.2 that the Environment, Health, and Natural Resources - Vital Records Section intends to amend rules cited as 15A NCAC 19H .0702 and .0903.*

*The proposed effective date of this action is February 1, 1994.*

*The public hearing will be conducted at 2:00 p.m. on December 1, 1993 at the Norton Board Room, Cooper Memorial Building, 6th Floor, 225 N. McDowell Street, Raleigh, NC 27602.*

**Reason for Proposed Action:**

**15A NCAC 19H .0702** - This amendment is necessary to further clarify the existing rule.

**15A NCAC 19H .0903** - This amendment is necessary to further clarify the existing rule. The RVS birth index system's capability to consistently designate changed or corrected records as amended has been tested and verified. Therefore, the statement which was eliminated during the last amendment should be included in the rule.

**Comment Procedures:** Individuals requiring information concerning or copies of the proposed rules should contact: Jan Ellington, P.O. Box 29537, Raleigh, NC 27626-0537, Tel: (919) 733-3000. Written comments may be sent to Ms. Ellington at the above address or submitted at the public hearing. Those desiring 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. All written comments must be received by December 15, 1993.

**CHAPTER 19 - HEALTH:  
EPIDEMIOLOGY**

**SUBCHAPTER 19H - VITAL  
RECORDS**

**SECTION .0700 - FEES  
AND REFUNDS**

**.0702 RESEARCH REQUESTS**

(a) The State Registrar may permit the use of data from vital records for research purposes. The State Registrar shall require the applicant to specify in writing the conditions under which the records or data will be used, the purpose of the research, the research protocol, and such other data as may be deemed necessary by the State Registrar.

(b) The State Registrar may determine fees charged for preparing, searching or providing information from, or non-certified copies of the vital records based on the estimated cost of rendering the service. An hourly rate or charge per name searched may be imposed. The fee shall not exceed ten dollars (\$10.00) per name searched. If expedited service is specifically requested, an additional fee of ten dollars (\$10.00), in addition to all shipping and commercial charges, shall be charged in accordance with G.S. 130A-93.1(a)(2).

(c) Vital records or data provided under this Rule shall be used for the purposes described in the application.

Statutory Authority G.S. 130A-92(7); 130A-93.

**SECTION .0900 - CORRECTIONS  
AND AMENDMENTS**

**.0903 CORRECTIONS REQUIRING  
PROOF**

The following items may be corrected upon written request on forms prescribed by the State Registrar properly notarized and signed by the registrant if of legal age or by one or both parents or guardians of a minor child provided that the request is supported by at least one piece of documentary evidence:

- (1) state of birth (deaths),
- (2) birthplace of parents (births),
- (3) county of birth,
- (4) spelling of given names of child (births) after four years of birth,
- (5) spelling of father's or mother's name,
- (6) age of parents,
- (7) sex of child if incorrectly recorded,
- (8) date of birth, and
- (9) hour of birth.

For these corrections, except sex of child and hour of birth, the certificates shall be marked "amended" as shall certified copies subsequently issued. All available evidence including any which might not have been submitted by the applicant shall be evaluated by the State Registrar. The existence of inconsistent or conflicting evidence may be consid-

ered cause for denying any request for correction in which case the applicant shall be duly advised.

Statutory Authority G.S. 130A-92(7).

## TITLE 21 - OCCUPATIONAL LICENSING BOARDS

*Notice is hereby given in accordance with G.S. 150B-21.2 that the N.C. State Board of Cosmetic Art Examiners intends to amend rule cited as 21 NCAC 14H .0019.*

*The proposed effective date of this action is February 1, 1994.*

*Instructions on How to Demand a Public Hearing (must be requested in writing within 15 days of notice): Anyone wishing to demand a public hearing may contact Vicky Goudie, Executive Secretary, N.C. State Board of Cosmetic Art Examiners, 1110 Navaho Drive, Raleigh, N.C. 27609, (919) 850-2793. This demand must be in writing and received by December 15, 1993.*

*Reason for Proposed Action: This Rule became effective prior to ratification of SB 463, (c) and (e) changes, and the Board felt that 14H .0019 (b) creates an unnecessary hardship on shops and schools, since the bill covers adequate requirements.*

*Comment Procedures: Written comments regarding this rule should be mailed or delivered to Vicky Goudie, Executive Secretary, N.C. State Board of Cosmetic Art Examiners, 1110 Navaho Drive, Raleigh, N.C. 27609. Comments must be received no later than December 15, 1993.*

## CHAPTER 14 - BOARD OF COSMETIC ART EXAMINERS

### SUBCHAPTER 14H - SANITATION

#### .0019 NOTICE TO BOARD

(a) Each cosmetologist, apprentice cosmetologist, manicurist, cosmetology teacher, and manicurist teacher shall notify the Board within 10 days of each change in the licensee's residence or place of business. Notice shall be given in one of the following ways:

- (1) by depositing written notice in the United

States mail with the correct address and postage;

- (2) by personally delivering written notice to the Board's offices;
- (3) by telephone or fax transmission (followed by written notice that must be actually received in the Board's office within 30 days of the change).

~~(b) Each beauty establishment shall notify the Board within 10 days of the day any person licensed by the Board either begins work or ceases work in that beauty establishment. Notice may be given in any of the ways listed in Paragraph (a) of this Rule.~~

Statutory Authority G.S. 88-23; 88-29.

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*Notice is hereby given in accordance with G.S. 150B-21.2 that the State Board of Refrigeration Examiners intends to adopt rule cited as 21 NCAC 60 .0210.*

*The proposed effective date of this action is February 1, 1994.*

*The public hearing will be conducted at 4:00 p.m. on December 10, 1993 at 3716 National Drive, Suite 120, Raleigh, N.C. 27612.*

*Reason for Proposed Action: Requires technician certification for contractors and technicians who handle refrigerants.*

*Comment Procedures: All interested parties in this matter are invited to attend the public hearing. The State Board of Refrigeration Examiners will receive written comments postmarked no later than 12/15/93. More information may be obtained by contacting the Board Office, P.O. Box 30693, Raleigh, N.C. 27622, (919) 781-1602.*

## CHAPTER 60 - BOARD OF REFRIGERATION EXAMINERS

### SECTION .0200 - EXAMINATIONS

#### .0210 CERTIFICATION REQUIREMENTS OF EPA; AUTHORITY TO ISSUE LICENSES

- (a) Pursuant to the Federal Clean Air Act of

1990 and regulations adopted by the EPA as authorized by the Act all licensed refrigeration contractors and technicians as defined in 40 CFR 82.161 who handle refrigerants as stated in the Act and regulations must be certified by an EPA-Approved Technician's Certification Program effective November 14, 1994.

(b) The State Board of Refrigeration Examiners is authorized by G.S. 87-52 and G.S. 87-54 to issue a license or certification to contractors and technicians who can document successful completion of an EPA-Approved Course and Examination. The Board is further authorized to charge refrigeration contractors and technicians a reasonable cost for the issuance of any such license or certification.

Statutory Authority G.S. 87-52; 87-54; 87-58.

## TITLE 23 - COMMUNITY COLLEGES

*Notice is hereby given in accordance with G.S. 150B-21.2 that the N. C. Department of Community Colleges intends to amend rules cited as 23 NCAC 2D .0202 - .0203, .0325 - .0326 and 2E .0402.*

*The proposed effective date of this action is April 1, 1994.*

*The public hearing will be conducted at 10:00 a.m. on December 9, 1993 at the Caswell Building, Room 176, 200 W. Jones Street, Raleigh, NC 27603.*

### *Reason for Proposed Action:*

*23 NCAC 2D .0202 - .0203 - To revise tuition refund provisions.*

*23 NCAC 2D .0325 - .0326 - To incorporate changes resulting from action of the 1993 General Assembly concerning course repetition, in-plant training course offerings, and courses provided for clients of sheltered workshops.*

*23 NCAC 2E .0402 - To incorporate changes resulting from action of the 1993 General Assembly concerning approval for in-plant training courses.*

*Comment Procedures: Interested persons may present statements either orally or in writing at the public hearing; or by mail on or before December 17, 1993 addressed to: Dr. Bill Cole, Department*

*of Community Colleges, 200 W. Jones St., Raleigh NC 27603.*

*Editor's Note: These Rules were filed as temporary amendments effective November 1, 1993 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner.*

## CHAPTER 2 - COMMUNITY COLLEGES

### SUBCHAPTER 2D - COMMUNITY COLLEGES: FISCAL AFFAIRS

#### SECTION .0200 - STANDARD STUDENT FEES

#### .0202 CURRICULUM

##### (a) Tuition.

- (1) Student Residence Classification. The classification of students for tuition purposes shall be made pursuant to G.S. 116-143.1
- (2) Tuition Rates In-State.
  - (A) A general and uniform tuition rate is established by the State Board as set by the Legislature for full-time curriculum students per quarter for North Carolina residents.
  - (B) A North Carolina resident who is a part-time student shall pay a per credit hour rate for curriculum instruction, as established by the State Board, for such tuition in any quarter as set by the Legislature.
- (3) Learning Laboratory. No tuition fees charged.
- (4) Tuition Creditable Upon Transfer of Student. When a student has paid the required tuition at a college and is given permission to transfer to another college within the system during the academic quarter for which the tuition was paid, the college from which the student transfers shall issue to him a statement certifying the amounts of tuition that have been paid, and the college to which he is transferring shall accept such certificate in lieu of requiring payment again. [Also, see 23 NCAC 2D .0323(b)(2) which provides information regarding reporting student hours in membership.]
- (5) Tuition Student Enrolled in More Than



One College. Where a student desires to enroll for the same quarter at two or more colleges of the system, the total amount of tuition and fees may be paid to the student's "home" college. "Home" college is defined as the college which the student initially registers for classes. The home college shall, in that case, assume responsibility for arranging with the other college or colleges for enrolling the student in appropriate classes without further charge. Such arrangement shall be made by exchange of letters between the colleges involved. Student membership hours for instruction received shall, in any event, be reported by the college in which the respective instruction occurred.

(6) Tuition Rates Out-of-State.

- (A) Any full-time curriculum student who is an out-of-state resident shall pay tuition fees as established by the State Board for each quarter as set by the Legislature.
- (B) An out-of-state resident who is a part-time student shall pay a per credit hour rate for curriculum instruction as established by the State Board as set by the Legislature.

(7) Tuition Exemptions.

- (A) Individuals taking courses in the categories set forth in G.S. 115D-5(b) shall be exempt from tuition.
- (B) College Staff Members. Full-time college staff members may enroll in one curriculum or extension course per quarter in the system without payment of tuition.
- (C) Basic Law Enforcement Training Program (BLET) for law enforcement officers. All law enforcement officers employed by a municipal, county, state, or federal law enforcement agency when taking courses in a state-mandated BLET training program, are exempt from tuition payment. Also, trainees may be exempt from BLET class tuition if a letter of sponsorship from an appropriate law enforcement agency is on file at the college.

(b) Pre-Enrollment Deposit. When a prospective student has made application for admission and has been accepted, the student may be re-

quired to pay an advance deposit up to a maximum of fifteen dollars (\$15.00). This advance payment is not refundable unless covered by the refund policy stated in Subparagraph (e) (1) of this Rule. This advance payment shall be deposited to the State Treasurer and credited against the full tuition due from the student during the regular registration period.

(c) Late Enrollment Fee. A late enrollment fee up to five dollars (\$5.00) may be charged curriculum students registering after the specific closing date of ~~registrations~~ registration, with such fees becoming state funds.

(d) Student Activity Fee. Colleges may establish a student activity fee which may include a parking fee or a scheduled vehicle registration fee. However, students shall not be assessed a parking fee, a vehicle registration fee, or a similar fee in addition to the established student activity fee. The maximum amount charged for the student activity fee shall not exceed twenty-eight dollars (\$28.00) per student per fiscal year. Funds derived from collection of a student activity fee shall be accounted for and expended under standing procedures and regulations adopted by the local governing board of the college. Any expenditure from the fund must directly benefit students.

(e) Tuition Refunds.

- (1) A refund shall not be made except under the following circumstances:

- (A) A ~~full~~ 75 percent refund may be made upon request of the student if the student officially withdraws from the class(es) prior to or on the official 20 percent point of the class(es) or the 20 percent point of the quarter if the student officially withdraws from the college. At the time the student officially withdraws under this policy, the college shall notify the student of the right to receive the refund. Requests for refunds will not be considered after the 20 percent point.

- (B) For classes beginning at times other than at the beginning of the quarter, the same provisions set forth in Part (1)(A) of this Paragraph apply. For contact hour classes 10 calendar days from the first day of the class(es) is the determination date.

- (2) To comply with applicable federal regulations regarding refunds to individuals or groups, federal regulations will supersede the state refund regulations stated in this Rule.



- (3) Where a student, having paid the required tuition for a quarter, dies during that quarter (prior to or on the last day of examinations of the college the student was attending), all tuition and fees for that quarter may be refunded to the estate of the deceased.

*Statutory Authority G.S. 115D-5; 115D-54; 116-143.1; P.L. 93-508.*

### **.0203 EXTENSION PROGRAMS**

(a) Registration fees for Non-Curriculum Extension Instruction. For purposes of administration of this Rule, non-curriculum extension instruction means all instruction organized, supervised, or delivered outside the regular curriculum programs offered by the college.

- (1) A registration fee, as established by the State Board, as set by the Legislature shall be charged for each occupational extension class.
- (2) Each local board is delegated the responsibility to establish registration fees for Community Service Programs (academic, practical skills, avocational, and cultural/civic activities).
- (3) All recreational courses must be self-supporting. Colleges are required to collect and deposit to a local account fees and other contributions to support entirely the costs of all recreational extension courses taught during the school year. Also, note Paragraph (b) of Rule .0325 of this Subchapter regarding the reporting of student membership hours for this area.
- (4) A registration fee shall be charged for each extension class of 17 weeks or less. A registration fee shall be charged each 13 weeks for extension classes lasting longer than 17 weeks.
- (5) Registration Fee Exemptions:
  - (A) Special Extension Training Programs. No fees of any kind shall be charged students enrolling for special extension training programs set forth in G.S. 115D-5(b).
  - (B) College Staff Members. Full-time college staff members may enroll in one extension or curriculum course per quarter in the system without registration fee or tuition charges.

(b) Self-Supported Courses. A college shall have the authority to sponsor self-supporting

courses, [see 23 NCAC 2E.0101], deposit income (if any) to a local account, and pay all expenses from such local account. Each student is required to pay a pro-rata share of the cost of a self-supporting class. Since the pro-rata share assumed is not considered a registration fee, no individual or group is exempt under G.S. 115D-5(b) from paying a proportional share of the identified cost of the class.

(c) Driver Education. Colleges are required to collect a student fee as established by the local board of trustees for the adult driver education training course offered through the community service program.

(d) Registration Fee Refunds. A refund shall not be made except under the following circumstances:

- (1) For classes that are scheduled to meet four times or less, a full 75 percent refund shall be made upon the request of the student if the student officially withdraws from the class(es) prior to or on the first day of the class(es).
- (2) For classes that are scheduled to meet five or more times, a full 75 percent refund shall be made upon the request of the student if the student officially withdraws from the class(es) prior to or in on the official 20 percent point of the class(es). Requests for refunds will not be considered after the 20 percent point.
- (3) For classes beginning at times other than at the beginning of the quarter, applicable provisions as noted in Subparagraphs (d)(1) and (2) of this Rule apply. For contact hour classes 10 calendar days from the first day of the class(es) is the determination date.
- (4) At the time of official withdrawal under this policy, the college shall notify the student of the right to receive a refund.

*Statutory Authority G.S. 115D-1; 115D-5.*

### **SECTION .0300 - BUDGETING: ACCOUNTING: FISCAL MANAGEMENT**

#### **.0325 LIMITATION IN REPORTING STUDENT MEMBERSHIP HOURS**

(a) Student hours may not be reported for budget/FTE which result from:

- (1) Conferences or visits. General types of meetings usually of one or more day's duration, attended by a fairly large

number of people. A conference or visit may have a central theme, but is loosely structured to cover a wide range of topics. The emphasis is on prepared presentations by authoritative speakers, although division into small group sessions for discussion purposes is often a related activity.

- (2) Seminars or Meetings. A small group of people meeting primarily for discussion under the direction of a leader or resource person or persons. Seminars and meetings are generally one-time offerings even though they may continue for more than one day.
- (3) Programs of a service nature rather than instructional classes.
- (4) Enrollment of high school students not in compliance with 23 NCAC 2C .0301 and 2C .0305.
- (5) Unsupervised classes.
- (6) Proficiency or challenge exams except that the actual time required to take the exam may be counted in membership; students must be registered in the class consistent with Paragraph (a) of Rules .0202 and .0203 of this Subchapter.
- (7) Homework assignments.
- (8) Inter-institutional or intramural sports activities including those of prison inmates.
- (9) Effective July 1, 1993, no budget/FTE shall be generated by occupational extension students after their first repetition of an occupational extension course. Students who take an occupational extension course more than twice within a five-year period shall pay their cost for the course based on the amount of funds generated by a student membership hour for occupational extension multiplied by the number of actual hours the class is to be taught. These students will not generate budget/FTE. The funds collected from these students will be used by the colleges to offer additional educational programs.
- (A) A statement on occupational extension course repetitions consistent with the requirements of this Rule shall be included in college advertisements, schedules and catalogs. Students shall be notified during registration that they will be charged the full cost of

courses which they have taken twice within a five-year period and in which they wish to enroll. Students shall be primarily responsible for monitoring course repetitions; however, the colleges shall review records and charge students full cost for courses taken more than twice.

- (B) Senior citizens who are legal residents of North Carolina and who wish to enroll in an occupational extension course, will not be required to pay for taking the course twice. Senior citizens who take an occupational extension course more than twice within a five-year period shall pay their cost for the course based on the amount of funds generated by a student membership hour for occupational extension multiplied by the number of actual hours the class is to be taught. These senior citizens will not generate budget/FTE. The funds collected from these senior citizens will be used by the colleges to offer additional educational programs.
- (C) Students may repeat occupational extension courses more than once if the repetitions are required for certification, licensure, or recertification. The colleges shall submit annual reports to the State Board of Community Colleges naming the students and the certification, licensure or recertification requirements that necessitated the repetition.

(b) Self-supporting classes are not to be reported for regular budget purposes (those classes supported by student fees or a class in which instruction is provided gratis); all recreational extension classes fall in this category.

(c) Occupational extension instruction ~~may~~ shall not be offered in sheltered workshops and adult developmental activity centers (ADAP) except sheltered workshops and adult development activity centers (ADAP) may contract with the community college to provide occupational extension courses on a self-supporting basis, provided:

- (1) Instruction involves the development of a job skill dependent on equipment or processes in the work environment which are not available through college facilities. The purpose of occupational

extension instruction in a sheltered workshop/ADAP is to teach fundamental skills. The achievement of production or performance standards established by the sheltered workshop or ADAP center is not a goal of these courses. The instruction provided shall not duplicate or supplant existing training provided by the workshop or ADAP center. Occupational extension courses offered at sheltered workshops/ADAP's may be made available to clients on a two-tier basis as follows:

- (A) ~~Pre-vocational Education.~~ Standardized course(s) designed to provide students with job skills which could be applied in a variety of job settings. The course(s) do not include training which involves on-the-job production nor do the course(s) duplicate the instruction provided in the compensatory education program.
- (B) ~~On-the-job training.~~ Instruction is designed to deal with content and skills which prepare students for production work. On-the-job training is occupationally specific and is designed to permit clients to apply occupational skills learned in a work place setting. The on-the-job training course(s) are designed by the colleges.

- (2) ~~Content of a sheltered workshop or ADAP course is based on an analysis of the job for which training is offered. The job analysis shall designate each separate task within a job and assign a number of hours required to teach each separate task.~~
- (3) ~~Instruction offered is not repetitive or recurring to the same clients within the organization. Sheltered workshop or ADAP clients shall not be enrolled for more than 660 hours during a 12-month period. (The 12-month period will begin at the start of the initial training. The initial training period begins Fall Quarter, 1992.) Excessive student repeats of the same course are not appropriate and cannot be funded with state funds. No course may be taken more than four times. A given course may not be scheduled for more than 330 hours.~~

- (4) ~~Instruction provided deals with content and skills which prepare students for production work. Instruction which involves production only cannot be counted for FTE purposes.~~

- (5) ~~During the time the course is offered, instructors shall not engage in any administrative, supervisory, or operational functions of the organization for which the course is being offered.~~

(d) ~~All occupational extension courses offered in sheltered workshop or ADAP settings must be submitted to the board of trustees for approval. The course outline and a fiscal plan for operating each course shall be approved by the board of trustees. If approval is not given, no budget/FTE shall be reported for that course.~~

(e) ~~Community colleges will earn regular budget/FTE if the college employs the instructor. If the college contracts and pays the sheltered workshop or ADAP center to provide the instruction, funding will be provided as per contract cost plus fifteen percent of that amount for administrative expense.~~

(d) Educational programs offered in a correctional department setting shall report full-time equivalent (FTE) student hours on the basis of contact hours.

Statutory Authority G.S. 115D-5.

### .0326 BUDGET FTE FUNDING

(a) All student membership hours generated by the college for a given class shall be counted for budget FTE purposes provided when 100 percent of the instructional cost hours delivered are paid from college funds (funds budgeted through the college's budget including State Current, County Current, or College Funds) shall be counted for budget/FTE purposes. Refer to Paragraph (e) of this Rule. These provisions apply to all instructional contracts which generate budget FTE including Basic Skills classes. For purpose of this Rule, instructional cost includes the salary of the instructor(s) as well as fringe benefits, supplies, materials, travel, etc. paid from college funds. College-sponsored instruction shall not supplant existing training which may take place without the college's involvement. Following are Rule applications of this Rule:

- (1) ~~For a given class, if the salary paid to an instructor(s) include both college funds and funds from sources which are not budgeted through the college's budget, student hours in membership~~



reported for the class will be prorated in the same proportion as the college funding.

- (1) A company or entity may reimburse the college for a given class up to 50 percent of the instructional cost and the student hours in membership generated in the class may be reported for budget FTE. If the college is reimbursed for more than 50 percent of the instructional cost for a given class, student hours in membership reported for the class will be prorated in the same proportion as the college funding. If the college is reimbursed for 100 percent of the instructional cost, the class would be gratis [see Paragraph (b) of this Rule] and no budget FTE would be generated.
- (2) ~~If a company or agency donates funds to a college or pays the college for the instruction delivered, these funds may, consistent with the definition of college funds, be used to support classes and generate budget/FTE.~~
- (2) In cases where a company or entity donates funds to a college with no expectation for instruction in return, these funds shall be treated as college funds and may be used to generate budget FTE.
- (3) ~~For a class that involves a contract resulting in a separate, additional entity being contracted to deliver the instruction (third-party contract) or for a class which the college contracts and pays a company to deliver instruction to its employees, the college shall not supplant existing training which may be taking place without the college's involvement.~~
- (3) (4) The community college shall not contract with a company/entity or other entity to provide training to its current employees except as provided by provisions which generates regular budget/FTE. The college may contract and pay a company (excluding individuals who are identified as trainers or individuals who have training responsibilities as a part of their regular job requirements) to deliver instruction. If this provision is applied, the college would be reimbursed at a rate of the cost of the

~~contract plus fifteen percent for administrative overhead consistent with the provisions for in-plant contracted training set forth in 23 NCAC 2E .0402(e).~~

(b) Any class for which the instructor's services are provided at no cost or for which the ~~instructor's salary~~ instructional cost is paid totally ~~and or~~ directly by an external agency is a "gratis" class. In this situation, the class is reported as self-supporting, and does not generate budget/FTE. If a portion of the class is gratis, student hours shall be ~~reported prorated accordingly.~~ consistent with Subparagraph (a)(1) of this Rule.

(c) Categorical state allotments to colleges (except literacy) such as Human Resources Development, Small Business, Focused Industrial Training, Community Service Block Grants, etc., do not earn budget/FTE and are not subject to the provisions of this Rule. Regular budget extension funds excluding adult high school may be used in human resources development programs when the special allocations for these purposes are obligated and, in this event, shall earn budget/FTE. ~~Also, note 23 NCAC 2E .0602 which provides specific information regarding individual instructional contracts.~~

(d) Student class hours for class-size projects in which instructional salaries are funded by Title II of the Job Training Partnership Act (JTPA) shall not receive full FTE funding, but shall receive administrative cost reimbursement.

*Statutory Authority G.S. 115D-5; 115D-31; 115D-58.5.*

## SUBCHAPTER 2E - EDUCATIONAL PROGRAMS

### SECTION .0400 - INDUSTRIAL SERVICES

#### .0402 PROVISION OF IN-PLANT SKILL TRAINING

(a) Chapter 115D of the General Statutes of North Carolina authorizes the college to conduct in-plant courses to assist manufacturing, service, and/or governmental organizations with in-service training of their employees. The goal of in-plant training is the development of skilled workers, such that the people of the state may benefit in common by the attraction of more industries to the state and the maintenance of existing industries. ~~In-plant training is defined as an occupational extension course that meets the following~~



conditions: An in-plant training course must provide a greater benefit to the public than it provides to the private company. In-plant training courses supported with public funds must meet the following conditions:

- (1) Training courses shall be available to all local companies, not just to a select few.
  - (2) (+) Training shall occur in the facilities or at the sites in which the organization company normally operates.
  - (3) (2) Enrollment shall be limited to the employees of the organization company in which the training occurs; trainees may be newly-hired employees who need entry level skills or existing employees who, due to documented changes in the job content, need up-grading or retraining.
  - (4) (3) Training shall be conducted at the employee's assigned work station during normal working hours.
  - (5) (4) Training shall be directly related to job skills. Skills taught in the course shall be transferable to work in other companies involved in the same or similar areas of industry, such that the benefit to the public is the development of a skilled workforce, and not merely the training of a private company's employees.
  - (6) Training shall prepare new or current employees to apply new technology, new equipment, or new processes. Training shall not be used to refine skills already possessed.
  - (7) Courses shall not subsidize private companies. A course in which a company is reimbursed for the cost of providing an employee to conduct the training constitutes a subsidy, and shall not be acceptable without a finding of special circumstances. Special circumstances consist of, but are not limited to the following:
    - (A) A qualified outside instructor is not available.
    - (B) The best qualified and most convenient instructor is an employee of the company.
    - (C) The company has processes about which it does not wish outsiders to obtain knowledge.
- (b) Colleges are encouraged to offer in-plant courses in those situations where the development

of job skills is dependent on equipment or processes in the work environment which cannot be reasonably duplicated in a college setting. The purpose of an in-plant course is to teach the fundamental skills of a particular job. The achievement of production or performance standards established by the employer is not a goal of in-plant courses. The instruction provided shall not duplicate or supplant existing training.

(c) A community college may offer in-plant training, as defined in this Rule, in the following ways:

- (1) The college may employ an instructor or enter into a third-party agreement as defined in 23 NCAC 2D .0326(a)(3). In this instance, the college will earn regular budget/FTE for the resulting student hours reported.
- (2) A college may contract with a company to provide the direct cost of replacement of an employee providing the actual training who is not hired by the company as a trainer, and who is released from regular work responsibilities during the time for which contracted to provide instruction. Replacement cost is defined as actual costs which were expended by the company to replace on a temporary basis the contracted employee from normal duties while providing instruction. In this situation the college may earn regular budget/FTE.
- (3) A college may contract with a company to provide indirect replacement cost. The cost, if this option is applied, will be the salary loss of production time to the company for the individual contracted to deliver the instruction. This individual must not be a regular trainer or have instructional responsibilities as a part of the regular job requirement. In this situation the college may earn the actual cost of the contract by determining, for the employee who is actually doing the instruction, an hourly wage rate for the instructor's normal job times the actual hours of instruction. This will be the contract cost, and the college will be reimbursed this cost plus ~~45~~ 25 percent of the cost for delivery of in-plant instruction when contracted through a company. If the college provides the supplies and materials, these costs may

be added to the instructional cost as a part of the contract. Supplies and materials are not to be included in the instructional cost plus ~~45~~ 25 percent calculation. Contracted instruction applying this option may neither exceed 240 hours nor be provided on a repetitive basis.

(d) Content of an in-plant course shall be based on an analysis of the job for which training is offered. The job analysis shall designate each separate task within a job and assign a number of hours required to teach each separate task. The college shall review each request for an in-plant training course and make a determination, using the conditions set forth in Paragraph (a) of this Rule, that the public's interest in providing the course to the company's employees is greater than the private benefit to the company. The course outline, ~~which shall include the operating costs, for offering each course and a written finding that this course's public interest is greater than the private benefit to the company~~ shall be approved by the local board of trustees. This approved plan shall be forwarded to the department for review and recommendations to the State Board that all requirements have been met. The course will then be forwarded to the State Board of Community Colleges for approval. If approval is not given by either the local board of trustees or the State Board of Community Colleges, no budget/FTE or contract reimbursement shall be reported for that course.

(e) An in-plant course may be offered up to 240 hours. No employee shall be trained for more than 440 hours during a 12-month period. (The 12-month period will begin at the start of the initial training. The application of this provision will begin on or after the first day of Fall Quarter, 1992.)

- (1) An in-plant course shall not be offered on a repetitive or recurring basis to the same employees within the same organization. An employee may not take a given course more than twice.
- (2) The college shall retain in its files a course outline and documentation substantiating each course.

(f) An instructor of an in-plant course, whether an employee of the organization in which the course is offered or an employee of the sponsoring college, shall not, during hours of instruction, be involved in any activity other than instruction. An instructor shall not engage in any administrative, supervisory, or operational functions of the organi-

zation in which a course is offered during those hours when he or she is partially or totally paid by the college. An appropriate official of the organization in which the course is offered shall agree in writing to these conditions.

*Statutory Authority G.S. 115D-5.*

***The List of Rules Codified is a listing of rules that were filed with OAH in the month indicated.***

***Key:***

*Citation* = Title, Chapter, Subchapter and Rule(s)  
*AD* = Adopt  
*AM* = Amend  
*RP* = Repeal  
*With Chgs* = Final text differs from proposed text  
*Corr* = Typographical errors or changes that requires no rulemaking  
*Eff. Date* = Date rule becomes effective  
*Temp. Expires* = Rule was filed as a temporary rule and expires on this date or 180 days

**NORTH CAROLINA ADMINISTRATIVE CODE**

**SEPTEMBER 93**

TITLE	DEPARTMENT	TITLE	DEPARTMENT
1	Administration	19A	Transportation
2	Agriculture	20	State Treasurer
4	Commerce	21	Occupational Licensing Boards
10	Human Resources		8 - CPA Examiners
11	Insurance		19 - Electrolysis
13	Labor		32 - Medical Examiners
15A	Environment, Health, and Natural Resources		34 - Mortuary Science
16	Public Education		46 - Pharmacy
			63 - Social Work
		23	Community Colleges

Citation				AD	AM	RP	With Chgs	Corr	Eff. Date	Temp. Expires
1	NCAC	39	.0101	✓					10/01/93	
			.0301	✓			✓		10/01/93	
2	NCAC	20B	.0102 - .0103		✓		✓		10/01/93	
			.0104		✓				10/01/93	
			.0105			✓			10/01/93	
			.0203		✓				10/01/93	
			.0204		✓		✓		10/01/93	
			.0206		✓				10/01/93	
			.0208		✓				10/01/93	



**LIST OF RULES CODIFIED**

Citation				AD	AM	RP	With Chgs	Corr	Eff. Date	Temp. Expires
			.0211		✓				10/01/93	
2	NCAC	20B	.0214		✓				10/01/93	
			.0216		✓				10/01/93	
			.0218		✓		✓		10/01/93	
			.0220		✓				10/01/93	
			.0225		✓				10/01/93	
			.0301		✓				10/01/93	
			.0411		✓				10/01/93	
			.0413		✓				10/01/93	
			.0414			✓			10/01/93	
			.0426		✓				10/01/93	
	48A		.0611		✓				10/01/93	
	48C		.0005		✓				10/01/93	
			.0017		✓				10/01/93	
			.0020 - .0021		✓				10/01/93	
			.0023		✓				10/01/93	
			.0024		✓		✓		10/01/93	
	52B		.0502		✓		✓		10/01/93	
4	NCAC	2S	.0612		✓				09/24/93	180 DAYS
			.0613 - .0616	✓					09/24/93	180 DAYS
10	NCAC	26B	.0112	✓			✓		10/01/93	
			.0119					✓		
			.0121					✓		
10	NCAC	26B	.0112 - .0124						10/01/93	
	recodified to									
10	NCAC	26B	.0113 - .0125							
			.41R .0002		✓		✓		10/01/93	
11	NCAC	10	.1208	✓					10/11/93	180 DAYS
	12		.1304		✓				10/11/93	180 DAYS
			.1306 - .1307		✓				10/11/93	180 DAYS
	16		.0205		✓				10/01/93	
			.0302		✓				10/01/93	
13	NCAC	7F	.0101		✓				09/24/93	
			.0201		✓				09/24/93	

**LIST OF RULES CODIFIED**

Citation				AD	AM	RP	With Chgs	Corr	Eff. Date	Temp. Expires
.0301					✓				09/24/93	
15A	NCAC	1K	.0402		✓				10/01/93	
	2H		.0223		✓				09/13/93	180 DAYS
.0610					✓		✓		10/01/93	
.1110					✓				10/01/93	
	2L		.0102		✓		✓		10/01/93	
.0104					✓		✓		10/01/93	
.0106 - .0107					✓		✓		10/01/93	
.0109					✓		✓		10/01/93	
.0110					✓				10/01/93	
.0111 - .0114					✓		✓		10/01/93	
.0201 - .0202					✓		✓		10/01/93	
	3I		.0001		✓				10/01/93	
	3J		.0401		✓				10/01/93	
	3R		.0011		✓		✓		10/01/93	
	6C		.0417		✓				10/01/93	
	7H		.0203		✓				10/01/93	
.0205 - .0207					✓				10/01/93	
.1703					✓				10/01/93	
.2001				✓					10/01/93	
.2003				✓					10/01/93	
.2005				✓					10/01/93	
	10D		.0002		✓				10/11/93	180 DAYS
	13A		.0001		✓				10/01/93	
.0009					✓				10/01/93	
.0018				✓			✓		10/01/93	
	13B		.1601		✓				10/09/93	180 DAYS
	18A		.1022		✓				10/01/93	
.1323					✓				10/01/93	
.1522					✓				10/01/93	
.1620					✓				10/01/93	
.2218					✓				10/01/93	
.2537					✓				10/01/93	

**LIST OF RULES CODIFIED**

Citation				AD	AM	RP	With Chgs	Corr	Eff. Date	Temp. Expires
			.2609		✓				10/01/93	
15A	NCAC	18A	.2807		✓				10/01/93	
			.3006		✓				10/01/93	
		19A	.0202		✓		✓		01/04/94	
		19B	.0301		✓		✓		10/01/93	
			.0304		✓		✓		10/01/93	
			.0309		✓		✓		10/01/93	
			.0316 - .0317			✓			10/01/93	
			.0501		✓				10/01/93	
		21D	.0401		✓				10/01/93	
			.0501		✓		✓		10/01/93	
			.0706		✓		✓		10/01/93	
			.1102 - .1106			✓			10/01/93	
			.1201 - .1203	✓					10/01/93	
			.1204	✓			✓		10/01/93	
			.1205 - .1206	✓					10/01/93	
			.1207	✓			✓		10/01/93	
		21F	.0102		✓				10/01/93	
16	NCAC	6C	.0312		✓		✓		10/01/93	
			.0401 - .0403		✓				10/01/93	
19A	NCAC	5						✓		
		6						✓		
		6B	.0101					✓		
			.0201 - .0205					✓		
			.0301					✓		
			.0303 - .0304					✓		
		6C	.0304					✓		
20	NCAC	2A	.0101		✓				10/01/93	
			.0201		✓		✓		10/01/93	
			.0202		✓				10/01/93	
			.0301 - .0302		✓				10/01/93	
			.0401		✓		✓		10/01/93	
			.0402		✓				10/01/93	



**LIST OF RULES CODIFIED**

Citation				AD	AM	RP	With Chgs	Corr	Eff. Date	Temp. Expires
2N .0105					✓				10/01/93	
20	NCAC	2N	.0106		✓		✓		10/01/93	
.0107					✓				10/01/93	
.0108				✓			✓		10/01/93	
.0210 - .0211					✓		✓		10/01/93	
.0305 - .0313						✓			10/01/93	
21	NCAC	8K	.0301	✓					10/01/93	180 DAYS
19 .0202					✓				10/13/93	180 DAYS
32B .0801 - .0808				✓					10/01/93	
34A .0126				✓					10/01/93	
46 .3001				✓			✓		10/01/93	
63 .0210				✓			✓		10/01/93	
23	NCAC	2	TOC					✓		
2D .0109								✓		
.0203								✓		

*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).*

## **AGRICULTURE**

### **North Carolina State Fair**

<i>2 NCAC 20B .0106 - General</i>	<i>RRC Objection 09/17/93</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed 10/21/93</i>

## **COMMERCE**

### **Banking Commission**

<i>4 NCAC 31 .0305 - Issuance of Certificate of Registration</i>	<i>RRC Objection 10/21/93</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed 10/21/93</i>

## **ENVIRONMENT, HEALTH, AND NATURAL RESOURCES**

### **Coastal Management**

<i>15A NCAC 7H .2002 - Approval Procedures</i>	<i>RRC Objection 09/17/93</i>
<i>Agency Responded</i>	<i>Obj. Cont'd 10/21/93</i>
<i>15A NCAC 7H .2004 - General Conditions</i>	<i>RRC Objection 09/17/93</i>
<i>Agency Responded</i>	<i>Obj. Cont'd 10/21/93</i>

### **Environmental Management**

<i>15A NCAC 2L .0103 - Policy</i>	<i>RRC Objection 09/17/93</i>
<i>Agency Revised Rule</i>	<i>RRC Objection 09/17/93</i>
<i>Rule Returned to Agency</i>	<i>Obj. Cont'd 10/21/93</i>
<i>Agency Filed Rule for Codification Over RRC Objection</i>	<i>Eff. 11/04/93</i>

## **HUMAN RESOURCES**

### **Aging**

<i>10 NCAC 22G .0505 - Staffing</i>	<i>RRC Objection 10/21/93</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed 10/21/93</i>
<i>10 NCAC 22G .0506 - Congregate Site Requirements</i>	<i>RRC Objection 10/21/93</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed 10/21/93</i>
<i>10 NCAC 22G .0509 - Home-Delivered Meals Standards</i>	<i>RRC Objection 10/21/93</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed 10/21/93</i>
<i>10 NCAC 22G .0510 - Congregate Food Requirements</i>	<i>RRC Objection 10/21/93</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed 10/21/93</i>
<i>10 NCAC 22G .0514 - Administration Requirements</i>	<i>RRC Objection 10/21/93</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed 10/21/93</i>
<i>10 NCAC 22S .0102 - Withdrawal of Area on Aging Designation</i>	<i>RRC Objection 10/21/93</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed 10/21/93</i>

**Children's Services**

<i>10 NCAC 41R .0002 - Administration and Organization</i>	<i>RRC Objection</i>	<i>07/15/93</i>
<i>Agency Responded</i>	<i>Obj. Cont'd</i>	<i>08/20/93</i>
<i>Rule Returned to Agency</i>	<i>Obj. Cont'd</i>	<i>09/17/93</i>
<i>Agency Filed Rule for Codification Over RRC Objection</i>	<i>Eff.</i>	<i>10/01/93</i>

**Facility Services**

<i>10 NCAC 3H .0108 - Definitions</i>	<i>RRC Objection</i>	<i>10/21/93</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>10/21/93</i>

**JUSTICE****Criminal Justice Education and Training Standards**

<i>12 NCAC 9A .0107 - Rule-Making and Administrative Hearing Procedures</i>	<i>RRC Objection</i>	<i>10/21/93</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>10/21/93</i>
<i>12 NCAC 9B .0101 - Minimum Standards for Criminal Justice Officers</i>	<i>RRC Objection</i>	<i>10/21/93</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>10/21/93</i>

**LICENSING BOARDS AND COMMISSIONS****Electrolysis Examiners**

<i>21 NCAC 19 .0604 - Program Directors</i>	<i>RRC Objection</i>	<i>10/21/93</i>
<i>21 NCAC 19 .0611 - Identification of Students</i>	<i>RRC Objection</i>	<i>10/21/93</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>10/21/93</i>
<i>21 NCAC 19 .0613 - Student/Teacher Ratio and Equipment</i>	<i>RRC Objection</i>	<i>10/21/93</i>

**Foresters**

<i>21 NCAC 20 .0020 - Certification of Consulting Foresters</i>	<i>RRC Objection</i>	<i>09/17/93</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>10/21/93</i>
<i>21 NCAC 20 .0021 - Rejection of Consultant Affidavit</i>	<i>RRC Objection</i>	<i>09/17/93</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>10/21/93</i>
<i>21 NCAC 20 .0022 - Handling of Complaints</i>	<i>RRC Objection</i>	<i>09/17/93</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>10/21/93</i>

**Plumbing, Heating and Fire Sprinkler Contractors**

<i>21 NCAC 50 .0506 - Minor Repairs and Alterations</i>	<i>RRC Objection</i>	<i>10/21/93</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>10/21/93</i>

**REVENUE****Corporate Income and Franchise Tax**

<i>17 NCAC 5C .0904 - The Term Employee</i>	<i>RRC Objection</i>	<i>10/21/93</i>
<i>Agency Repealed Rule</i>	<i>Obj. Removed</i>	<i>10/21/93</i>

**TRANSPORTATION****Departmental Rules**



<i>19A NCAC 1B .0202 - Contents of Petition</i>	<i>RRC Objection</i>	<i>10/21/93</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>10/21/93</i>
<i>19A NCAC 1B .0302 - Record of Hearing</i>	<i>RRC Objection</i>	<i>10/21/93</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>10/21/93</i>

**Division of Highways**

<i>19A NCAC 2D .0403 - Use of Dust Allaying Materials</i>	<i>RRC Objection</i>	<i>10/21/93</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>10/21/93</i>
<i>19A NCAC 2D .0404 - Maintenance Within Municipalities</i>	<i>RRC Objection</i>	<i>10/21/93</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>10/21/93</i>
<i>19A NCAC 2D .0405 - Examples of Construction and Maintenance Activities</i>	<i>RRC Objection</i>	<i>10/21/93</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>10/21/93</i>
<i>19A NCAC 2D .0601 - Permits-Authority, Application and Enforcement</i>	<i>RRC Objection</i>	<i>10/21/93</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>10/21/93</i>
<i>19A NCAC 2D .0633 - Denial: Revocation: Refusal/Renew: Appeal: Invalidation</i>	<i>RRC Objection</i>	<i>10/21/93</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>10/21/93</i>
<i>19A NCAC 2D .0801 - Pre-Qualifying to Bid: Requalification</i>	<i>RRC Objection</i>	<i>09/17/93</i>
<i>No Response from Agency</i>	<i>Obj. Cont'd</i>	<i>10/21/93</i>
<i>19A NCAC 2D .0802 - Invitation to Bid</i>	<i>RRC Objection</i>	<i>09/17/93</i>
<i>No Response from Agency</i>	<i>Obj. Cont'd</i>	<i>10/21/93</i>
<i>19A NCAC 2D .0803 - Advertisement and Invitations for Bids</i>	<i>RRC Objection</i>	<i>09/17/93</i>
<i>No Response from Agency</i>	<i>Obj. Cont'd</i>	<i>10/21/93</i>
<i>19A NCAC 2D .0821 - Return of Bid Bond or Bid Deposit</i>	<i>RRC Objection</i>	<i>09/17/93</i>
<i>No Response from Agency</i>	<i>Obj. Cont'd</i>	<i>10/21/93</i>
<i>19A NCAC 2E .0404 - Highway Obstructions Interfering/Traffic/Maintenance</i>	<i>RRC Objection</i>	<i>10/21/93</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>10/21/93</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).

**10 NCAC 3R .1124(f) - ACCESSIBILITY TO SERVICES**

Beecher R. Gray, Administrative Law Judge with the Office of Administrative Hearings, declared Rule 10 NCAC 3R .1124(f) void as applied in *Britthaven, Inc. d/b/a Britthaven of Morganton, Petitioner v. N.C. Department of Human Resources, Division of Facility Services, Certificate of Need Section, Respondent and Valdese Nursing Home, Inc., Respondent-Intervenor* (92 DHR 1785).

**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>
<b>ADMINISTRATION</b>				
LMS Express, Inc. v. Administration, Div of Purchase & Contract	92 DOA 0735	Morgan	06/04/93	
Stauffer Information Systems v. Community Colleges & Administration	92 DOA 0803	West	06/10/93	8:7 NCR 613
McLaurin Parking Co. v. Administration	92 DOA 1662	Morrison	04/02/93	8:3 NCR 320
Warren H. Arrington Jr. v. Division of Purchase & Contract	93 DOA 0132	West	07/21/93	
<b>ALCOHOLIC BEVERAGE CONTROL COMMISSION</b>				
Alcoholic Beverage Control Comm. v. Ann Oldham McDowell	92 ABC 0260	Morgan	04/01/93	
Curtis Ray Lynch v. Alcoholic Beverage Control Comm.	92 ABC 0288	Gray	05/18/93	
Alcoholic Beverage Control Comm. v. Ezra Everett Rigsbee	92 ABC 0702	West	07/30/93	
Alcoholic Beverage Control Comm. v. Partnership, Phillip Owen Edward	92 ABC 0978	Gray	05/28/93	
Alcoholic Beverage Control Comm. v. Gary Morgan Neugent	92 ABC 1086	Becton	03/22/93	
Alcoholic Beverage Control Comm. v. Azzat Aly Amer	92 ABC 1149	Reilly	09/01/93	
Alcoholic Beverage Control Comm. v. Kirby Ronald Eldridge	92 ABC 1153	Chess	04/26/93	
Alcoholic Beverage Control Comm. v. Gloria Black McDuffie	92 ABC 1476	West	05/26/93	
Alcoholic Beverage Control Comm. v. Larry Isaac Hailstock	92 ABC 1483	Reilly	04/07/93	
Alcoholic Beverage Control Comm. v. Anthony Ralph Cecchini Jr.	92 ABC 1690	Morgan	06/29/93	
Johnnie L. Baker v. Alcoholic Beverage Control Commission	92 ABC 1735	Chess	05/07/93	
RAMSAC Enterprises, Inc. v. Alcoholic Beverage Control Comm.	93 ABC 0002	Morrison	07/02/93	
Alcoholic Beverage Control Comm. v. Aubrey Rudolph Wallace	93 ABC 0047	Gray	05/28/93	
Alcoholic Beverage Control Comm. v. Mermaid, Inc.	93 ABC 0076	Gray	08/04/93	
Alcoholic Beverage Control Comm. v. Majdi Khalid Wahdan	93 ABC 0087	Becton	07/06/93	8:9 NCR 785
Cornelius Hines T/A Ebony Lounge v. Alcoholic Beverage Ctl. Comm.	93 ABC 0118	Morrison	08/04/93	
Alcoholic Beverage Control Comm. v. Homer Patrick Godwin Jr.	93 ABC 0125	Reilly	05/13/93	
Alcoholic Beverage Control Comm. v. Wanda Lou Ball	93 ABC 0182	Nesnow	07/29/93	
Charles Anthonious Morant v. Alcoholic Beverage Control Comm.	93 ABC 0232	Chess	07/20/93	
Alcoholic Beverage Control Comm. v. Billy Fincher McSwain Jr.	93 ABC 0239	Gray	08/26/93	
Jean Hoggard Askew v. Alcoholic Beverage Control Commission	93 ABC 0255	West	09/10/93	
ABC Comm. v. Partnership/T/A Corrothers Comty Ctr & Private Club	93 ABC 0318	Reilly	07/22/93	
Alcoholic Beverage Control Comm. v. James Elwood Alphin	93 ABC 0326	Gray	08/26/93	
Alcoholic Beverage Control Comm. v. James William Campbell	93 ABC 0327	Gray	08/09/93	
Barbara Locklear v. Alcoholic Beverage Control Commission	93 ABC 0395	West	09/14/93	
Alcoholic Beverage Control Comm. v. Partnership, T/A Hawk's Landing	93 ABC 0407	Becton	10/18/93	
Alcoholic Beverage Control Com. v. Thomas Andrew Reid	93 ABC 0408	Gray	11/01/93	
Zachary Andre Jones v. Alcoholic Beverage Control Commission	93 ABC 0421	West	09/13/93	
Alcoholic Beverage Control Comm. v. Mack Ray Chapman	93 ABC 0423	Gray	09/17/93	
Alcoholic Beverage Control Comm. v. Bistro Enterprises, Inc.	93 ABC 0430	Reilly	10/07/93	
Alcoholic Beverage Control Comm. v. Richard Donald James Jr.	93 ABC 0431	Nesnow	09/01/93	
Alcoholic Beverage Control Comm. v. George Oliver O'Neal III	93 ABC 0433	Morgan	11/01/93	8:16 NCR 1553
Alcoholic Beverage Control Comm. v. The Sideline of Wilmington, Inc.	93 ABC 0462	Becton	10/27/93	
William Vernon Franklin & Gene Carroll Daniels v. ABC Commission	93 ABC 0570	Reilly	09/17/93	
Alcoholic Beverage Control Comm. v. Joseph Adu	93 ABC 0601	Nesnow	10/28/93	8:16 NCR 1560
Alcoholic Beverage Control Comm. v. Citizens Fuel Company	93 ABC 0611	West	10/12/93	
Alcoholic Beverage Control Comm. v. Citizens Fuel Company	93 ABC 0613	West	10/11/93	
Alcoholic Beverage Control Comm. v. Mohammad Salim Pirini	93 ABC 0616	West	10/13/93	
Charles Edward Hare, Club Paradise v. Alcoholic Beverage Ctl. Comm.	93 ABC 0644	Gray	08/10/93	
Alcoholic Beverage Control Comm. v. Partnership t/a RJ's Store	93 ABC 0860	Mann	09/29/93	
Alcoholic Bev. Control Comm. v. Mild & Wild, Inc., Sheila Scholz	93 ABC 1475	Nesnow	03/23/93	
<b>COMMERCE</b>				
Lester Moore v. Weatherization Assistance Program	93 COM 0105	Gray	03/08/93	



<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>ALJ</u>	<u>DATE OF DECISION</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
<b>CRIME CONTROL AND PUBLIC SAFETY</b>				
George W. Paylor v. Crime Victims Compensation Comm.	91 CPS 1286	Morgan	04/27/93	
Steven A. Barner v. Crime Victims Compensation Comm.	92 CPS 0453	Nesnow	06/01/93	
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	
Isabelle Hyman v. Crime Victims Compensation Comm.	92 CPS 1807	Morrison	05/24/93	
James G. Pellom v. Crime Control & Public Safety	93 CPS 0034	Gray	05/05/93	
Norman E. Brown v. Victims Compensation Commission	93 CPS 0141	West	07/07/93	
Moses H. Cone Mem Hosp v. Victims Compensation Comm.	93 CPS 0152	Nesnow	04/02/93	8:3 NCR 327
David & Jane Spano v. Crime Control & Public Safety	93 CPS 0160	Nesnow	07/30/93	8:10 NCR 862
Phillip Edward Moore v. Crime Control & Public Safety	93 CPS 0169	Nesnow	05/20/93	
Norma Jean Purkett v. Crime Victims Compensation Comm.	93 CPS 0205	West	08/27/93	8:12 NCR 1171
Sheila Carter v. Crime Control and Public Safety	93 CPS 0249	Morgan	08/25/93	
John Willie Leach v. Crime Victims Compensation Comm.	93 CPS 0263	Morrison	05/20/93	
Nellie R. Mangum v. Crime Victims Compensation Comm.	93 CPS 0303	Morrison	06/08/93	
Constance Brown v. Crime Victims Compensation Comm.	93 CPS 0351	Reilly	05/24/93	
Susan Coy v. Crime Victims Compensation Commission	93 CPS 0623	Reilly	09/22/93	
<b>ENVIRONMENT, HEALTH, AND NATURAL RESOURCES</b>				
Charles L. Wilson v. Environment, Health, & Natural Resources	91 EHR 0664	Morgan	03/23/93	
J. Bruce Mulligan v. Environment, Health, & Natural Resources	91 EHR 0773	West	07/13/93	
Michael D. Barnes v. Onslow Cty Hlth & Environment and EHR	91 EHR 0825	Morgan	06/21/93	
William E. Finck v. Environment, Health, & Natural Resources	92 EHR 0040	Gray	06/14/93	
Utlely C. Stallings v. Environment, Health, & Natural Resources	92 EHR 0062	Gray	03/15/93	
Dora Mae Blount on behalf of Joseph T. Midgette v. Hyde Cty Bd/Commissioners, Hyde Cty Bd/Health, & Environment, Health, & Natural Resources	92 EHR 0400	Gray	10/15/93	
A.J. Ballard Jr., Tire & Oil Co., Inc. v. Env., Health, & Nat. Res.	92 EHR 0754	Nesnow	08/30/93	
Safeway Removal, Inc. v. Environment, Health, & Natural Res.	92 EHR 0826	West	03/12/93	8:1 NCR 83
White Oak Chapter of the Izaak Walton League, Inc., and National Parks and Conservation Association, Inc. v. Division of Solid Waste Management, EHR and Haywood County	92 EHR 0881	West	09/14/93	
Elizabeth City/Pasquotank Cty Mun Airport Auth v. EHNHR	92 EHR 1140	Gray	04/13/93	
Interstate Brands Corp & Donald Leffew v. Env., Health, & Nat. Res.	92 EHR 1201 <sup>*1</sup>	Reilly	08/12/93	
Service Oil Company v. Environment, Health, & Natural Resources	92 EHR 1205	Reilly	05/27/93	
Interstate Brands Corp & Donald Leffew v. Env., Health, & Nat. Res.	92 EHR 1224 <sup>*1</sup>	Reilly	08/12/93	
Residents of Camm & Shell v. Health Environmental - Septic Tank Div.	92 EHR 1462	Morrison	08/25/93	
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	
Standard Specialty Contractors, Inc. v. EHNHR	92 EHR 1660	Reilly	05/21/93	
Shawqi A. Jaber v. Environment, Health, & Natural Resources	92 EHR 1784	Becton	07/07/93	
McLeod Leather & Belting Co., Inc. v. Env., Health, & Natural Res.	93 EHR 0003	Morgan	10/11/93	8:15 NCR 1503
Angela Power, Albert Power v. Children's Special Health Svcs.	93 EHR 0008	Becton	03/24/93	
Rayco Utilities, Inc. v. Environment, Health, & Natural Resources	93 EHR 0063	Morrison	09/17/93	
Erby Lamar Grainger v. Environment, Health, & Natural Resources	93 EHR 0071	Reilly	06/21/93	
Mustafa E. Essa v. Environment, Health, & Natural Resources	93 EHR 0146	Gray	03/29/93	
A.J. Holt v. Public Water Supply Section, Div. of Environmental Health	93 EHR 0168	West	10/25/93	
Charlie Garfield McPherson Swine Farm v. Env., Health, & Nat. Res.	93 EHR 0181	Reilly	07/23/93	8:10 NCR 870
Keith Cutler, Kathryn Cutler v. Environment, Health, & Natural Res.	93 EHR 0185	Morrison	10/20/93	
Rosetta Brimage, Vanessa Pack v. Env. Health of Craven County	93 EHR 0206	Nesnow	05/20/93	
R.L. Stowe Mills, Inc. v. Environment, Health, & Natural Resources	93 EHR 0219	Morrison	08/11/93	8:11 NCR 996
O.C. Stafford/Larry Hancy v. Montgomery Cty. Health Dept.	93 EHR 0224	Gray	06/07/93	
Patricia Y. Marshall v. Montgomery Cty Health Dept. & EHR	93 EHR 0252	Gray	10/22/93	
Fred M. Grooms v. Environment, Health, & Natural Resources	93 EHR 0276	West	08/27/93	8:12 NCR 1176
Bobby Anderson v. Environment, Health, & Natural Resources	93 EHR 0299	Reilly	06/07/93	
Shell Bros. Dist., Inc. v. Environment, Health, & Natural Resources	93 EHR 0308	Becton	05/18/93	
Fred C. Gosnell & wife, Patricia T. Gosnell v. Env., Health, & Nat. Res.	93 EHR 0340	Becton	08/11/93	
Holding Bros., Inc. v. Environment, Health, & Natural Resources	93 EHR 0380	Nesnow	08/03/93	8:11 NCR 1001
Hamilton Beach/Proctor-Silex, Inc. v. Environment, Health, & Natrl Res	93 EHR 0477	Reilly	06/29/93	
Monroe Gaskill v. DEHNR-Div. of Coastal Management	93 EHR 0802	Chess	10/13/93	
Lanny Clifton, Southwind Dev., Co. v. Div. of Environmental Mgmt.	93 EHR 0848	Becton	10/20/93	
Blue Ridge Env. Defense League, Inc. v. Env., Health, & Natrl Res	93 EHR 0862	Nesnow	10/11/93	

<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>ALJ</u>	<u>DATE OF DECISION</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
<b>HUMAN RELATIONS COMMISSION</b>				
Human Relations Comm. on behalf of Tyrone Clark v. Myrtle Wilson	92 HRC 0560	Becton	09/07/93	8:13 NCR 1287
Human Relations Comm. on behalf of Marsha Crisco v. Hayden Morrison	93 HRC 0167	Reilly	08/18/93	8:12 NCR 1168
<b>HUMAN RESOURCES</b>				
O.C. Williams v. Human Resources	91 CSE 0036*2	Morgan	03/30/93	
Ronald Terry Brown v. Human Resources	91 CSE 0249	Morgan	05/17/93	
Dennis K. King v. Human Resources	91 CSE 1122	Morgan	07/28/93	
Cathy Harris, A/K/A Cathy D. Grubb v. Human Resources	91 CSE 1131	Morgan	08/24/93	
Raymond L. Griffin v. Human Resources	91 CSE 1148	Morgan	08/24/93	
O.C. Williams v. Human Resources	91 CSE 1158*2	Morgan	03/30/93	
Michael L. Ray v. Human Resources	91 CSE 1173	Morgan	05/17/93	
Randy Chambliss v. Human Resources	91 CSE 1187	Morgan	04/28/93	
Melvin White v. Human Resources	91 CSE 1192	Morgan	05/17/93	
Joseph R. Kavaliauskas Jr. v. Human Resources	91 CSE 1204	Morgan	07/29/93	
Larry D. Boyd v. Human Resources	91 CSE 1214	Morgan	08/24/93	
Jefferson D. Boylen v. Human Resources	91 CSE 1217	Morgan	05/17/93	
Jeffery D. Williams v. Human Resources	91 CSE 1231	Morgan	04/28/93	
Jerry L. Summers v. Human Resources	91 CSE 1234	Morgan	07/28/93	
Samuel E. Massenberg Jr. v. Human Resources	91 CSE 1249	Morgan	05/17/93	
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	
Edwin Clarke v. Human Resources	92 CSE 0129	Morgan	05/17/93	
Dwayne Allen v. Human Resources	92 CSE 0196	Morgan	03/31/93	
Edwin Ivester v. Human Resources	92 CSE 0268	Nesnow	03/30/93	
Connie F. Epps, Otis Junior Epps v. Human Resources	92 CSE 1182	Reilly	07/22/93	
Tyrone Aiken v. Human Resources	92 CSE 1217	Gray	06/17/93	
Everett M. Eaton v. Human Resources	92 CSE 1221	Reilly	07/27/93	
Edward E. Brandon v. Human Resources	92 CSE 1237	Gray	04/16/93	
Darrell W. Russell v. Human Resources	92 CSE 1249	Becton	04/20/93	
John Henry Byrd v. Human Resources	92 CSE 1250	Reilly	06/04/93	
Michelle D. Mobley v. Human Resources	92 CSE 1256	Nesnow	04/15/93	
Gus W. Long Jr. v. Human Resources	92 CSE 1263	Gray	08/16/93	
Robert E. Watson v. Human Resources	92 CSE 1265	Reilly	05/06/93	
Byron Christopher Williams v. Human Resources	92 CSE 1270	Nesnow	04/26/93	
James W. Bell v. Human Resources	92 CSE 1311	Nesnow	05/10/93	
Charles W. Stall Jr. v. Human Resources	92 CSE 1313	Mann	07/06/93	
Eric Stanley Stokes v. Human Resources	92 CSE 1316*3	Reilly	03/25/93	
Clayton L. Littleton v. Human Resources	92 CSE 1317	Morrison	09/02/93	
Frank E. Johnson v. Human Resources	92 CSE 1326	Reilly	08/16/93	
David Rollins v. Human Resources	92 CSE 1334	Morrison	05/06/93	
Willie Sam Brown v. Human Resources	92 CSE 1338	Morrison	09/15/93	
Lyndell Greene v. Human Resources	92 CSE 1346	Nesnow	04/16/93	
Charles Swann v. Human Resources	92 CSE 1347	West	09/16/93	
Joe B. Reece v. Human Resources	92 CSE 1355	Mann	10/12/93	
Michael Anthony Dean v. Human Resources	92 CSE 1356	Morrison	08/13/93	
Gregory W. Alford v. Human Resources	92 CSE 1358	Gray	10/18/93	
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	
Herbert H. Fordham v. Human Resources	92 CSE 1362	Nesnow	07/19/93	
Jack Dulq v. Human Resources	92 CSE 1374	Gray	07/16/93	
Jesse B. Williams v. Human Resources	92 CSE 1389	Nesnow	10/12/93	
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	
Ocie C. Williams v. Human Resources	92 CSE 1405	Mann	06/25/93	
Terrance Freeman v. Human Resources	92 CSE 1411	Mann	06/07/93	
Floyd Excell Stafford v. Human Resources	92 CSE 1412	Reilly	08/31/93	
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	

\* 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>
Roy Chester Robinson v. Human Resources	92 CSE 1423	Reilly	04/15/93	
Lynwood McClinton v. Human Resources	92 CSE 1424	Reilly	09/15/93	
Timothy Scott Long v. Human Resources	92 CSE 1445	Becton	06/29/93	
David W. Williams v. Human Resources	92 CSE 1448	Nesnow	07/19/93	
William E. Ingram v. Human Resources	92 CSE 1450	Reilly	04/15/93	
Harold R. Pledger v. Human Resources	92 CSE 1455	Morrison	05/20/93	
Carl Beard v. Human Resources	92 CSE 1459	Reilly	09/08/93	
Henry Alston Jr. v. Human Resources	92 CSE 1460	Becton	06/29/93	
Gary Lewis Doster v. Human Resources	92 CSE 1461	Morrison	10/21/93	
Michael W. Bentley v. Human Resources	92 CSE 1512	Nesnow	06/09/93	
Dale Robert Stuhre v. Human Resources	92 CSE 1516	Reilly	05/11/93	
James T. Carter Jr. v. Human Resources	92 CSE 1517	Mann	08/31/93	
Tommy Malone v. Human Resources	92 CSE 1520	Mann	05/07/93	
James C. Dixon Jr. v. Human Resources	92 CSE 1522	Becton	05/11/93	
Timothy R. Currence v. Human Resources	92 CSE 1523	Reilly	09/09/93	
Wardell Walker v. Human Resources	92 CSE 1524	Reilly	10/12/93	
Wallace M. Cooper v. Human Resources	92 CSE 1527	Reilly	05/11/93	
Jarvis N. Price v. Human Resources	92 CSE 1531	Morrison	05/12/93	
Thomas L. Yates v. Human Resources	92 CSE 1535	Gray	05/10/93	
Robert E. Tarlton Sr. v. Human Resources	92 CSE 1536	Gray	05/17/93	
Rodney Devard Clemons v. Human Resources	92 CSE 1539	Gray	05/10/93	
James A. Coleman v. Human Resources	92 CSE 1540	Reilly	05/11/93	
Lee Richard Jones v. Human Resources	92 CSE 1541	Reilly	09/08/93	
Romeo F. Skapple v. Human Resources	92 CSE 1545	Gray	04/26/93	
Terrial W. Mayberry v. Human Resources	92 CSE 1546	Reilly	10/12/93	
Jeffrey L. Garrett v. Human Resources	92 CSE 1557	Gray	04/22/93	
Edward Kirk v. Human Resources	92 CSE 1560	Gray	06/29/93	
William C. Hubbard v. Human Resources	92 CSE 1562	Mann	05/12/93	
William Michael Przybysz v. Human Resources	92 CSE 1565	Becton	07/23/93	
Kevin Keith Witmore v. Human Resources	92 CSE 1566	Reilly	11/01/93	
Edward Fitch v. Human Resources	92 CSE 1572	Reilly	05/11/93	
David Robinette v. Human Resources	92 CSE 1573	Mann	07/14/93	
Kit C. Elmore v. Human Resources	92 CSE 1575	Gray	07/16/93	
Brian C. Gilmore v. Human Resources	92 CSE 1576	Gray	04/26/93	
Philip S. Piercy v. Human Resources	92 CSE 1577	Gray	07/16/93	
Anthony McLaughlin v. Human Resources	92 CSE 1582	Gray	06/29/93	
Johnny W. Cooke v. Human Resources	92 CSE 1585	Becton	05/11/93	
Roland L. Essaff v. Human Resources	92 CSE 1588	Morrison	07/26/93	
Isaac Maxwell v. Human Resources	92 CSE 1589	Reilly	04/26/93	
Donald J. Ray v. Human Resources	92 CSE 1592	Mann	05/19/93	
Barbara A. Chaperon v. Human Resources	92 CSE 1593	Mann	10/13/93	
Kenneth Eugene Johnson v. Human Resources	92 CSE 1594	Reilly	11/01/93	
Charles Wayne Pierce v. Human Resources	92 CSE 1596	Morrison	07/14/93	
Donna G. Kuotts v. Human Resources	92 CSE 1611	Morrison	07/16/93	
Robert Jerome Sutton v. Human Resources	92 CSE 1618	Chess	10/12/93	
Donald R. Williams v. Human Resources	92 CSE 1622	Nesnow	08/04/93	
McKinley Clyburn v. Human Resources	92 CSE 1623	Morrison	05/20/93	
Henry L. Taylor v. Human Resources	92 CSE 1624	Mann	09/15/93	
Tony Thorpe v. Human Resources	92 CSE 1625	Chess	07/15/93	
Jeffery D. Williams v. Human Resources	92 CSE 1626	Mann	05/19/93	
Ronald Sowell v. Human Resources	92 CSE 1627	Reilly	07/19/93	
Billy Smith v. Human Resources	92 CSE 1629	Reilly	03/25/93	
Anthony Curry v. Human Resources	92 CSE 1631	Reilly	03/25/93	
John G. Williams v. Human Resources	92 CSE 1632	Mann	08/10/93	
Larry W. Golden v. Human Resources	92 CSE 1633	Reilly	03/25/93	
William J. Carter v. Human Resources	92 CSE 1637	Nesnow	05/19/93	
Mark W. Dean v. Human Resources	92 CSE 1638	Reilly	07/15/93	
Linda D. McDonald v. Human Resources	92 CSE 1639	Gray	10/19/93	
Tyrone Thomas v. Human Resources	92 CSE 1640	Mann	07/22/93	
Rilton E. May v. Human Resources	92 CSE 1642	Morgan	07/29/93	
Joe K. Martin v. Human Resources	92 CSE 1650	Reilly	09/10/93	
Eric Stanley Stokes v. Human Resources	92 CSE 1652*	Reilly	03/25/93	
Larry Thompson v. Human Resources	92 CSE 1655	Reilly	07/22/93	
Billie J. Smith v. Human Resources	92 CSE 1656	Gray	07/23/93	
Patrick Floyd v. Human Resources	92 CSE 1663	Reilly	05/20/93	
Dennis W. Nolan v. Human Resources	92 CSE 1670	Morrison	06/25/93	
Eric L. Garland v. Human Resources	92 CSE 1671	Mann	07/22/93	
Ira Alston Jr. v. Human Resources	92 CSE 1703	Becton	06/16/93	



# CONTESTED CASE DECISIONS

AGENCY	CASE NUMBER	ALJ	DATE OF DECISION	PUBLISHED DECISION REGISTER CITATION
Elvis Bernard Telfair v. Human Resources	92 CSE 1704	Reilly	09/15/93	
Ronald G. Bolden v. Human Resources	92 CSE 1706	Mann	06/25/93	
Donnell E. Byrd v. Human Resources	92 CSE 1712	Chess	10/22/93	
Marvin Holley v. Human Resources	92 CSE 1713	Mann	06/08/93	
Eddie Short v. Human Resources	92 CSE 1714	West	07/15/93	
Michael Tywan Marsh v. Human Resources	92 CSE 1716	Gray	06/17/93	
Leroy Jones v. Human Resources	92 CSE 1718	Gray	06/17/93	
Antonio M. Townsend v. Human Resources	92 CSE 1721	Chess	08/30/93	
Kevin J. Close v. Human Resources	92 CSE 1727	Chess	08/30/93	
Norman Gatewood v. Human Resources	92 CSE 1728	Chess	10/22/93	
Thadius Bonapart v. Human Resources	92 CSE 1740	Chess	09/21/93	
Ronald Norman v. Human Resources	92 CSE 1746	Chess	10/14/93	
Joseph Eric Lewis v. Human Resources	92 CSE 1748	Becton	08/02/93	
Ronald Dean Lowery v. Human Resources	92 CSE 1771	West	07/15/93	
Tamera S. Hatfield v. Human Resources	92 CSE 1772	Chess	08/30/93	
Michael Wayne Bryant v. Human Resources	92 CSE 1773	Chess	10/22/93	
James E. Blakney v. Human Resources	92 CSE 1779	Nesnow	05/13/93	
Nelson Fowler Jr. v. Human Resources	93 CSE 0050	Chess	10/18/93	
Oswinn Blue v. Human Resources	93 CSE 0073	Chess	08/03/93	
Kelvin D. Jackson v. Human Resources	93 CSE 0221	West	08/04/93	
Linwood Staton v. Human Resources	93 CSE 0250	Nesnow	08/13/93	
Anthony Watson v. Human Resources	93 CSE 0396	Nesnow	08/04/93	
Eugene Polk v. Human Resources	93 CSE 0437	Chess	08/11/93	
Steve R. Tallent v. Human Resources	93 CSE 0448	West	10/29/93	
Glenda K. Hollifield v. Human Resources	93 CSE 0545	West	10/11/93	
Kenneth W. Williams v. Human Resources	93 CSE 0590	Reilly	10/18/93	
Charles Thompson Jr. v. Human Resources	93 CSE 0696	Morrison	09/23/93	
Barbara W. Catlett v. Human Resources	92 DCS 0577	West	03/15/93	
Laurel Langford v. Human Resources	92 DCS 1181	Gray	05/04/93	8:5 NCR 441
Ida Diane Davis v. Human Resources	92 DCS 1200	Gray	03/29/93	
Hatsuko Klein v. Human Resources	92 DCS 1271	Reilly	05/05/93	
Karen Mullins Martin v. Human Resources	92 DCS 1783	West	08/04/93	
Ora Lee Brinkley v. David T. Flaherty, Secretary of Human Resources	92 DHR 0608	Chess	08/27/93	
Mary McDuffie v. Human Resources Child Development	93 DHR 0651	Becton	09/10/93	
Leon Barbee v. Human Resources	92 DHR 0658	Morrison	04/30/93	8:4 NCR 392
Carrolton of Dunn, Inc. v. Human Resources	92 DHR 1101	Morgan	07/26/93	
Dialysis Care of North Carolina, Inc., d/b/a Dialysis Care of Cumberland County v. Human Resources, Division of Facility Services, Certificate of Need Section, and Bio-Medical Applications of Fayetteville d/b/a Fayetteville Kidney Center, Webb-Lohachan-Melton Rentals, Bio-Medical Applications of North Carolina, Inc., d/b/a BMA of Raeford and Webb-Lohachan Rentals	92 DHR 1109*	Morgan	06/22/93	8:8 NCR 687
Dialysis Care of North Carolina, Inc., d/b/a Dialysis Care of Cumberland County v. Human Resources, Division of Facility Services, Certificate of Need Section, and Bio-Medical Applications of Fayetteville d/b/a Fayetteville Kidney Center, Webb-Lohachan-Melton Rentals, Bio-Medical Applications of North Carolina, Inc., d/b/a BMA of Raeford and Webb-Lohachan Rentals	92 DHR 1110*	Morgan	06/22/93	8:8 NCR 687
Bio-Medical Applications of North Carolina, Inc., d/b/a BMA of Raeford, Webb-Lohachan-Melton Rentals, Bio-Medical Applications of North Carolina, Inc., d/b/a BMA of Fayetteville d/b/a Fayetteville Kidney Center and Webb-Lohachan Rentals v. Human Resources, Division of Facility Services, Certificate of Need Section and Dialysis Care of North Carolina, Inc., d/b/a Dialysis Care of Hoke County	92 DHR 1116*	Morgan	06/22/93	8:8 NCR 687
Renal Care of Rocky Mount, Inc. v. Human Resources, Division of Facility Services, Certificate of Need Section, and Bio-Medical Applications of North Carolina, Inc., d/b/a BMA of Tarboro, Rocky Mount Nephrology Associates, Inc., Bio-Medical Applications of North Carolina, Inc., d/b/a BMA of Rocky Mount d/b/a Rocky Mount Kidney Center, and Rocky Mount Kidney Center Associates	92 DHR 1120	Gray	06/18/93	8:8 NCR 687
James H. Hunt Jr. v. Division of Medical Assistance	92 DHR 1145	Becton	05/13/93	8:5 NCR 443
Barbara Jones v. Human Resources	92 DHR 1192	Nesnow	04/02/93	8:3 NCR 313
Joyce P. Williams v. Human Resources	92 DHR 1275	Gray	03/15/93	
Snoopy Day Care, Diane Hamby v. Child Day Care Licensing	92 DHR 1320	Morgan	05/21/93	

# CONTESTED CASE DECISIONS

AGENCY	CASE NUMBER	ALJ	DATE OF DECISION	PUBLISHED DECISION REGISTER CITATION
Cynthia Reed v. Human Resources	92 DHR 1329	Chess	05/10/93	
The Neighborhood Center v. Human Resources	92 DHR 1375	Chess	08/02/93	
Helm's Rest Home, Ron J. Schimpf/Edith H. Wilson v. Human Resources	92 DHR 1604	Reilly	05/10/93	
Jo Ann Kinsey v. NC Memorial Hospital Betty Hutton, Volunteer Svc.	92 DHR 1612	Chess	03/08/93	
Amy Clara Williamson v. NC Mem Hosp Betty Hutton, Volunteer Svc.	92 DHR 1613	Chess	03/08/93	
Betty Butler v. Human Resources	92 DHR 1614	Chess	03/09/93	
Wayne Sanders and Brenda Sanders v. Human Resources	92 DHR 1699	Reilly	06/07/93	8:7 NCR 632
Britthaven, Inc. v. Human Resources & Valdeese Nursing Home, Inc.	92 DHR 1785	Gray	09/17/93	
Samuel Benson v. Office of Admin. Hearings for Medicaid	93 DHR 0010	Becton	03/11/93	
James W. McCall, Alice V. McCall v. Human Resources	93 DHR 0102	Morgan	10/05/93	
Vernice Whisnant v. Human Resources	93 DHR 0332	Morgan	09/23/93	
Cabarrus Cty Dept. of Social Svcs. v. Human Resources	93 DHR 0373	Morgan	07/20/93	
Hannah F. Tonkel v. Human Resources	93 DHR 0378	Nesnow	09/10/93	
Fannie Lewis v. Human Resources	93 DHR 0379	Gray	06/28/93	
Human Resources, Div. of Child Development v. Susan Amato	93 DHR 0418	Morgan	08/26/93	
Katie Kelly v. Human Resources	93 DHR 0441	Chess	07/26/93	
Venola Hall, Agape Day Care v. Human Resources	93 DHR 0535	Mann	10/22/93	
Christopher Durrer, Wilson Memorial Hospital v. Human Resources	93 DHR 0566	Chess	09/17/93	
Darryl A. Richardson v. Human Resources	93 DHR 0679	Becton	09/30/93	
Home Health Prof., Barbara P. Bradsher, Admin v. Human Resources	93 DHR 0737	Chess	09/23/93	
Sandra Gail Wilson v. Child Abuse/Neglect, Div. of Child Development	93 DHR 0782	Nesnow	09/09/93	

## INSURANCE

Carolyn M. Hair v. St Employees Comprehensive Major Medical	92 INS 1464	Chess	03/10/93	
Scotland Memorial Hospital, Mary Horne Odom v. Bd./Trustees// St. of N.C. Teachers' & St. Emp. Comp. Major Medical Plan, and David G. Devries, as Exec. Admin. of the N.C. Teachers' & St. Emp. Comp. Major Medical Plan	92 INS 1791	Reilly	08/19/93	
Phyllis C. Harris v. Teachers' & St. Emp. Comp. Major Med. Plan	93 INS 0197	Nesnow	07/29/93	

## JUSTICE

Philip B. Cates v. Justice, Attorney General's Office	90 DOJ 0353	Morgan	08/30/93	8:13 NCR 1281
Jennings Michael Bostic v. Sheriffs' Ed. & Traning Sids. Comm.	92 DOJ 0656*7	West	06/22/93	
Colin Carlisle Mayers v. Sheriffs' Ed. & Training Sids. Comm.	92 DOJ 0761	Morrison	05/10/93	
Jennings Michael Bostic v. Sheriffs' Ed. & Traning Sids. Comm.	92 DOJ 0829*7	West	06/22/93	
Michael Charles Kershner v. Criminal Justice Ed & Training Sids Comm	92 DOJ 0869	Morgan	08/11/93	
George Wilton Hawkins v. Criminal Justice Ed. & Training Sids. Comm.	92 DOJ 1081*9	Morgan	07/09/93	
Marilyn Jean Britt v. Criminal Justice Ed. & Training Sids. Comm.	92 DOJ 1088	Morrison	03/16/93	
Tim McCoy Deck v. Criminal Justice Ed. & Training Sids. Comm.	92 DOJ 1367	Chess	04/01/93	
Richard Zander Frink v. Criminal Justice Ed. & Traning Sids. Comm.	92 DOJ 1465	Nesnow	05/28/93	
Sherri Ferguson Revis v. Sheriffs' Ed. & Training Sids. Comm.	92 DOJ 1756	Gray	03/23/93	
Mark Thomas v. Sheriffs' Ed. & Training Standards Commission	93 DOJ 0151	West	04/21/93	
George Wilton Hawkins v. Sheriffs' Ed. & Training Sids. Comm.	93 DOJ 0156*9	Morgan	07/09/93	
Lonnie Allen Fox v. Sheriffs' Ed. & Training Standards Commission	93 DOJ 0196	Morrison	08/09/93	
Alarm Systems Licensing Bd. v. Eric Hoover	93 DOJ 0201	Becton	07/12/93	
Alarm Systems Licensing Bd. v. Vivian Darlene Gaither	93 DOJ 0202	Chess	05/10/93	
Rebecca W. Stevenson v. Criminal Justice Ed. & Training Sids. Comm.	93 DOJ 0357	Morrison	09/13/93	
Lloyd Harrison Bryant Jr. v. Criminal Justice Ed & Training Sids Comm	93 DOJ 0377	Reilly	08/31/93	
William B. Lipscomb v. Private Protective Services Board	93 DOJ 0458	Morrison	06/01/93	
Private Protective Svcs. Bd. v. Fred D. Rector	93 DOJ 0479	Mann	08/19/93	
Private Protective Svcs. Bd. v. Alan D. Simpson	93 DOJ 0480	West	07/21/93	
William M. Medlin v. Sheriffs' Ed. & Training Sids. Comm.	93 DOJ 0569	Chess	10/06/93	
Carl Michael O'Byrne v. Alarm Systems Licensing Board	93 DOJ 0844	Nesnow	09/08/93	8:13 NCR 1300

## LABOR

Greensboro Golf Center, Inc. v. Labor	92 DOL 0204	Nesnow	04/15/93	
Ronald Dennis Hunt v. Labor	92 DOL 1319	Morgan	06/17/93	
Jeffrey M. McKinney v. Labor	92 DOL 1333	Morrison	06/21/93	

## MORTUARY SCIENCE

Board of Mortuary Science v. Triangle Funeral Chapel, Inc.	92 BMS 1169	Reilly	04/29/93	8:4 NCR 396
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<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>ALJ</u>	<u>DATE OF DECISION</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
<b>PUBLIC INSTRUCTION</b>				
Arnold O. Herring v. Public Instruction	91 EDC 0858	Becton	10/20/93	
Frances F. Davis, Parent of Joseph E. Davis v. Public Instruction	93 EDC 0628	Mann	07/29/93	
Donna Marie Snyder v. Public Instruction	93 EDC 0731	Nesnow	09/16/93	
<b>STATE PERSONNEL</b>				
Frances K. Pate v. Transportation	88 OSP 0340	Morrison	05/03/93	
Lawrence D. Wilkie, Jerry R. Evans, Jules R. Hancart, James H. Johnson, James D. Fishel v. Justice	90 OSP 1064 <sup>*4</sup>	Mann	05/04/93	
Lawrence D. Wilkie, Jerry R. Evans, Jules R. Hancart, James H. Johnson, James D. Fishel v. Justice	90 OSP 1065 <sup>*4</sup>	Mann	05/04/93	
Lawrence D. Wilkie, Jerry R. Evans, Jules R. Hancart, James H. Johnson, James D. Fishel v. Justice	90 OSP 1066 <sup>*4</sup>	Mann	05/04/93	
Lawrence D. Wilkie, Jerry R. Evans, Jules R. Hancart, James H. Johnson, James D. Fishel v. Justice	90 OSP 1067 <sup>*4</sup>	Mann	05/04/93	
Lawrence D. Wilkie, Jerry R. Evans, Jules R. Hancart, James H. Johnson, James D. Fishel v. Justice	90 OSP 1068 <sup>*4</sup>	Mann	05/04/93	
Connie B. Lee v. Justice	91 OSP 0011	Morgan	10/05/93	8:15 NCR 1498
Donald Allen Rutschman v. UNC Greensboro, Office of Human Res.	91 OSP 0305	Chess	10/19/93	
Bernie B. Kelly v. Correction	91 OSP 0344	Morrison	05/27/93	
Brenda G. Mitchell v. Correction	91 OSP 0625	West	03/08/93	8:1 NCR 75
Walton M. Pittman v. Correction	91 OSP 0805	Morgan	10/06/93	
Adolph Alexander Justice Jr. v. Motor Vehicles, Transportation	91 OSP 0860	Chess	07/19/93	
Clayton Brewer v. North Carolina State University	91 OSP 0941	West	04/02/93	8:3 NCR 306
Sherman Daye v. Transportation	91 OSP 0951	West	05/07/93	
Donnie M. White v. Correction	91 OSP 1236	Morgan	04/05/93	
Gregory Samuel Parker v. Environment, Health, & Natural Resources	91 OSP 1344 <sup>*5</sup>	Chess	05/20/93	
Renee E. Shepherd v. Winston-Salem State University	91 OSP 1391	Morgan	04/28/93	
Eva Dockery v. Human Resources	92 OSP 0010	Chess	05/03/93	
Lee P. Crosby v. Michael Kelly, William Meyer and EHR	92 OSP 0056	Gray	06/07/93	
William Marshall Boyd Jr. v. County Commissioners of Hyde & Certain Board of Health Members	92 OSP 0090	Gray	08/25/93	
Gregory Samuel Parker v. Environment, Health, & Natural Resources	92 OSP 0188 <sup>*5</sup>	Chess	05/20/93	
Willie Granville Bailey v. Winston-Salem State University	92 OSP 0285	Morrison	03/10/93	
Mattie W. Smith v. State Agricultural and Technical University	92 OSP 0298 <sup>*12</sup>	Reilly	09/14/93	
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 <sup>*1</sup>	West	03/08/93	
Jimmy D. Wilkins v. Transportation	92 OSP 0432 <sup>*1</sup>	West	03/08/93	
Sarah W. Britt v. Human Resources, C.A. Dillon School, CPS	92 OSP 0455	West	05/26/93	8:6 NCR 484
Charles Robinson v. Revenue	92 OSP 0553	Morgan	07/21/93	
Anna L. Spencer v. Mecklenburg County Area Mental Health	92 OSP 0584	Becton	08/16/93	
Herman James Goldstein v. UNC-Chapel Hill et al.	92 OSP 0634	Morrison	05/04/93	
Ronnie H. Mozingo v. Correction	92 OSP 0644	Mann	10/11/93	
Glinda C. Smith v. Wildlife Resources Commission	92 OSP 0653	Morrison	03/12/93	
Cindy G. Bartlett v. Correction	92 OSP 0671	Morgan	06/08/93	
William Kenneth Smith Jr. v. Broughton Hospital (Human Resources)	92 OSP 0684	Becton	05/10/93	
Larry O. Nobles v. Human Resources	92 OSP 0732	Mann	04/23/93	
Beatrice Wheelless v. Lise M. Miller, University Payroll Off., NC St. Univ.	92 OSP 0744 <sup>*10</sup>	Morgan	07/16/93	
Tracey Hall v. N.C. Central U., Off. of Scholarship & Student Aid	92 OSP 0815	Morgan	09/16/93	
Sondra Williams v. Winston-Salem State University	92 OSP 0847	Morrison	08/06/93	
Willie Thomas Hope v. Transportation	92 OSP 0947	Morgan	03/23/93	
David Scales v. Correction	92 OSP 0989	Chess	06/24/93	
Suzanne Shepherd Hill v. Environment, Health, & Nat. Res.	92 OSP 0992	Reilly	03/18/93	8:2 NCR 224
Herman James Goldstein v. UNC-Chapel Hill et al.	92 OSP 1047	Morrison	05/04/93	
Charles M. Blackwelder v. Correction	92 OSP 1082	Morrison	10/15/93	8:15 NCR 1500
Beatrice Wheelless v. Lise M. Miller, University Payroll Off., NC St. Univ.	92 OSP 1124 <sup>*10</sup>	Morgan	07/16/93	
John B. Sauls v. Wake County Health Department	92 OSP 1142	Reilly	03/08/93	8:1 NCR 88
Patti G. Newsome v. Transportation	92 OSP 1180	Becton	09/22/93	8:14 NCR 1346
Nancy McAllister v. Camden County Department of Social Services	92 OSP 1185	Chess	09/07/93	
Gilbert Jaeger v. Wake County Alcoholism Treatment Center	92 OSP 1204	Reilly	05/10/93	
Joseph Henry Bishop v. Environment, Health, & Natural Res.	92 OSP 1243	Reilly	03/05/93	
Glenn D. Fuqua v. Rockingham County Board of Social Services	92 OSP 1318	Morrison	08/03/93	



# CONTESTED CASE DECISIONS

<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>ALJ</u>	<u>DATE OF DECISION</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
Dorothy D. Johnson v. Correction	92 OSP 1395	Nesnow	10/29/93	
Willie L. Hudson v. Correction	92 OSP 1468	Becton	05/26/93	
Brenda K. Campbell v. Employment Security Commission	92 OSP 1505	Morrison	03/17/93	
Christie L. Guthrie v. Environment, Health, & Natural Resources	92 OSP 1555	Becton	05/31/93	
Sharon Reavis v. Crime Control & Public Safety	92 OSP 1606	Morrison	08/19/93	8:12 NCR 1163
James B. Price v. Transportation	92 OSP 1657	Mann	03/19/93	
Jerry L. Jones v. N.C.S.U. Physical Plant	92 OSP 1661	Chess	07/06/93	
Mattie W. Smith v. State Agricultural and Technical University	92 OSP 1691 <sup>#12</sup>	Reilly	09/14/93	
Gina Renee Cox v. UNC Chapel Hill	92 OSP 1692	Becton	10/18/93	
Roland W. Holden v. University of North Carolina at Chapel Hill	92 OSP 1715	Becton	08/30/93	8:13 NCR 1292
Betty Bradsher v. UNC-CH	92 OSP 1733	Becton	03/30/93	
Anthony M. Little v. Human Resources, John Umstead Hospital	92 OSP 1734	Becton	09/01/93	
Jannie C. Sykes v. Employment Security Commission	92 OSP 1738	Gray	10/25/93	
Jamal Al Bakkat-Morris v. Glenn Sexton (DSS)	92 OSP 1741	Becton	03/24/93	
Rebecca Beauchesne v. University of North Carolina at Chapel Hill	92 OSP 1767	Becton	10/01/93	
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	
Buford D. Vieregge Jr. v. N.C. State University, University Dining	92 OSP 1796	Morrison	05/27/93	
Dorothy Ann Harris v. Correction	93 OSP 0013	Morrison	09/15/93	
Brenda B. Miles v. University of North Carolina Chapel Hill	93 OSP 0033	Morrison	09/10/93	
Deborah J. Whitfield v. Caswell Center	93 OSP 0064	West	09/20/93	
Karen Canter v. Appalachian State University	93 OSP 0079	Reilly	06/15/93	
Terry Steve Brown v. Iredell County Health Department	93 OSP 0101	Morgan	08/06/93	
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 & EHNr	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	
Grace Jean Washington v. Caswell Center	93 OSP 0153	Morgan	06/03/93	
Ralph Snipes v. Transportation and Correction	93 OSP 0157	Mann	10/29/93	
Clifton E. Simmons v. Correction	93 OSP 0159	Morrison	04/21/93	
Willie L. James v. Caswell Center	93 OSP 0171	Morgan	05/27/93	
Irving S. Rodgers v. C.A. Dillon, Division of Youth Services	93 OSP 0177	West	04/21/93	
Richard E. Howell v. Correction, Wayne Correctional Center	93 OSP 0245	Gray	08/25/93	
Brian Dale Barnhardt v. State Highway Patrol	93 OSP 0251	Reilly	07/27/93	
F.R. "Don" Bowen v. Human Resources	93 OSP 0253	Morgan	08/06/93	
Michael L. Pegram v. Correction	93 OSP 0275 <sup>#8</sup>	Reilly	06/28/93	
Jerry D. Doss Sr. v. Correction	93 OSP 0287	Gray	05/17/93	
Debbie Renee Robinson v. Correction	93 OSP 0383	Nesnow	06/07/93	
Linda R. Wharton v. N.C. A & T University	93 OSP 0456	Chess	09/22/93	
Michael L. Pegram v. Correction	93 OSP 0472 <sup>#8</sup>	Reilly	06/28/93	
Ralph W. Burcham v. Transportation	93 OSP 0493	Chess	10/15/93	8:16 NCR 1558
Hubert L. Holmes v. Transportation	93 OSP 0572	Reilly	08/17/93	
Timothy E. Blevins v. UNC A/K/A Western Carolina University	93 OSP 0604	Morgan	09/29/93	
Xantippe Blackwell v. Human Resources, Murdoch Center	93 OSP 0632	Reilly	09/01/93	
Wayne Bradley Johnson v. State Computing Center	93 OSP 0694	Chess	10/11/93	
Harold Kovalenko v. Lynn C. Phillips, Director of Prisons	93 OSP 0697	Nesnow	09/08/93	
Daniel Thomas Wheeler, Kye Lee Wheeler v. Caldwell County Department of Social Services	93 OSP 0752	Nesnow	09/16/93	
Terry Johnson v. Correction	93 OSP 0757	Gray	10/06/93	
Kathleen E. Conran v. New Bern Police Dept., City of New Bern; and City of New Bern Police Civil Service Board	93 OSP 0797	Morrison	09/21/93	
Berton Hamm Jr. v. Wake County Child & Family Services	93 OSP 0809	Becton	10/27/93	
John R. Woods Sr. v. Wake County Child & Family Services	93 OSP 0810	Becton	11/02/93	
Coleman F. Tyrance Jr. v. Wake County Child & Family Services	93 OSP 0811	Becton	11/02/93	
John Augusta Page v. Wake County Child & Family Services	93 OSP 0812	Becton	11/02/93	
Thomas James v. Wake County Child & Family Services	93 OSP 0813	Becton	11/02/93	
James E. Hargrove v. Wake County Child & Family Services	93 OSP 0814	Becton	11/02/93	
Ricky Harrell v. Wake County Child & Family Services	93 OSP 0815	Becton	11/02/93	
Bruce Creecy v. Wake County Child & Family Services	93 OSP 0816	Becton	11/02/93	
Dana Phillips v. Administrative Office of the Courts	93 OSP 0822	West	09/09/93	
Terry P. Chappell v. Correction	93 OSP 0834	Nesnow	10/11/93	
<b>STATE TREASURER</b>				
Juanita M. Braxton v. Bd. of Trustees/Teachers' & St Emp Ret Sys	91 DST 0017	West	09/07/93	
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	



# CONTESTED CASE DECISIONS

<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>ALJ</u>	<u>DATE OF DECISION</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
Frances Billingsley v. Bd./Trustees/Teachers' & St. Emp. Ret. Sys.	92 DST 0996	West	09/20/93	
Dennis Willoughby v. Bd./Trustees/Teachers' & St. Emp. Ret. Sys.	92 DST 1439	West	09/20/93	8:14 NCR 1356
Mary Alyce Carmichael v. Bd./Trustees/Teachers' & St Emp Ret Sys	92 DST 1506	Chess	04/08/93	
W. Rex Perry v. Bd./Trustees/Teachers' & St Emp Ret Sys	93 DST 0133	West	08/12/93	8:11 NCR 992
Rory Dale Swiggett v. Bd./Trustees/N.C. Local Govtl. Emp. Ret. Sys.	93 DST 0198	West	09/28/93	8:14 NCR 1360
<b>TRANSPORTATION</b>				
Yates Construction Co., Inc. v. Transportation	92 DOT 1800	Morgan	03/25/93	
<b>UNIVERSITY OF NORTH CAROLINA HOSPITALS</b>				
Constance V. Graham v. UNC Hospital	93 UNC 0269	Morgan	07/20/93	
Jacqueline Florence v. UNC Hospitals	93 UNC 0355	Becton	06/16/93	

STATE OF NORTH CAROLINA

IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS  
93 ABC 0433

COUNTY OF DARE

N.C. ALCOHOLIC BEVERAGE CONTROL  
COMMISSION,

Petitioner,

v.

GEORGE OLIVER O'NEAL III  
T/A THE RED DRUM FOOD MART,  
Respondent.

**RECOMMENDED DECISION**

The above-captioned matter was heard by Michael Rivers Morgan, Administrative Law Judge on August 17, 1993 in Manteo, North Carolina.

**APPEARANCES**

Larry S. Height, Chief Agency Legal Specialist, for the Petitioner.

Christopher L. Seawell, Aldridge, Seawell and Khoury, for the Respondent.

**ISSUE**

Whether an employee of the Respondent's business sold or gave malt beverages to Jennifer Gray, a person less than 21 years of age, on the licensed premises on or about December 21, 1992 at 7:00 p.m.

**FINDINGS OF FACT**

Based upon the evidence admitted at the hearing, the undersigned administrative law judge finds the following facts:

1. Jimmy Ray O'Neal, 27-year-old brother of the Respondent individual, was a temporary employee of the Respondent establishment on December 21, 1992.
2. On December 21, 1992 O'Neal was working at the Respondent establishment from 3:00 p.m. until 7:00 p.m.
3. Stacy Meekins was employed with the Respondent establishment on December 21, 1992, working at the business on this date from 3:00 p.m. until 9:00 p.m.
4. O'Neal was a stock person and Meekins was a cashier with the Respondent establishment, with O'Neal being in charge of the premises.
5. Jack Gray, a 20-year-old friend of O'Neal, entered the Respondent establishment a little before 7:00 p.m.
6. O'Neal and Gray were close friends who "hung out" together almost every night.

7. Inside the Respondent establishment, Gray asked O'Neal about going to see a movie later in the evening.
8. Gray's sister Jennifer, who was 17 years of age, drove into the parking lot of the Respondent establishment while Gray and O'Neal were inside the business.
9. Jack Gray exited the Respondent establishment to speak with his sister in the business' parking lot.
10. Jennifer Gray gave Jack Gray some money outside the Respondent establishment and asked him to get her some beer.
11. Jack Gray re-entered the Respondent establishment after his conversation with Jennifer Gray outside of the store.
12. Jack Gray asked O'Neal to purchase beer for Jennifer Gray, whom O'Neal knew was underaged for the purpose of buying alcoholic beverages.
13. Jack Gray gave O'Neal a total of \$8.00--1 \$5.00 bill and 3 \$1.00 bills which Jennifer Gray had given to her brother in the Respondent establishment's parking lot--inside of the Respondent establishment and O'Neal put the \$8.00 in his pocket.
14. O'Neal and other individuals had purchased beer for Jack Gray on previous occasions.
15. O'Neal and Jack Gray conducted their conversation and exchange of money behind Meekins, who could not hear the two men's conversation nor see the money being passed.
16. Jack Gray left the Respondent establishment to go to his home to prepare to attend a movie.
17. Jennifer Gray was outside of the Respondent establishment seated alone in the vehicle which she was operating.
18. Meekins saw Jennifer Gray sitting in a vehicle in the Respondent's parking lot.
19. O'Neal was performing duties for the Respondent establishment at the time that he accepted the money from Jack Gray to purchase beer for Jennifer Gray.
20. Although the arrangements for O'Neal's purchase of beer for Jennifer Gray were made prior to O'Neal's completion of his work period at the Respondent establishment, O'Neal did not purchase the beer for Jennifer Gray upon his receipt of the money from Jack Gray because O'Neal wanted to keep the Respondent establishment out of the beer purchase transaction while O'Neal was still on duty at the store.
21. O'Neal was scheduled to get off of work at the Respondent establishment at 7:00 p.m. and to be relieved by the Respondent establishment's manager Stanley Meekins, the father of Stacy Meekins.
22. Stanley Meekins arrived at the Respondent establishment just prior to 7:00 p.m. on December 21, 1992 in order to take over the supervisory duties of the Respondent establishment from O'Neal.
23. Jennifer Gray was seated in a vehicle in the Respondent's parking lot when Stanley Meekins arrived at the business.
24. O'Neal saw Stanley Meekins drive a vehicle into the Respondent establishment's parking lot and knew that it was about time for O'Neal to get off of work.

25. O'Neal had been performing work duties for the Respondent establishment such as sweeping and stocking up to the time that Stanley Meekins arrived at the business.
26. When Stanley Meekins arrived at the Respondent establishment, O'Neal put away the broom and went to the beer cooler, which was located in the rear left corner of the Respondent establishment.
27. O'Neal obtained a "long-neck" 12-pack of Budweiser beer from the Respondent establishment's beer cooler and then went to the Respondent establishment's walk-in cooler and got a case of Michelob beer.
28. O'Neal placed the beer on the check-out counter of the Respondent establishment upon Stanley Meekins' arrival at the store.
29. When Stanley Meekins first arrived at the Respondent establishment, he cleared away trash and cans from the newspaper bins in front of the Respondent establishment prior to entering the business.
30. O'Neal purchased the beer about 7:01 p.m. or 7:02 p.m. on December 21, 1992 from the Respondent establishment.
31. Stacy Meekins sold the beer to O'Neal at the Respondent establishment on December 21, 1992.
32. Stacy Meekins registered O'Neal's beer purchases from the Respondent establishment as two separate sales.
33. Stacy Meekins did not know that O'Neal was purchasing the Budweiser beer for Jennifer Gray.
34. Stacy Meekins was giving O'Neal his change from the beer purchases as Stanley Meekins entered the Respondent establishment.
35. O'Neal considered himself to be "off-duty" from his work with the Respondent establishment upon Stanley Meekins' arrival at the store.
36. O'Neal considered himself to be "off-duty" from his work with the Respondent establishment when he purchased the beer from the Respondent establishment.
37. O'Neal left the Respondent establishment with the purchased beer and entered a vehicle which was occupied by Garland Midgett.
38. O'Neal placed the beer in the back seat area of Midgett's vehicle on the driver's side.
39. O'Neal told Jennifer Gray that he could not give her the beer which he had purchased for her in front of the Respondent establishment, and he instructed Jennifer Gray to meet him in the parking lot of Lightkeeper's Station, a restaurant located about 100 yards south of the Respondent establishment.
40. O'Neal wanted to give Jennifer Gray the beer off of the premises of the Respondent establishment in order that he would not involve the business in the beer transaction.
41. In the parking lot of Lightkeeper's Station, O'Neal handed Midgett the beer which O'Neal had purchased for Jennifer Gray and Midgett then handed the beer to Jennifer Gray.
42. Jennifer Gray was a fatality in a vehicular accident on December 21, 1992 and her death was alcohol-related.
43. O'Neal pleaded guilty to the criminal offense of the sale of malt beverages to a person less than 21 years of age.



44. The Respondent individual "laid off" O'Neal from being employed at the Respondent establishment because of O'Neal's sale of beer to the minor Jennifer Gray.

**CONCLUSIONS OF LAW**

1. North Carolina General Statutes Section 18B-302(a)(1) states that it shall be unlawful for any person to sell or give malt beverages or unfortified wine to anyone less than 21 years old.
2. North Carolina General Statutes Section 18B-101(13) defines the term "sale," with regard to alcoholic beverages, as "any transfer, trade, exchange, or barter, in any manner or by any means, for consideration."
3. Title 4, Chapter 2S, Rule .0211 of the North Carolina Administrative Code states, in pertinent part, that no permittee or his employee shall sell, offer for sale, possess or knowingly permit the possession or consumption on the licensed premises of any kind of alcoholic beverages, the sale or possession of which is not authorized by the ABC laws.
4. 4 NCAC 2S .0101(1) defines the term "employee" as "any person who performs a service for any person holding an ABC permit, regardless of whether that person is compensated for the performance of those services."
5. Jimmy Ray O'Neal was not performing a service for the Respondent establishment, and hence was not acting as an employee of the Respondent establishment, at the time that O'Neal purchased malt beverages at the Respondent establishment for the minor Jennifer Gray at about 7:01 p.m. or 7:02 p.m. on December 21, 1992 after O'Neal's work obligations for the Respondent establishment had ended at 7:00 p.m.
6. Jimmy Ray O'Neal did not sell, offer for sale or permit the possession on the Respondent establishment's premises of malt beverages by the minor Jennifer Gray on December 21, 1992 in O'Neal's capacity as an employee of the Respondent establishment.
7. The Respondent establishment, through its employee Stacy Meekins, lawfully sold malt beverages to Jimmy Ray O'Neal at about 7:01 p.m. or 7:02 p.m. on December 21, 1992 after O'Neal's completion of his employee activities for the Respondent establishment in performing services.
8. Jimmy Ray O'Neal, in an unlawful transaction which was independent, separate and apart from his lawful purchase of malt beverages from the Respondent establishment on December 21, 1992, sold malt beverages to the minor Jennifer Gray in the parking lot of the restaurant Lightkeeper's Station upon transfer of malt beverages to Jennifer Gray for consideration of money which Jack Gray had given to O'Neal on Jennifer Gray's behalf.
9. Jimmy Ray O'Neal's receipt of Jennifer Gray's money from Jack Gray on December 21, 1992 while serving as an employee of the Respondent establishment on its licensed premises did not constitute a sale of malt beverages by O'Neal to Jennifer Gray, because O'Neal did not transfer, trade, exchange or barter the malt beverages--and did not purchase the malt beverages--while serving as an employee of the Respondent establishment.
10. An employee of the Respondent's business did not sell or give malt beverages to Jennifer Gray, a person less than 21 years of age, on the licensed premises on or about December 21, 1992 at 7:00 p.m.

**RECOMMENDATION**

It is recommended that the Petitioner North Carolina Alcoholic Beverage Control Commission refrain from taking any action against the Respondent.

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 Alcoholic Beverage Control Commission.

This the 1st day of November, 1993.

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Michael Rivers Morgan  
Administrative Law Judge

STATE OF NORTH CAROLINA  
COUNTY OF DAVIDSON

IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS  
93 OSP 0493

RALPH W. BURCHAM,  
Petitioner,

v.

NORTH CAROLINA DEPARTMENT OF  
TRANSPORTATION,  
Respondent.

FINAL DECISION

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This matter was set for hearing before the undersigned Administrative Law Judge in Raleigh, North Carolina on September 27, 1993. Prior to the hearing on the merits, the Administrative Law Judge heard argument on a motion to dismiss that had been filed by the Respondent. The Respondent, through its attorney, had moved for the dismissal of this contested case due to lack of subject matter jurisdiction in the Office of Administrative Hearings, pursuant to Rule 12 of the North Carolina Rules of Civil Procedure and 26 NCAC 3 .0001, .0015. After hearing the arguments of the parties and reviewing the materials submitted, the Administrative Law Judge finds as follows:

**FINDINGS OF FACT**

1. The position of Transportation Supervisor II was posted as vacant from March 8 - 12, 1993. The Petitioner and sixteen other persons applied for the position.
2. On May 12, 1993, the Petitioner was advised in a letter from Spencer B. Jennings, Field Operations Engineer, that someone else had been selected for the position.
3. On May 14, 1993, the Petitioner filed a Petition for Contested Case Hearing, alleging that he had been denied the promotion in violation of the state policy of veteran's preference.
4. The position at issue constituted a promotion for both the Petitioner and for the selected applicant.
5. N.C.G.S. §126-80 is a general policy statement that the State of North Carolina will provide preference for veterans in employment.
6. N.C.G.S. §126-81 defines the term "veteran" and describes the other persons entitled to this preference.
7. N.C.G.S. §126-82 establishes the mechanism of how the preference is to be accorded and the personnel actions to which the preference is applicable. This subsection specifically lists hiring and reduction in force as the personnel actions to which the veterans' preference statute has application. No other personnel actions are specifically listed.

**CONCLUSIONS OF LAW**

1. Promotion is not specifically listed in N.C.G.S. §126-82 as a personnel action to which veterans' preference is applicable.

2. The North Carolina State Personnel Manual, Section 2, pp 4 - 5.1 provides that the preference to be accorded veterans shall apply in initial selection and reduction in force situations only.

3. 25 N.C.A.C. 1H .0614 provides that the preference to be accorded eligible veterans shall apply in initial selection and reduction in force situations only.

4. The Supreme Court has determined that "the jurisdiction of the OAH over appeals of state employee grievances derives not from Chapter 150B, but from Chapter 126." Batten v. Department of Correction, 326 NC 338, 342, 389 S.E.2d 35, 38 (1990).

5. The primary rule of construction of a statute is to ascertain the intent of the legislature and to carry out such intentions to the fullest extent. Burgess v. Your House of Raleigh, 326 N.C. 205, 388 S.E.2d 134 (1990); Buck v. Guaranty Co., 265 N.C. 285, 144 S.E.2d 34 (1965). "The structure of the statute ... calls for application of the maxim, expressio unius est exclusio alterius, i.e., when certain things are specified in a statute, an intention to exclude all others from its operation may be inferred." Jolly v. Wright, 300 N.C. 83, 89, 265 S.E.2d 135, 141 (1980), overruled on other grounds by McBride v. McBride, 334 N.C. 124, 431 S.E.2d 14 (1993). "The rule of ejusdem generis dictates that 'where general words follow a designation of particular subjects or things, the meaning of the general words will ordinarily be presumed to be, and construed as, restricted by the particular designations and as including only things of the same kind, character and nature as those specifically enumerated.' " Delconte v. North Carolina, 313 N. C. 384, 391, 329 S.E.2d 636, 641 (1985) citing State v. Fenner, 263 N. C. 694, 697, 140 S.E.2d 349, 352 (1965). The Petitioner's allegation regarding denial of promotion is not a claim to which veterans' preference applies.

6. N.C.G.S. §126-82, the statute delineating the application of veterans' preference in employment, does not apply to promotion.

#### DECISION

The Petitioner has alleged the denial of promotion in violation of veterans' preference. The statutes, rules, and policies affording veterans' preference in employment apply only to initial selection and reduction in force situations. The employment action involved in this contested case is promotion; therefore, veterans' preference is inapplicable to the personnel action at issue in this contested case. Accordingly, this contested case is dismissed for lack of subject matter jurisdiction in the Office of Administrative Hearings. This constitutes a final decision under N. C. G. S. §150B-36(c).

#### NOTICE

In Order to appeal a final decision, the person seeking review must file a Petition in the Superior Court of Wake County or in the superior court of the county where the person resides. The Petition for Judicial Review must be filed within thirty (30) days after the person is served with a copy of the final decision. North Carolina General Statutes Section 150B-46 describes the contents of the Petition and requires service of a copy of the Petition on all parties.

This the 15th day of October, 1993.

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Sammie Chess, Jr.  
Administrative Law Judge





3. On Friday, January 29, 1993, at approximately 10:16 p.m., Alcohol Law Enforcement (ALE) Agent Julie Holt entered the Respondent's store to purchase a soft drink. ALE Agent Lassiter was outside the Convenient Store waiting in the car for Agent Holt to return.
4. Agent Holt testified that when she was inside the store she saw a youthful black male purchase two large bottles of beer. Agent Holt further testified that the male appeared to be under 21 years of age, that he was 5' 9" tall, slim, and was wearing a jacket.
5. Agent Holt testified that the youthful black male purchased a 1.183 liter St. Ides Beer and 650 milliliter Colt 45 Malt Liquor and that she was four feet away from the youthful male at the time of the purchase.
6. Agent Holt further testified that there was another black male operating the register, that the cashier made the sale, gave the youthful male change, and put the beer in a bag. At that time, the youthful male exited the store and Agent Holt followed him.
7. Agent Holt saw the male get into a car which was parked next to Agent Lassiter's car.
8. Agent Holt testified that the car was "beat up", that there were three other individuals in the car, and that the youthful black male got into the backseat.
9. Agent Holt testified that the car pulled out of the parking lot and she and Agent Lassiter followed in their car. She further testified that they stopped the "beat up" car about 50 yards from the Respondent premises.
10. Agent Holt testified that she approached the car, identified herself, and asked the youthful black male for his identification.
11. Agent Holt further testified that the youthful black male stated that he did not have any identification but, that he was 19 years of age, and that his name was Marcus Carthran.
12. Agent Holt called the name Marcus Carthran in on the police radio and it was verified that Marcus Carthran was 19 years of age.
13. Agent Holt testified that she and Agent Lassiter did a pat-down search and did not find any identification on the youthful male.
14. Agent Holt testified that she asked the youthful male where he got the beer and he said "at the A to Zee Store." Agent Holt testified that she asked if the cashier had asked for identification and the youthful male said, "No."
15. Agent Holt testified that she confiscated two bottles of beer from the car.
16. Agent Lassiter and Agent Holt then escorted Carthran to the store and entered the store along with him.
17. Agent Holt later determined that the cashier was Joseph Adu, the Respondent in the case. Agent Holt said Mr. Adu stated to her at that time that there was another black male who told him that Marcus Carthran was 21 years of age.
18. Agent Holt further testified that she did not see a picture identification or any other identification of Marcus Carthran at the scene and that subsequent to that night, she did not follow-up by finding any other definite identification on Marcus Carthran. She testified that the radio check she did on the scene was based only on the name which the youthful male gave her.

19. Joseph Adu testified that on the night of January 29, 1993, he saw Agent Holt enter his store. He testified that when he is standing behind the counter, he can see almost the entire store.
20. Mr. Adu testified that Agent Holt came in, walked around the store and then left. Nobody was in the store when she was there.
21. Mr. Adu further testified that nobody purchased anything while Agent Holt was in the store.
22. Mr. Adu further testified that he did not know Agent Holt was an ALE Agent at the time she entered the store or at the time she left. When she exited the store, he was concerned that she had come in to steal something since she had made no purchase. He followed her to the door and looked out through the glass door to see if there were any bulges in her pockets or if she had anything in her hands. He saw that her hands were empty and he could not discern any bulges so he then returned to the cash register.
23. Mr. Adu further testified that after Agent Holt left, a red Toyota, which he testified was not "beat up" came up to the store and a young black male exited the car and entered the store.
24. Mr. Adu testified that the young black male tried to buy a Colt 45 but when Mr. Adu asked for identification, the young male said that he did not have any identification but that he was 21.
25. Mr. Adu testified that he stated to the young male that he did not believe him. The young male then exited the store and came in with another black male.
26. Mr. Adu testified that the second black male was a "notorious drug dealer" known as Leon, and that Mr. Adu knows Leon who has been in his store many times. Mr. Adu testified that he had previously seen Leon's ID and knew him to be over 21 years of age.
27. Mr. Adu testified that Leon stated he would buy the beer, which he did. He also purchased a single Black and Mild cigar.
28. Mr. Adu testified that approximately 15 minutes after the two black males left the premises, Agents Holt and Lassiter returned with the younger of the two black males.
29. Mr. Adu testified that he told them at the time that he didn't sell the beer to him; that he sold it to Leon, and Agent Lassiter said that the boy who bought the beer was also under 21 years of age. Mr. Adu stated, "No, that was not true. Leon was over 21."
30. Mr. Adu testified that Agent Holt stated at the time she returned to the store that she had been in the store and saw the purchase. Mr. Adu responded to her stating that she had not been in the store and asked her if she would swear on a Bible. Agent Holt did not respond. Mr. Adu further testified "there is no way she could have been in the store and I didn't see her."
31. Mr. Adu testified that Leon purchased only one beer and one cigar and that Mr. Adu had had to open a package to sell him one cigar because Leon did not have enough money to buy more than his purchase of a single beer and a single cigar.
32. Ted McManus is a middle-aged black male and a regular customer in Mr. Adu's store. Mr. McManus testified that when the young black male entered the store, Mr. McManus was at the microwave heating up a sandwich. Mr. McManus testified that Mr. Adu refused to sell the young black male the beer and that the young male went out the door "stamping his feet." Mr. McManus testified that an older black male then re-entered the store with the young male and bought the beer from Mr. Adu. Mr. McManus testified that he then paid for his own purchase and left the store. He testified that during the time he was there, Agent Holt was not present.

33. After studying the demeanor of the witnesses, reconciling the evidence presented, deliberating on the facts and the testimony, it is the considered opinion of the undersigned that Mr. Adu's testimony is more credible and accurate than Agent Holt's.

Based upon the foregoing Findings of Fact, the undersigned makes the following:

**CONCLUSIONS OF LAW**

1. The North Carolina Alcoholic Beverage Control Commission has the authority to revoke or suspend the permits of a permittee, fine a permittee or both for violations of Chapter 18B of the General Statutes or any regulation of the Commission. G.S. 18B-104, 203(12).

2. G.S. 18B-302(a)(1) provides that it is unlawful for a person to sell or give malt beverages to a minor.

3. Mr. Adu's testimony was rendered with such consistent detail and was supported by the testimony of a corroborating witness. More importantly, however, while it is not the opinion of the undersigned that Agent Holt would purposely falsify her testimony, it appears that Agent Holt may not remember this particular incident as specifically as she believes.

Further, it is critically important to note that Agents Holt and Lassiter never confirmed that the boy they stopped in the car was, in fact, Marcus Carthran. Although that was the name which the boy provided and was the name which they verified in their radio call-in, there is no conclusive evidence that the boy was, in fact, "Marcus Carthran."

Additionally, and also of some import, is the fact that the two large glass bottles of beer were taken from the car. It is clearly possible that one of the bottles was purchased elsewhere.

Where witnesses' testimonies are directly opposite, the critical factor becomes a finding of credibility. This is a matter of judgment, a matter of study, a matter of comparing not only demeanor but facts, evidence, and plausibility to the credibility of the witnesses. Having studied each of the witnesses with great care and having compared the presentation of facts, in addition to the other finding of fact on credibility, it is hereby concluded that Mr. Adu's testimony was the most credible.

4. It is concluded that Petitioner has failed to meet its burden of showing that Respondent sold alcoholic beverages to a minor.

Based upon the foregoing Findings of Fact and Conclusions of Law, the undersigned makes the following:

**RECOMMENDATION**

It is recommended that the Petitioner take no action against Respondent's permit.

**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 Alcoholic Beverage Control Commission.

This the 27th day of October, 1993.

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Dolores O. Nesnow  
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.*

**TITLE/MAJOR DIVISIONS OF THE NORTH CAROLINA ADMINISTRATIVE CODE**

<b>TITLE</b>	<b>DEPARTMENT</b>	<b>LICENSING BOARDS</b>	<b>CHAPTER</b>
1	Administration	Acupuncture	1
2	Agriculture	Architecture	2
3	Auditor	Auctioneers	4
4	Commerce	Barber Examiners	6
5	Correction	Certified Public Accountant Examiners	8
6	Council of State	Chiropractic Examiners	10
7	Cultural Resources	General Contractors	12
8	Elections	Cosmetic Art Examiners	14
9	Governor	Dental Examiners	16
10	Human Resources	Dietetics/Nutrition	17
11	Insurance	Electrical Contractors	18
12	Justice	Electrolysis	19
13	Labor	Foresters	20
14A	Crime Control & Public Safety	Geologists	21
15A	Environment, Health, and Natural Resources	Hearing Aid Dealers and Fitters	22
16	Public Education	Landscape Architects	26
17	Revenue	Landscape Contractors	28
18	Secretary of State	Marital and Family Therapy	31
19A	Transportation	Medical Examiners	32
20	Treasurer	Midwifery Joint Committee	33
*21	Occupational Licensing Boards	Mortuary Science	34
22	Administrative Procedures	Nursing	36
23	Community Colleges	Nursing Home Administrators	37
24	Independent Agencies	Occupational Therapists	38
25	State Personnel	Opticians	40
26	Administrative Hearings	Optometry	42
		Osteopathic Examination & Reg. (Repealed)	44
		Pharmacy	46
		Physical Therapy Examiners	48
		Plumbing, Heating & Fire Sprinkler Contractors	50
		Podiatry Examiners	52
		Practicing Counselors	53
		Practicing Psychologists	54
		Professional Engineers & Land Surveyors	56
		Real Estate Appraisal Board	57
		Real Estate Commission	58
		Refrigeration Examiners	60
		Sanitarian Examiners	62
		Social Work Certification	63
		Speech & Language Pathologists & Audiologists	64
		Therapeutic Recreation Certification	65
		Veterinary Medical Board	66

**Note:** Title 21 contains the chapters of the various occupational licensing boards.

**CUMULATIVE INDEX**  
(April 1993 - March 1994)

Pages	Issue
1 - 92	1 - April
93 - 228	2 - April
229 - 331	3 - May
332 - 400	4 - May
401 - 455	5 - June
456 - 502	6 - June
503 - 640	7 - July
641 - 708	8 - July
709 - 792	9 - August
793 - 875	10 - August
876 - 1006	11 - September
1007 - 1184	12 - September
1185 - 1307	13 - October
1308 - 1367	14 - October
1368 - 1512	15 - November
1513 - 1568	16 - November

Unless otherwise identified, page references in this Index are to proposed rules.
---

**ADMINISTRATION**

Administration's Minimum Criteria, 5  
 Low-Level Radioactive Waste Management Authority, 232  
 State Employees Combined Campaign, 1008

**ADMINISTRATIVE HEARINGS**

Civil Rights Division, 370  
 General, 366  
 Hearings Division, 1480  
 Rules Division, 367

**AGRICULTURE**

Aquaculture, 1212  
 N.C. State Fair, 506  
 Plant Industry, 513, 1212  
 Standards Division, 1212  
 Veterinary Division, 515, 1212

**COMMERCE**

Alcoholic Beverage Control Commission, 408, 711, 1310  
 Banking Commission, 408, 798, 1312  
 Cemetery Commission, 810  
 Savings Institutions Division: Savings Institutions Commission, 461  
 State Ports Authority, 811

**COMMUNITY COLLEGES**

Community Colleges, 1527

**ENVIRONMENT, HEALTH, AND NATURAL RESOURCES**

Coastal Management, 279, 571, 962, 1405  
Comprehensive Conservation and Management Plan, 882  
Departmental Rules, 465  
Environmental Management, 210, 556, 658, 797, 893, 1254  
Health Services, 283, 335, 425, 465, 572, 709, 762, 966, 1098, 1417  
Marine Fisheries, 28, 568  
Mining: Mineral Resources, 829  
NPDES Permit, 710  
Soil and Water Conservation Commission, 214, 1322  
Vital Records, 1525  
Wildlife Resources Commission, 32, 663, 831, 965, 1255, 1409  
Zoological Park, 337

**FINAL DECISION LETTERS**

Voting Rights Act, 4, 407, 460, 795, 880, 1371, 1514

**GENERAL STATUTES**

Chapter 7A, 1185  
Chapter 150B, 1187

**GOVERNOR/LT. GOVERNOR**

Executive Orders, 1, 93, 229, 332, 401, 456, 641, 793, 876, 1007, 1209, 1308, 1368, 1513

**HUMAN RESOURCES**

Aging, Division of, 815, 1372  
Blind, Services for the, 884  
Deaf and Hard of Hearing, Services for the, 650  
Facility Services, 94, 883, 1014, 1215, 1312, 1519  
Medical Assistance, 25, 414, 553, 712, 888, 1316  
Medical Care Commission, 644, 1312  
Mental Health, Developmental Disabilities and Substance Abuse Services, 7, 413, 516, 1086, 1217  
Social Services Commission, 237, 733, 1091, 1376

**INSURANCE**

Actuarial Services, 555, 657, 1249, 1321, 1403  
Agent Services Division, 1399  
Engineering and Building Codes Division, 1248  
Financial Evaluation Division, 1093, 1317  
Life and Health Division, 1094, 1318, 1400  
Medical Database Commission, 463, 737  
Property and Casualty Division, 1400  
Special Services Division, 1096

**JUSTICE**

Alarm Systems Licensing Board, 761  
Attorney General, Office of the, 28  
Criminal Justice Education and Training Standards Commission, 253  
Criminal Justice Standards Division, 241  
Departmental Rules, 1096  
Private Protective Services Board, 252, 890  
Sheriffs' Education and Training Standards Commission, 738

**LABOR**

OSHA, 97, 231, 278, 892, 1523



**LICENSING BOARDS**

Architecture, 43  
Certified Public Accountant Examiners, 1418  
Cosmetic Art Examiners, 969, 1526  
Dental Examiners, State Board of, 763  
Electrolysis Examiners, Board of, 841, 1457  
Foresters, Registration for, 674  
Geologists, Board of, 285  
Landscape Architects, 1256  
Medical Examiners, Board of, 591, 1458  
Mortuary Science, Board of, 45, 342, 971, 1461  
Nursing, Board of, 1463  
Nursing Home Administrators, 346  
Occupational Therapy, 1469  
Opticians, Board of, 1261  
Pharmacy, Board of, 47, 354, 1326  
Physical Therapy Examiners, 53, 767  
Plumbing, Heating and Fire Sprinkler Contractors, 360  
Practicing Psychologists, Board of, 844  
Real Estate Commission, 53, 364  
Refrigeration Examiners, 1148, 1526  
Social Work, Certification Board for, 428  
Therapeutic Recreation Certification Board, 1328

**LIST OF RULES CODIFIED**

List of Rules Codified, 61, 290, 432, 593, 769, 845, 1264, 1535

**PUBLIC EDUCATION**

Elementary and Secondary Education, 427, 470

**STATE PERSONNEL**

Office of State Personnel, 286, 972, 1262, 1472

**STATE TREASURER**

Retirement Systems, 337, 1146

**TAX REVIEW BOARD**

Orders of Tax Review, 503, 1516

**TRANSPORTATION**

Highways, Division of, 669, 836  
Motor Vehicles, Division of, 1145

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