

The **NORTH CAROLINA REGISTER**

IN THIS ISSUE

IN ADDITION

Voting Rights Act

PROPOSED RULES

**Dental Examiners
Environment, Health, and Natural Resources
Human Resources
Insurance
Medical Examiners
Real Estate Appraisal
Real Estate Commission**

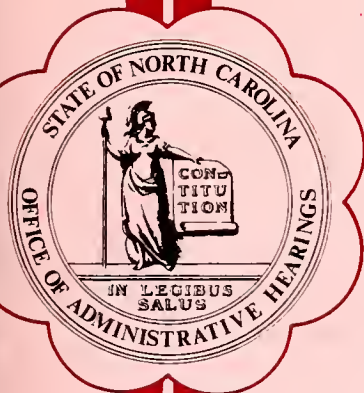
RRC OBJECTIONS

RULES INVALIDATED BY JUDICIAL DECISION

CONTESTED CASE DECISIONS

ISSUE DATE: January 14, 1994

Volume 8 • Issue 20 • Pages 1942 - 2031



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

I. IN ADDITION	
Voting Rights Act	1942

II. PROPOSED RULES	
Environment, Health, and Natural Resources	
Wildlife Resources	1957
Human Resources	
Medical Assistance	1943
Insurance	
Financial Evaluation Division . . .	1946
Life and Health Division	1956
Medical Database Commission . .	1956
Licensing Boards	
Dental Examiners	1960
Medical Examiners	1965
Real Estate Appraisal	1976
Real Estate Commission	1996

III. RRC OBJECTIONS	1999
--------------------------------------	------

IV. RULES INVALIDATED BY JUDICIAL DECISION	2005
---	------

V. CONTESTED CASE DECISIONS	
Index to ALJ Decisions	2006
Text of Selected Decisions	
93 CPS 0652	2016
93 DOJ 1003	2020
93 EDC 1143	2022

VI. CUMULATIVE INDEX	2028
---------------------------------------	------

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
8:23	03/01/94	02/08/94	02/15/94	03/16/94	03/31/94	04/20/94	06/01/94
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

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:MAP:EMP:emr

DJ 166-012-3

93-4086

December 16, 1993

DeWitt F. McCarley, Esq.

City Attorney

P. O. Box 7207

Greenville, North Carolina 27835-7207

Dear Mr. McCarley:

This refers to eight annexations (Ordinance Nos. 2680-2683, 2698, and 2705-2707) and the designation of the annexed areas to single-member districts for the City of Greenville in Pitt County, North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your submission on October 22, 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

**TITLE 10 - DEPARTMENT
OF HUMAN RESOURCES**

Notice is hereby given in accordance with G.S. 150B-21.2 that the DHR-Division of Medical Assistance intends to adopt rules cited as 10 NCAC 26B .0124, 26H .0511 and 26I .0301 - .0305.

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

The public hearing will be conducted at 1:30 p.m. on February 15, 1994 at the North Carolina Division of Medical Assistance, 1985 Umstead Drive, Room 132, Raleigh, NC 27603.

Reason for Proposed Action:

10 NCAC 26B .0124 - Rule necessary to establish targeted case management for persons with confirmed medical diagnosis of HIV disease.

10 NCAC 26H .0511 - Rule necessary to establish reimbursement methodology for HIV Case Management Services.

10 NCAC 26I .0301 - .0305 - Adoption of rules necessary to provide transfer and discharge appeal procedures for nursing facility residents.

Comment Procedures: *Written comments concerning these Rules must be submitted by February 14, 1994, to: Division of Medical Assistance, 1985 Umstead Drive, Raleigh, NC 27603 ATTN: Clarence Ervin, APA Coordinator. Oral comments may be presented at the hearing. In addition, a fiscal impact statement is available upon written request from the same address.*

**CHAPTER 26 - MEDICAL
ASSISTANCE**

**SUBCHAPTER 26B - MEDICAL
ASSISTANCE PROVIDED**

SECTION .0100 - GENERAL

.0124 HIV CASE MANAGEMENT

(a) The components of HIV case management are listed below. In order to be reimbursed by the Division of Medical Assistance, a provider shall provide all of these components:

- (1) Evaluation of the client's situation to determine the need for initial case management services;

- (2) Comprehensive assessment of the client's health care, psychosocial, environmental and financial needs;
- (3) Development and implementation of a plan of care which includes goals, services to be provided and progress notes;
- (4) Coordination of service delivery when multiple providers or programs are involved in care provision;
- (5) Monitoring to ensure that services received meet the client's needs and are consistent with good quality of care;
- (6) Follow-up an assessment to determine the continued appropriateness of services, the correct level of care, and the continued need for services;
- (7) Discharge of the client from service; and
- (8) Locating and helping access available systems, resources and services within the community to meet the client's needs.

(b) Persons are eligible to receive HIV case management services if they:

- (1) Have a medical diagnosis of HIV disease; and
- (2) Are eligible for regular Medicaid services; and
- (3) Are not institutionalized; and
- (4) Are not recipients of other Medicaid-reimbursed case management services provided through the State's home and community-based waivers or the State Plan.

(c) Provider Qualifications. Providers of HIV case management services shall:

- (1) Be enrolled in accordance with section 1902(a)(23) of the Social Security Act; and
- (2) Meet applicable State and Federal Laws governing the participation of providers in the Medicaid program; and
- (3) Be certified by the AIDS Care Branch, Division of Adult Health Promotion, Department of Environment, Health and Natural Resources as a qualified HIV case management provider. To be certified, a provider must:

(A) Submit an application to the AIDS Care Branch that includes the provider's plans for :

- (i) Provision of all the HIV case management components in 10 NCAC 26B .0124(a); and

(ii) Quality assurance, including the monitoring and evaluation of case management records.

(B) Have qualified case managers with supervision provided by a supervisor who meets the requirements in 10 NCAC 26B .0124(d), except that case managers qualified under 10 NCAC 26B .0124(e)(4) shall have all their charts reviewed and signed by a such a supervisor.

(d) Supervisor Qualification. An HIV case management supervisor shall meet the following qualifications:

(1) Have a master's level degree in a human service area including, but not limited to, Social Work, Sociology, Child Development, Maternal and Child Health, Counseling, Psychology or Nursing and one year of experience in case management; or

(2) Have a bachelor's degree in a human service including, but not limited to, Social Work, Sociology, Child Development, Maternal and Child Health, Counseling, Psychology or Nursing and two years experience in case management.

(e) Case Manager Qualifications. HIV case managers shall meet the following qualifications:

(1) Have a master's degree in a human service area including, but not limited to, Social Work, Sociology, Child Development, Maternal and Child Health, Counseling, Psychology or Nursing; or

(2) Have a bachelor's level degree in a human service area including, but not limited to, Social Work, Sociology, Child Development, Maternal and Child Health, Counseling, Psychology or Nursing and two years experience working in human services; or

(3) Be a licensed Registered Nurse, Nurse Practitioner, Physician Assistant or Certified Substance Abuse Counselor with two years experience working in human services.

(4) Have a high school diploma and two years experience providing HIV case management. A person who qualifies under 10 NCAC 26B .0124 (e)(4) may serve as an HIV case manager for five years from date of employment as an HIV case manager in an agency

certified to provide HIV case management . If an agency is not a certified HIV case management provider at the time of the person's employment as an HIV case manager, the five year time period begins with the agency's certification date. After the five year period ends, the person must meet HIV case manager requirements defined in 10 NCAC 26B .0124 (c)(1),(2), or (3) in order to continue to providing HIV case management services

(5) HIV case managers shall attend, at least annually, training sessions approved by the AIDS Care Branch, Division of Adult Health Promotion, Department of Environment, Health and Natural Resources.

Authority G.S. 108A-25(b); 108A-54; 42 C.F.R. 440.169; Social Security Act 1915(b).

SUBCHAPTER 26H - REIMBURSEMENT PLANS

SECTION .0500 - REIMBURSEMENT FOR SERVICES

.0511 CASE MANAGEMENT SERVICES

Medicaid reimbursement for HIV case management providers shall be the same per unit rate (one unit = fifteen minutes) for all providers and shall be determined annually by the Division of Medical Assistance. This reimbursement limitation shall become effective in accordance with the provisions of G.S. 108A-55 (c).

Statutory Authority G.S. 108A-25(b); 108A-54; 1915 (g) of the Social Security Act.

SUBCHAPTER 26I - PROCEDURAL RULES

SECTION .0300 - HEARINGS: TRANSFER AND DISCHARGES

.0301 DEFINITIONS

The following definitions shall apply throughout this Subchapter:

(1) "Division" means the North Carolina Division of Medical Assistance of the Department of Human Resources.

(2) "Hearing Officer" means the person designated to preside over hearings between a resident and a nursing facility

provider regarding transfers and discharges.

- (3) "Hearing Unit" means the Chief Hearing Officer and his staff in the Division of Medical Assistance, Department of Human Resources.
- (4) "Notice of Transfer and Discharge form" means the form developed by the Division.
- (5) "Request for Hearing" means a clear expression, in writing by the resident or family member or legal representative of the resident, that the resident wants to appeal the facility's decision to transfer or discharge.
- (6) The "Request for Hearing form" means the form developed by the Division.

Authority G.S. 108A-25(b); 42 USCS 1396r(e)(3), (f)(3); 42 C.F.R. 483.5; 42 C.F.R. 483.12; 42 C.F.R. 483.202; 42 C.F.R. 483.206.

.0302 TRANSFER AND DISCHARGE REQUIREMENTS

(a) A resident and, if known, a family member or legal representative of the resident, shall be notified in writing of a facility's decision to transfer or discharge the resident. The Notice of Transfer or Discharge form shall be used by a facility when giving notice of a transfer or discharge.

(b) Failure to complete the Notice of Transfer or Discharge form shall result in the notice of the transfer or discharge being ineffective.

(c) The resident shall be handed the Notice of Transfer or Discharge form on the same day that it is dated.

(d) A copy of the notice of Transfer or Discharge form shall be mailed to the family member or legal representative on the same day that it is dated.

(e) The facility shall provide a Request for Hearing Form to the resident and family member or legal representative simultaneously with the Notice of Transfer or Discharge form.

Authority G.S. 108A-25(b); 42 USCS 1396r(e)(3), (f)(3); 42 C.F.R. 483.5; 42 C.F.R. 483.12; 42 C.F.R. 483.202; 42 C.F.R. 483.206.

.0303 INITIATING A HEARING

(a) in order to initiate an appeal of a facility's intent to transfer or discharge, a resident or family member or legal representative shall submit a written request for a hearing to the Hearing Unit.

The request for hearing must be received by the Hearing Unit within eleven (11) calendar days from the date of the facility's notice of transfer or discharge. If the eleventh day falls on a Saturday, Sunday or legal holiday, then the period during which an appeal may be requested shall run until the end of the next day which is not a Saturday, Sunday or legal holiday.

(b) The request for hearing shall be submitted to the Hearing Unit by mail, or facsimile, or hand delivery.

Authority G.S. 108A-25(b); 42 USCS 1396r(e)(3), (f)(3); 42 C.F.R. 483.12.

.0304 HEARING PROCEDURES

(a) Upon timely receipt of a request for a hearing, the Hearing Unit shall promptly notify the facility of the request.

(b) The parties shall be notified by certified mail of the date, time and place of the hearing. If the hearing is to be conducted in person, it shall be held in Raleigh, North Carolina.

(c) At least five working days prior to the hearing, the facility administrator shall make available to the resident all documents and records to be used at the hearing. The facility administrator shall forward identical information to the Hearing Unit, to be received at least five working days prior to the hearing.

(d) The hearing officer may grant continuances for good cause.

(e) The hearing officer may dismiss a request for hearing if the resident or family member or legal representative of the resident fails to appear at a scheduled hearing without good cause.

(f) The hearing officer may proceed to conduct a scheduled hearing if a facility representative fails to appear at a scheduled hearing without good cause.

(g) The Rules of Civil Procedures as contained in G.S. 1A-1 and the General Rules of Practice for the Superior and District Courts as authorized by G.S. 7A-34 and found in the Rules Volume of the North Carolina General Statutes shall not apply in any hearings held by a Division Hearing Officer unless another specific statute or rule provides otherwise. Division hearings are not hearings within the meaning of G.S. 150B and shall not be governed by the provisions of that Chapter unless otherwise stated in these Rules. Parties may be represented by counsel at the hearing.

Authority G.G. 108A-25(b); G.S. 150B-25(a); 42 USCS 1396r(e)(3), (f)(3); 42 C.F.R. 483.12.

**.0305 HEARING OFFICER'S
FINAL DECISION**

The Hearing Officer's final decision shall uphold or reverse the facility's decision. Copies of the final decision shall be mailed via certified mail to the parties.

Authority G.S. 108A-25(b); 42 USCS 1396r(e)(3), (f)(3); 42 C.F.R. 483.12.

**TITLE 11 - DEPARTMENT
OF INSURANCE**

Notice is hereby given in accordance with G.S. 150B-21.2 that the N.C. Department of Insurance intends to repeal rules cited as 11 NCAC 11B .0112, .0138; 11C .0120; 11D .0102 - .0103.

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

The public hearing will be conducted at 10:00 a.m. on February 2, 1994 at the Dobbs Building, 3rd Floor Hearing Room, 430 N. Salisbury Street, Raleigh, N.C. 27611.

Reason for Proposed Action: Rules unnecessary due to statute changes.

Comment Procedures: Written comments may be sent to Ray Martinez at P.O. Box 26387, Raleigh, NC 27611. Oral presentations may be made at the public hearing. Anyone having questions should call Ray Martinez at (919) 733-5633 or Ellen Sprenkel at (919) 733-4529.

**CHAPTER 11 - FINANCIAL EVALUATION
DIVISION**

SUBCHAPTER 11B - SPECIAL PROGRAMS

SECTION .0100 - SECURITIES

**.0112 RETURN OF SECURITIES ON
DEPOSIT**

~~Any company previously licensed in North Carolina will have its deposit returned when all of the following conditions have been met:~~

- ~~(1) Written request from company asking that its deposit be returned;~~
- ~~(2) Certified copies of the assumption and reinsurance agreement indicating that all~~

~~of its business has been assumed by a solvent company licensed to do business in North Carolina and approved by the Commissioner;~~

- ~~(3) Certified affidavit from the withdrawing company indicating the amount and the type of risks to be taken by the assuming company; and executed on form designated as 11 NCAC 11A .0489;~~
- ~~(4) Receipt of appropriate "Annual Statement Blank" of the withdrawing company for calendar year ending after withdrawal date, including the North Carolina business page;~~
- ~~(5) Expiration of a minimum of three years after date of withdrawal; and~~
- ~~(6) The Commissioner finds that return of the deposit is appropriate.~~

~~No consideration will be given to the return of deposits if a withdrawing company has its North Carolina business assumed by an unlicensed company until the Commissioner has determined to his satisfaction that its liabilities, whether fixed or contingent upon its contracts to persons residing in this state or having policies upon property situated in this state, have been satisfied or have been terminated.~~

Statutory Authority G.S. 58-9(1); 58-187.

**.0138 TYPES OF SECURITIES ELIGIBLE
FOR DEPOSIT**

~~Statutory or Administrative Deposits of Securities must be comprised of Treasury Bonds or Notes of the United States of America, bonds of the State of North Carolina or any of its counties or municipalities or certificates of deposit of building and loan associations and banks situated in the State of North Carolina registered as required by the Master Trust Bank. See also 11 NCAC 11B .0102 and .0103.~~

Statutory Authority G.S. 58-7.5; 58-9.

**SUBCHAPTER 11C - ANALYSIS AND
EXAMINATIONS**

SECTION .0100 - GENERAL PROVISIONS

**.0120 VALUATION OF INVESTMENTS:
VALUATIONS OF SECURITIES
MANUAL**

~~Except as they may conflict with a valuation basis specifically authorized by the insurance laws of North Carolina, the investments in securities by~~

~~insurance companies shall be valued in accordance with the procedures and instructions contained in the Valuations of Securities Manual, in the form described by 11 NCAC 11A .0488, which is prepared annually by the securities valuation office of the National Association of Insurance Commissioners and as may be amended or revised from time to time by the National Association of Insurance Commissioners.~~

Statutory Authority G.S. 58-9; 58-79; 58-79.1.

SUBCHAPTER 11D - PROXY: LIQUIDATION AND MERGER

SECTION .0100 - GENERAL PROVISIONS

.0102 REVOCATION OR SUSPENSION OF LICENSE: FOREIGN INSURANCE

~~Upon receipt of notification from the Commissioner of Insurance of the domiciliary state that a foreign insurance company licensed in this state has been placed in rehabilitation or conservatorship or for any other reason has been required to cease the writing of new business, the Commissioner shall revoke or suspend the license of subject company and cause publication of notice of revocation or suspension in the manner and form prescribed by 11 NCAC 11D .0103 and 11 NCAC 11A .0456, respectively.~~

Statutory Authority G.S. 58-37.

.0103 PUBLICATION OF NOTICE OF REVOCATION OR SUSPENSION

~~Publication of the notice of revocation or suspension of the license of a foreign insurance company shall be made in the form designated as 11 NCAC 11A .0456 and shall be published at least once in the major morning newspapers in the Cities of Wilmington, Raleigh, Greensboro, Charlotte and Asheville, North Carolina.~~

Statutory Authority G.S. 58-37.

* * * * *

Notice is hereby given in accordance with G.S. 150B-21.2 that the N.C. Department of Insurance intends to adopt rule cited as 11 NCAC 11C .0133.

The proposed effective date of this action is April

1, 1994.

The public hearing will be conducted at 10:00 a.m. on February 2, 1994 at the Dobbs Building, 3rd Floor Hearing Room, 430 N. Salisbury Street, Raleigh, NC 27611.

Reason for Proposed Action: To establish accounting standards and examples for reinsurance transactions between licensed life and health insurance companies and reinsurance companies.

Comment Procedures: Written comments may be sent to Ray Martinez at P.O. Box 26387, Raleigh, NC 27611. Oral presentations may be made at the public hearing. Anyone having questions should call Ray Martinez at (919) 733-5633 or Ellen Sprenkel at (919) 733-4529.

Editor's Note: This Rule has been filed as a temporary adoption effective January 21, 1994 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner.

CHAPTER 11 - FINANCIAL EVALUATION DIVISION

SUBCHAPTER 11C - ANALYSIS AND EXAMINATIONS

SECTION .0100 - GENERAL PROVISIONS

.0133 ACCOUNTING FOR LIFE AND HEALTH REINSURANCE AGREEMENTS

When an insurer cedes business applicable to G.S. 58-7-31(d)(1), the insurer must account for the transaction in accordance with G.S. 58-7-31(d)(2). For the purpose of this Rule, any increase in surplus shall be accounted for as illustrated in the following examples:

- (1) on the last day of calendar year N, company XYZ pays a twenty million dollar (\$20,000,000) initial commission and expense allowance to company ABC for reinsuring an existing block of business. Assuming a 34 percent tax rate, the next increase in surplus at inception is thirteen million two hundred thousand dollars (\$13,200,000) [twenty million minus six million eight hundred thousand dollars (\$20 million - \$6.8

million)] which is reported on the "Aggregate write-ins for gains and losses in surplus" line in the Capital and Surplus account. Six million eight hundred thousand dollars (\$6,800,000) [34 percent of twenty million dollars (\$20,000,000)] is reported as income on the "Commissions and expense allowances on reinsurance ceded" line of the Summary of Operations.

- (2) At the end of year N+1 the business has earned four million dollars (\$4,000,000). ABC has paid five hundred thousand dollars (\$500,000) in profit and risk charges in arrears for the year and has received a one million dollar (\$1,000,000) experience refund. Company ABC's annual statement would report one million six hundred and fifty thousand dollars (\$1,650,000) [(66% of four million dollars (\$4,000,000) - one million dollars (\$1,000,000) - five hundred thousand dollars (\$500,000) up to a maximum of thirteen million two hundred thousand dollars (\$13,200,000)] on the "Commissions and expense allowance on reinsurance ceded" line of the Summary of Operations, and - one million six hundred and fifty thousand dollars (\$1,650,000) on the "Aggregate write-ins for gains and losses in surplus" line of the Capital and Surplus account. The experience refund would be reported separately as a miscellaneous income item in the Summary of Operations.

Statutory Authority G.S. 58-2-40; 58-7-31.

Notice is hereby given in accordance with G.S. 150B-21.2 that the N. C. Department of Insurance intends to adopt rules cited as 11 NCAC 11F .0201 - .0208.

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

The public hearing will be conducted at 10:00 a.m. on February 2, 1994 at the Dobbs Building, 3rd Floor Hearing Room, 430 N. Salisbury Street, Raleigh, NC 27611.

Reason for Proposed Action: To establish minimum reserve standards for health insurance policies in accordance with state law.

Comment Procedures: Written comments may be sent to Walter James at P.O. Box 26387, Raleigh, NC 27611. Oral presentations may be made at the public hearing. Anyone having questions should call Walter James at (919) 733-3284 or Ellen Sprenkel at (919) 733-4529.

Editor's Note: The following rules have been filed as temporary adoptions effective for a period of 180 days or until the permanent rule becomes effective, whichever is sooner:

11 NCAC 11F .0201 - .0206, .0208 - Eff. January 21, 1994.

11 NCAC 11F .0207 - Eff. January 1, 1994.

CHAPTER 11 - FINANCIAL EVALUATION DIVISION

SUBCHAPTER 11F - ACTUARIAL

SECTION .0200 - HEALTH INSURANCE MINIMUM RESERVE STANDARDS

.0201 DEFINITIONS

As used in this Section and in the Statement of Actuarial Opinion required by the NAIC Annual Statement Instructions pursuant to G.S. 58-2-165:

- (1) "Annual claim cost" means the net annual cost per unit of benefit before the addition of expenses, including claim settlement expenses, and a margin for profit or contingencies. For example, the annual claim cost for a one hundred dollar (\$100.00) monthly disability benefit, for a maximum disability benefit period of one year, with an elimination period of one week, with respect to a male at age 35, in a certain occupation might be twelve dollars (\$12.00), while the gross premium for this benefit might be eighteen dollars (\$18.00). The additional six dollars (\$6.00) would cover expenses and profit or contingencies.
- (2) "Claims accrued" means that portion of claims incurred on or before the valuation date that result in liability of the insurer for the payment of benefits for medical services that have been rendered on or before the valuation date.

and for the payment of benefits for days of hospitalization and days of disability that have occurred on or before the valuation date, that the insurer has not paid as of the valuation date, but for which it is liable, and will have to pay after the valuation date. This liability is sometimes referred to as a liability for "accrued" benefits. A claim reserve, which represents an estimate of this accrued claim liability, must be established.

- (3) "Claims reported" means when an insurer has been informed that a claim has been incurred, if the date reported is on or before the valuation date, the claim is considered as a reported claim for annual statement purposes.
- (4) "Claims unaccrued" means that portion of claims incurred on or before the valuation date that result in liability of the insurer for the payment of benefits for medical services expected to be rendered after the valuation date, and for benefits expected to be payable for days of hospitalization and days of disability occurring after the valuation date. This liability is sometimes referred to as a liability for "unaccrued" benefits. A claim reserve, which represents an estimate of the unaccrued claim payments expected to be made (that may or may not be discounted with interest), must be established.
- (5) "Claims unreported" means when an insurer has not been informed, on or before the valuation date, concerning a claim that has been incurred on or before the valuation date, the claim is considered as an unreported claim for annual statement purposes.
- (6) "Date of disablement" means the earliest date the insured is considered as being disabled under the definition of disability in the contract, based on a doctor's evaluation or other evidence. Normally this date will coincide with the start of any elimination period.
- (7) "Elimination period" means a specified number of days, weeks, or months starting at the beginning of each period of loss, during which no benefits are payable.
- (8) "Gross premium" means the amount of premium charged by the insurer. It

includes the net premium (based on claim-cost) for the risk, together with any loading for expenses, profit or contingencies.

- (9) "Group insurance" means blanket insurance and franchise insurance and any other forms of group insurance.
- (10) "Level premium" means a premium calculated to remain unchanged throughout either the lifetime of the policy, or for some shorter projected period of years. The premium need not be guaranteed; in which case, although it is calculated to remain level, it may be changed if any of the assumptions on which it was based are revised at a later time. Generally, the annual claim costs are expected to increase each year and the insurer, instead of charging premiums that correspondingly increase each year, charges a premium calculated to remain level for a period of years or for the lifetime of the contract. In this case the benefit portion of the premium is more than needed to provide for the cost of benefits during the earlier years of the policy and less than the actual cost in the later years. The building of a prospective contract reserve is a natural result of level premiums.
- (11) "Long-term care insurance" has the same meaning as in G.S. 58-55-20(4); and also means a policy or certificate that provides for payment of benefits based upon cognitive impairment or the loss of functional capacity.
- (12) "Modal premium" means the premium paid on a contract based on a premium term that could be annual, semi-annual, quarterly, monthly, or weekly. Thus if the annual premium is one hundred dollars (\$100.00) and if, instead, monthly premiums of nine dollars (\$9.00) are paid then the modal premium is nine dollars (\$9.00).
- (13) "Negative reserve" means a terminal reserve that has a value of less than zero resulting from benefits that decrease with advancing age or duration.
- (14) "Preliminary term reserve method" means the method of valuation under which the valuation net premium for each year falling within the preliminary term period is exactly sufficient to cover the expected incurred claims of that year, so

that the terminal reserves will be zero at the end of the year. As of the end of the preliminary term period, a new constant valuation net premium (or stream of changing valuation premiums) becomes applicable such that the present value of all such premiums is equal to the present value of all claims expected to be incurred following the end of the preliminary term period.

(15) "Present value of amounts not yet due on claims" means the reserve for claims unaccrued, which may be discounted at interest.

(16) "Reserve" means all items of benefit liability, whether in the nature of incurred claim liability or in the nature of contract liability relating to future periods of coverage, and whether the liability is accrued or unaccrued. An insurer under its contracts promises benefits that result in:

(a) Claims that have been incurred, that is, for which the insurer has become obligated to make payment, on or before the valuation date. On these claims, payments expected to be made after the valuation date for accrued and unaccrued benefits are liabilities of the insurer that should be provided for by establishing claim reserves; or

(b) Claims that are expected to be incurred after the valuation date. Any present liability of the insurer for these future claims should be provided for by the establishment of contract reserves and unearned premium reserves.

(17) "Terminal reserve" means the reserve at the end of a contract year, and is defined as the present value of benefits expected to be incurred after that contract year minus the present value of future valuation net premiums.

(18) "Unearned premium reserve" means the value of that portion of the premium paid or due to the insurer that is applicable to the period of coverage extending beyond the valuation date. Thus if an annual premium of one hundred twenty dollars (\$120.00) was paid on November 1, twenty dollars (\$20.00) would be earned as of December 31 and the remaining one hundred dollars (\$100.00) would be unearned. The unearned premium reserve could be on a gross basis as in

this example, or on a valuation net premium basis.

(19) "Valuation net modal premium" means the modal fraction of the valuation net annual premium that corresponds to the gross modal premium in effect on any contract to which contract reserves apply. Thus if the mode of payment in effect is quarterly, the valuation net modal premium is the quarterly equivalent of the valuation net annual premium.

Statutory Authority G.S. 58-2-40; 58-58-50(k).

.0202 GENERAL

(a) This Section applies to all accident and health insurance coverages under G.S. 58, Articles 50 through 55.

(b) When an insurer determines that adequacy of its insurance reserves requires reserves in excess of the minimum standards specified in this Section, such increased reserves shall be held and shall be considered the minimum reserves for that insurer.

(c) With respect to any block of contracts, or with respect to an insurer's accident and health business as a whole, a prospective gross premium valuation is the ultimate test of reserve adequacy as of a given valuation date. Such a gross premium valuation shall take into account, for contracts in force, in a claims status, or in a continuation of benefits status on the valuation date, the present value as of the valuation date of: all expected benefits unpaid, all expected expenses unpaid, and all unearned or expected premiums, adjusted for future premium increases reasonably expected to be put into effect. Such a gross premium valuation shall be performed whenever a significant doubt exists as to reserve adequacy with respect to any major block of contracts or with respect to the insurer's accident and health business as a whole. If inadequacy is found to exist, immediate loss recognition shall be made and the reserves restored to adequacy. Adequate reserves (inclusive of claim, premium, and contract reserves, if any) shall be held with respect to all contracts, regardless of whether contract reserves are required for such contracts under this Section.

(d) Whenever minimum reserves, as specified in this Section, exceed reserve requirements as determined by a prospective gross premium valuation, such minimum reserves remain the minimum requirement under this Section.

(e) Adequacy of an insurer's accident and health insurance reserves is to be determined on the basis

of claim reserves, premium reserves, and contract reserves, as required in 11 NCAC 11F .0203 through 11 NCAC 11F .0205, combined. However, those rules are to emphasize the importance of determining appropriate reserves for each of those three reserve categories separately.

Statutory Authority G.S. 58-2-40; 58-58-50(k).

.0203 CLAIM RESERVES

(a) General:

- (1) Claim reserves are required for all incurred but unpaid claims on all accident and health insurance contracts.
- (2) Appropriate claim expense reserves are required with respect to the estimated expense of settlement of all incurred but unpaid claims.
- (3) All such reserves for prior valuation years are to be tested for adequacy and reasonableness along the lines of claim runoff schedules in accordance with the statutory financial statement including consideration of any residual unpaid liability.

(b) Minimum Standards for Claim Reserves:

(1) Disability Income:

- (A) The maximum interest rate for claim reserves is specified in 11 NCAC 11F .0207.
- (B) Minimum standards with respect to morbidity are those specified in 11 NCAC 11F .0207; except that, at the option of the insurer:

- (i) For claims with a duration from date of disablement of less than two years, reserves may be based on the insurer's experience, if such experience is considered credible, or upon other assumptions designed to place a sound value on the liabilities.
- (ii) For group disability income claims with a duration from date of disablement of more than two years but less than five years, reserves may, with the approval of the Commissioner, be based on the insurer's experience for which the insurer maintains underwriting and claim administration control. The request for such approval of a plan of modification to the reserve basis must include:
 - (1) An analysis of the credibility

of the experience;

- (II) A description of how all the insurer's experience is proposed to be used in setting reserves;
- (III) A description and quantification of the margins to be included;
- (IV) A summary of the financial impact that the proposed plan of modification would have had on the insurer's last filed annual statement; and
- (V) A copy of the approval of the proposed plan of modification by the Commissioner of the state of domicile.

(C) For contracts with an elimination period, the duration of disablement should be measured as dating from the time that benefits would have begun to accrue had there been no elimination period.

(2) All Other Benefits:

- (A) The maximum interest rate for claim reserves is specified in 11 NCAC 11F .0207.
- (B) The reserve, with respect to morbidity or other contingency, should be based on the insurer's experience, if such experience is considered credible, or upon other assumptions designed to place a sound value on the liabilities.

(c) Any generally accepted or reasonable actuarial method or combination of methods may be used to estimate all claim liabilities. The methods used for estimating liabilities generally may be aggregate methods; or various reserve items may be separately valued. Approximations based on groupings and averages may also be employed. Adequacy of the claim reserves, however, shall be determined in the aggregate.

Statutory Authority G.S. 58-2-40; 58-58-50(k).

.0204 PREMIUM RESERVES

(a) General:

- (1) Unearned premium reserves are required for all contracts with respect to the period of coverage for which premiums, other than premiums paid in advance, have been paid beyond the date of valuation.
- (2) If premiums due and unpaid are carried as an asset, such premiums must be

treated as premiums in force, subject to unearned premium reserve determination. The value of unpaid commissions, premium taxes, and the cost of collection associated with due and unpaid premiums must be carried as an offsetting liability.

- (3) The gross premiums paid in advance for a period of coverage commencing after the next premium due date that follows the date of valuation may be appropriately discounted to the valuation date and shall be held either as a separate liability or as an addition to the unearned premium reserve that would otherwise be required as a minimum.

(b) Minimum Standards for Unearned Premium Reserves:

- (1) The minimum unearned premium reserve with respect to any contract is the pro rata unearned modal premium that applies to the premium period beyond the valuation date, with such premium determined on the basis of:

- (A) The valuation net modal premium on the contract reserve basis applying to the contract; or
 (B) The gross modal premium for the contract if no contract reserve applies.

- (2) However, in no event may the sum of the unearned premium and contract reserves for all contracts of the insurer subject to contract reserve requirements be less than the gross modal unearned premium reserve on all such contracts, as of the date of valuation. Such reserve shall never be less than the expected claims for the period beyond the valuation date represented by such unearned premium reserve, to the extent not provided for elsewhere.

(c) The insurer may employ suitable approximations and estimates, including groupings, averages, and aggregate estimation, in computing premium reserves. Such approximations or estimates shall be tested periodically to determine their continuing adequacy and reliability.

Statutory Authority G.S. 58-2-40; 58-58-50(k).

.0205 CONTRACT RESERVES

(a) General:

- (1) Contract reserves are required, unless otherwise specified in 11 NCAC 11F

.0205(a)(2) for:

- (A) All individual and group contracts with which level premiums are used; or

- (B) All individual and group contracts with respect to which, due to the gross premium pricing structure at issue, the value of the future benefits at any time exceeds the value of any appropriate future valuation net premiums at that time. The values specified in 11 NCAC 11F .0205(1)(B) shall be determined on the basis specified in 11 NCAC 11F .0205(b).

- (2) Contracts not requiring a contract reserve are:

- (A) Contracts that cannot be continued after one year from issue; or
 (B) Contracts already in force on the effective date of these standards for which no contract reserve was required under the immediately preceding standards.

- (3) The contract reserve is in addition to claim reserves and premium reserves.

- (4) The methods and procedures for contract reserves shall be consistent with those for claim reserves for any contract, or else appropriate adjustment must be made when necessary to assure provision for the aggregate liability. The definition of the date of incurrual must be the same in both determinations.

(b) Minimum Standards for Contract Reserves:

(1) Basis:

- (A) Minimum standards with respect to morbidity are those set forth in 11 NCAC 11F .0207. Valuation net premiums used under each contract must have a structure consistent with the gross premium structure at issue of the contract as this relates to advancing age of insured, contract duration and period for which gross premiums have been calculated. Contracts for which tabular morbidity standards are not specified in 11 NCAC 11F .0207 shall be valued using tables established for reserve purposes by a qualified actuary and acceptable to the Commissioner.

- (B) The maximum interest rate is specified in 11 NCAC 11F .0207.

(C) Termination rates used in the computation of reserves shall be on the basis of a mortality table as specified in 11 NCAC 11F .0207 except as noted in Subparts (b)(1)(C)(i) and (ii) of this Rule. Under contracts for which premium rates are not guaranteed, and where the effects of insurer underwriting are specifically used by contract duration in the valuation morbidity standard, or for return of premium or other deferred cash benefits, total termination rates may be used at ages and durations where these exceed specified mortality table rates, but not in excess of the lesser of:

- (i) Eighty percent of the total termination rate used in the calculation of the gross premiums, or
- (ii) Eight percent.

Where a morbidity standard specified in 11 NCAC 11F .0207 is on an aggregate basis, such morbidity standard may be adjusted to reflect the effect of insurer underwriting by contract duration. The adjustments must be appropriate to the underwriting and be acceptable to the Commissioner.

(D) Reserve Method:

- (i) For insurance except long-term care and return of premium or other deferred cash benefits, the minimum reserve is the reserve calculated on the two-year full preliminary term method; that is, under which the terminal reserve is zero at the first and also the second contract anniversary.
- (ii) For long-term care insurance, the minimum reserve is the reserve calculated on the one-year full preliminary term method.
- (iii) For return of premium or other deferred cash benefits, the minimum reserve is the reserve calculated as follows:
 - (I) On the one year preliminary term method if such benefits are provided at any time before the 20th anniversary;
 - (II) On the two year preliminary term method if such benefits

are only provided on or after the 20th anniversary.

- (iv) The preliminary term method may be applied only in relation to the date of issue of a contract. Reserve adjustments introduced later, as a result of rate increases, revisions in assumptions (e.g., projected inflation rates) or for other reasons, are to be applied immediately as of the effective date of adoption of the adjusted basis.

- (E) Negative reserves on any benefit may be offset against positive reserves for other benefits in the same contract, but the total contract reserve with respect to all benefits combined may not be less than zero.

(c) Provided the contract reserve on all contracts to which an alternative method or basis is applied is not less in the aggregate than the amount determined according to the applicable standards specified in this Rule; an insurer may use any reasonable assumptions as to interest rates, termination or mortality rates, and rates of morbidity or other contingency. Also, subject to the preceding condition, the insurer may employ methods other than the methods stated in this Rule in determining a sound value of its liabilities under such contracts, including, but not limited to the following: the net level premium method; the one-year full preliminary term method; prospective valuation on the basis of actual gross premiums with reasonable allowance for future expenses; the use of approximations such as those involving age groupings, groupings of several years of issue, average amounts of indemnity, grouping of similar contract forms; the computation of the reserve for one contract benefit as a percentage of, or by other relation to, the aggregate contract reserves exclusive of the benefit or benefits so valued; and the use of a composite annual claim cost for all or any combination of the benefits included in the contracts valued.

(d) Annually, an appropriate review shall be made of the insurer's prospective contract liabilities on contracts valued by tabular reserves, to determine the continuing adequacy and reasonableness of the tabular reserves giving consideration to future gross premiums. The insurer shall make appropriate increments to such tabular reserves if such tests indicate that the basis of such reserves is no longer adequate; subject, however, to the minimum standards of 11 NCAC

11F .0205(b). If an insurer has a contract or a group of related similar contracts, for which future gross premiums will be restricted by contract, insurance department regulations, or for other reasons, such that the future gross premiums reduced by expenses for administration, commissions, and taxes will be insufficient to cover future claims, the insurer shall establish contract reserves for such shortfall in the aggregate.

Statutory Authority G.S. 58-2-40; 58-58-50(k).

.0206 REINSURANCE

Increases to, or credits against reserves carried, arising because of reinsurance assumed or reinsurance ceded, must be determined in a manner consistent with these minimum reserve standards and with all applicable provisions of the reinsurance contracts that affect the insurer's liabilities.

Statutory Authority G.S. 58-2-40; 58-58-50(k).

.0207 SPECIFIC STANDARDS FOR MORBIDITY, INTEREST AND MORTALITY

(a) Minimum morbidity standards for valuation of specified individual contract accident and health insurance benefits are as follows:

(1) Disability Income Benefits Due to Accident or Sickness.

(A) Contract Reserves:

(i) Contracts issued on or after January 1, 1965 and before January 1, 1986: The 1964 Commissioners Disability Table (64 CDT).

(ii) Contracts issued on or after January 1, 1994: The 1985 Commissioners Individual Disability Tables A (85CIDA); or The 1985 Commissioners Individual Disability Tables B (85CIDB).

(iii) Contracts issued during the years 1986 through 1993:

Optional use of either the 1964 or the 1985 Tables.

(iv) Each insurer shall elect, with respect to all individual contracts issued in any one statement year, whether it will use Tables A or Tables B as the minimum standard. The insurer may,

however, elect to use the other tables with respect to any subsequent statement year.

(B) Claim Reserves: The minimum morbidity standard in effect for contract reserves on currently issued contracts, as of the date the claim is incurred.

(2) Hospital Benefits, Surgical Benefits and Maternity Benefits (Scheduled benefits or fixed time period benefits only).

(A) Contract Reserves:

(i) Contracts issued on or after January 1, 1955, and before January 1, 1982: The 1956 Intercompany Hospital-Surgical Tables.

(ii) Contracts issued on or after January 1, 1982: The 1974 Medical Expense Tables, Table A, Transactions of the Society of Actuaries, Volume XXX, pg. 63. Refer to the paper (in the same volume, pg. 9) to which this table is appended, including its discussions, for methods of adjustment for benefits not directly valued in Table A: "Development of the 1974 Medical Expense Benefits," Houghton and Wolf.

(B) Claim Reserves: No specific standard. See 11 NCAC 11F .0207(a)(5).

(3) Cancer Expense Benefits (Scheduled benefits or fixed time period benefits only).

(A) Contract Reserves: Contracts issued on or after January 1, 1986: The 1985 NAIC Cancer Claim Cost Tables.

(B) Claim Reserves: No specific standard. See 11 NCAC 11F .0207(a)(5).

(4) Accidental Death Benefits.

(A) Contract Reserves: Contracts issued on or after January 1, 1965: The 1959 Accident Death Benefits Table.

(B) Claim Reserves: Actual amount incurred.

(5) Other Individual Contract Benefits.

(A) Contract Reserves: For all other individual contract benefits, morbidity assumptions are to be determined as provided in the reserve standards.

(B) Claim Reserves: For all benefits

other than disability, claim reserves are to be determined as provided in the standards.

(b) Minimum morbidity standards for valuation of specified group contract accident and health insurance benefits are as follows:

(1) Disability Income Benefits Due to Accident or Sickness.

(A) Contract Reserves:

(i) Contracts issued before January 1, 1994: The same basis, if any, as that employed by the insurer as of January 1, 1994;

(ii) Contracts issued on or after January 1, 1994: The 1987 Commissioners Group Disability Income Table (87CGDT).

(B) Claim Reserves:

(i) For claims incurred on or after January 1, 1994: The 1987 Commissioners Group Disability Income Table (87CGDT);

(ii) For claims incurred before January 1, 1994: Use of the 87CGDT is optional.

(2) Other Group Contract Benefits.

(A) Contract Reserves: For all other group contract benefits, morbidity assumptions are to be determined as provided in the reserve standards.

(B) Claim Reserves: For all benefits other than disability, claim reserves are to be determined as provided in the standards.

(c) Maximum interest rate standards for valuation of accident and health insurance benefits are as follows:

(1) For contract reserves the maximum interest rate is the maximum rate permitted by law in the valuation of whole life insurance issued on the same date as the accident and health insurance contract.

(2) For claim reserves on contracts that require contract reserves, the maximum interest rate is the maximum rate permitted by law in the valuation of whole life insurance issued on the same date as the claim incurral date.

(3) For claim reserves on contracts not requiring contract reserves, the maximum interest rate is the maximum rate permitted by law in the valuation of single premium immediate annuities issued on the same date as the claim

incurral date, reduced by one hundred basis points.

(d) Mortality standards for valuation of accident and health insurance benefits are as follows:

(1) Except as provided for in 11 NCAC 11F .0207(d)(2), the mortality basis used shall be according to a table (but without use of selection factors) permitted by law for the valuation of whole life insurance issued on the same date as the accident and health insurance contract.

(2) Other mortality tables adopted by the NAIC and promulgated by the Commissioner may be used in the calculation of the minimum reserves if appropriate for the type of benefits and if approved by the Commissioner. The request for such approval must include the proposed mortality table and the reason that the standard specified in 11 NCAC 11F .0207(d)(1) is inappropriate.

Statutory Authority G.S. 58-2-40; 58-58-50(k).

.0208 RESERVES FOR WAIVER OF PREMIUM

(a) Tabular reserves using the 1964 CDT, 1985 CIDA or 1985 CIDB tables, i.e. disability valuation tables based on exposures that include contracts on premium waiver as in-force contracts, should value reserves on the following basis:

(1) Claim reserves should include reserves for premiums expected to be waived, valuing as a minimum the valuation net premium being waived.

(2) Premium reserves should include contracts on premium waiver as in-force contracts, valuing as a minimum the unearned modal valuation net premium being waived.

(3) Contract reserves should include recognition of the waiver of premium benefit in addition to other contract benefits provided for, valuing as a minimum the valuation net premium to be waived.

(b) If an insurer is, instead, valuing reserves on what is truly an active life table, or if a specific valuation table is not being used but the insurer's gross premiums are calculated on a basis that includes in the projected exposure only those contracts for which premiums are being paid, then it may not be necessary to provide specifically for

waiver of premium reserves. Any insurer using such a true "active life" basis should carefully consider, however, whether or not additional liability should be recognized on account of premiums waived during periods of disability or during claim continuation.

Statutory Authority G.S. 58-2-40; 58-58-50(k).

Notice is hereby given in accordance with G.S. 150B-21.2 that the N.C. Department of Insurance intends to adopt rule cited as 11 NCAC 12 .0560.

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

The public hearing will be conducted at 10:00 a.m. on February 2, 1994 at the Dobbs Building, 3rd Floor Hearing Room, 430 N. Salisbury Street, Raleigh, NC 27611.

Reason for Proposed Action: Prescribes Uniform Claim Forms that are submitted to health benefit plans for health care providers.

Comment Procedures: Written comments may be sent to Rodney Finger at P.O. Box 26387, Raleigh, NC 27611. Oral presentations may be made at the public hearing. Anyone having questions should call Rodney Finger at (919) 733-5060 or Ellen Sprenkel at (919) 733-4529.

Editor's Note: This Rule has been filed as a temporary adoption effective January 1, 1994 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner.

CHAPTER 12 - LIFE AND HEALTH DIVISION

SECTION .0500 - ACCIDENT AND HEALTH: GENERAL NATURE

.0560 UNIFORM CLAIM FORMS

(a) As used in this Rule, "health benefit plan" has the same meaning as in G.S. 58-3-171(c).

(b) On and after January 1, 1994, all claims submitted by institutional health care providers to health benefit plans shall be submitted on the

HCFA 1450 (UB 92), or a substantively similar, claim form. On and after January 1, 1994, all claims submitted by noninstitutional health care providers to health benefit plans shall be submitted on the HCFA 1500, or a substantively similar, claim form.

Statutory Authority G.S. 58-2-40; 58-3-171.

Notice is hereby given in accordance with G.S. 150B-21.2 that the N.C. Department of Insurance intends to adopt rule cited as 11 NCAC 15 .0012.

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

The public hearing will be conducted at 2:00 p.m. on January 31, 1994 at the Medical Database Commission, 112 Cox Avenue, Raleigh, NC 27611.

Reason for Proposed Action: Incorporates descriptions of successor claim forms by reference into the rules where necessitated by federal or state law or regulatory changes.

Comment Procedures: Written comments may be sent to Jim Hazelrigs at the Medical Database Comm., 112 Cox Avenue, Raleigh, NC 27605. Oral presentations may be made at the public hearing. Anyone having questions should call Jim Hazelrigs at (919) 733-7141 or Ellen Sprenkel at (919) 733-4529.

Editor's Note: This Rule has been filed as a temporary adoption effective January 1, 1994 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner.

CHAPTER 15 - MEDICAL DATABASE COMMISSION

.0012 SUCCESSOR FORMS

All references in this Section to claim forms, such as "HCFA 1500" and "UB-82", include references to their successor forms, such as "HCFA 1450" and "UB-92", that are developed pursuant to federal law under the auspices of HCFA, the National Uniform Billing Committee, or the North Carolina State Uniform Billing

Committee.

Statutory Authority G.S. 131E-212(b).

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

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Wildlife Resources Commission intends to amend rules cited as 15A NCAC 10F .0310, .0330, .0336 and adopt 15A NCAC 10F .0366.

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

The public hearing will be conducted at 10:00 a.m. on February 7, 1994 at the Archdale Building, Room 332, 512 N. Salisbury Street, Raleigh, NC 27604-1188.

Reason for Proposed Action: To establish a restricted speed zone on a designated body of water.

Comment Procedures: Interested persons may present their views either orally or in writing at the hearing. In addition, the record of hearing will be open for receipt of written comments from January 14, 1994 to February 14, 1994. Such written comments must be delivered or mailed to the N.C. Wildlife Resources Commission, 512 N. Salisbury Street, Raleigh, NC 27604-1188.

**CHAPTER 10 - WILDLIFE
RESOURCES AND WATER SAFETY**

**SUBCHAPTER 10F - MOTORBOATS
AND WATER SAFETY**

**SECTION .0300 - LOCAL WATER
SAFETY REGULATIONS**

.0310 DARE COUNTY

(a) Regulated Areas. This Rule applies to the following waters and portions of waters:

- (1) Manteo. Doughs Creek adjacent to Shallowbag Bay and all canals situated within the territorial limits of the Town of Manteo.
- (2) Hatteras. The waters of Hatteras Har-

bor and Muddy Creek bounded on the north and south by the high-water mark, on the west by a straight line between channel markers number 20 and 17, and on the east by the mouth of Muddy Creek at Sandy Bay;

- (3) Mann's Harbor. The waters of Ferry Dock Road Canal;
- (4) Nags Head
 - (A) Those waters contained within the canals of Old Nags Head Cove Development;
 - (B) The Roanoke Sound inlets at Pond Island on either side of Marina Drive extending north from US 64-264;
- (5) Wanchese.
 - (A) The waters of Wanchese Harbor;
 - (B) The Canal from its beginning where it connects with the Roanoke Sound south of the dead end road SR 1141 extending northwest roughly parallel to SR 1141 and SR 1142, then westward roughly parallel to NC 345, and finally curving to the southwest roughly parallel to the C.B. Daniels Road to its end.
- (6) Stumpy Point Canal. That portion of Stumpy Point Canal beginning at the Wildlife Resources Commission boating access area and extending inland for a distance of 3,600 feet;
- (7) Stumpy Point Basin. That portion of the Stumpy Point Basin, at the head of the Stumpy Point Bay, which is next to Highway 264 in the dock area and designated by the appropriate markers.
- (8) Town of Southern Shores. The waters contained in the canals and lagoons within the territorial limits of the Town of Southern Shores;
- (9) Colington Harbour. The waters contained in the canals of Colington Harbour;
- (10) Kitty Hawk. Those waters contained in the canals of Kitty Hawk Landing Subdivision.
- (11) Washington Baum Bridge. Those waters of the Roanoke Sound from marker 24B north of the bridge to marker 24A south of the bridge, and 50 yards east of the navigation span west to the shore as designated by the appropriate markers.
 - (b) Speed Limit. No person shall operate any motorboat or vessel at greater than no-wake speed

within any of the regulated areas described in Paragraph (a) of this Rule.

(c) **Placement and Maintenance of Markers.** Subject to the approval of the United States Coast Guard and the United States Army Corps of Engineers, the following agencies are designated suitable agencies for placement and maintenance of markers implementing this Rule as to the regulated areas listed in the several Subparagraphs of Paragraph (a) of this Rule:

- (1) the Board of Commissioners of the Town of Manteo as to the areas indicated in Subparagraph (1);
- (2) the Board of Commissioners of Dare County as to the areas indicated in Subparagraphs (2) through (7), ~~and~~ (9) and (11);
- (3) the Board of Commissioners of the Town of Southern Shores as to the areas indicated in Subparagraph (8);
- (4) the Board of Commissioners of the Town of Kitty Hawk as to the areas indicated in Subparagraph (a)(10).

Statutory Authority G.S. 75A-3; 75A-15.

.0330 CARTERET COUNTY

(a) **Regulated Areas.** This Rule applies to the following waters in Carteret County:

- (1) the waters of Money Island Slough beginning at the east end of Money Island near the Anchorage Marina Basin and ending at the west end of Money Island where Brooks Avenue deadends at the slough;
- (2) the waters of Taylor Creek located within the territorial limits of the Town of Beaufort;
- (3) the waters of Pelletier Creek beginning at the entrance to Pelletier Creek at the Intracoastal Waterway and ending at U.S. Highway 70;
- (4) the waters of Bogue Sound in Morehead City between Sugar Loaf Island and the seawall on the south side of Evans, Shepard and Shackleford Streets and bounded on the east by the State Ports Authority and on the west by the eastern right-of-way margin of South 13th Street extended;
- (5) the waters of Gallant's Channel from the US 70 crossing over the Grayden Paul bridge to Taylor's Creek;
- (6) the waters of Cedar Island Bay and Harbor from U.S. 70 to Cedar Island

- Bay Channel Light 8;
- (7) the waters of Radio Island Creek;
- (8) the waters of Spooners Creek beginning 100 feet south of the bulkhead area in the entrance to Spooners Creek and extending approximately 500 feet up Spooners Creek to a point on the north side of the first fork to the east as indicated by the appropriate markers.

(b) **Speed Limit.** It is unlawful to operate a motorboat or vessel at a speed greater than no-wake speed while on the waters of the regulated areas designated in Paragraph (a) of this Rule.

(c) **Placement and Maintenance of Markers.** The Board of Commissioners of Carteret County, with respect to the regulated areas designated in Subparagraphs (1), (3), (5), (6), ~~(7)~~, and ~~(7)~~ (8) of Paragraph (a) of this Rule, and the Board of Commissioners of the Town of Beaufort, with respect to the regulated area designated in Subparagraph (2) of Paragraph (a) of this Rule, and the Board of Commissioners of Morehead City, with respect to Subparagraph (4) of Paragraph (a) of this Rule, are designated as suitable agencies for placement and maintenance of the markers implementing this Rule, subject to the approval of the United States Coast Guard and the United States Army Corps of Engineers.

Statutory Authority G.S. 75A-3; 75A-15.

.0336 NORTHAMPTON AND WARREN COUNTIES

(a) **Regulated Area.** This Rule applies only to that portion of Lake Gaston which lies within the boundaries of Northampton and Warren Counties ~~County~~.

(b) **Speed Limit in Mooring Areas.** No person shall operate a vessel at greater than no-wake speed while within a marked mooring area established with the approval of the Executive Director, or his representative, on the waters of Gaston Lake in Northampton and Warren Counties ~~County~~.

(c) **Speed Limit Near Shore Facilities.** No person shall operate a vessel at greater than no-wake speed within 50 yards of any marked boat launching area, dock, pier, bridge, marina, boat storage structure, or boat service area on the waters of the regulated areas described in Paragraph (a) of this Rule.

(d) **Restricted Swimming Areas.** No person operating or responsible for the operation of a vessel shall permit it to enter any marked public swimming area established with the approval of the

Executive Director, or his representative, on the waters of Gaston Lake in Northampton and Warren Counties ~~County~~.

(e) Placement and Maintenance of Markers. The Board of Commissioners of Northampton County and Warren County ~~is~~ are designated ~~a~~ as suitable ~~agency~~ agencies for placement and maintenance of the markers implementing this Rule, subject to the approval of the United States Coast Guard and United States Army Corps of Engineers. With regard to marking Gaston Lake, all of the supplementary standards listed in Rule .0301(g) of this Section shall apply.

Statutory Authority G.S. 75A-3; 75A-15.

.0366 MACON COUNTY

(a) Regulated Area. This Rule applies to the following waters of Natahala Lake: that area within 50 yards of the Lakes End Boat Dock.

(b) Speed Limit. No person shall operate a vessel at greater than no-wake speed in the waters of the regulated area specified in Paragraph (a) of this Rule.

(c) Placement and Maintenance of Markers. The Board of Commissioners of Macon County is designated a suitable agency for placement and maintenance of the markers implementing this Rule.

Statutory Authority G.S. 75A-3; 75A-15.

* * * * *

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Wildlife Resources Commission intends to amend rule cited as 15A NCAC 101 .0001.

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

The public hearings will be conducted at:

7:00 p.m.
February 7, 1994
Asheville
Buncombe County Courthouse
60 Court Plaza
Room 1, 7th Floor
Asheville, NC

7:00 p.m.

February 8, 1994
Winston-Salem
Forsyth County
Agricultural Center
1450 Fairchild Drive
Winston-Salem, NC

7:00 p.m.
February 10, 1994
Raleigh
Archdale Building
Ground Floor Hearing Room
512 Salisbury Street
Raleigh, NC

7:00 p.m.
February 14, 1994
Wilmington
New Hanover County Courthouse
316 Princess Street
Wilmington, NC

Reason for Proposed Action: To establish definitions and criteria for critical habitat.

Comment Procedures: Interested persons may present their views either orally or in writing at the hearing. In addition, the record of hearing will be open for receipt of written comments from January 14, 1994 to February 25, 1994. Such written comments must be delivered or mailed to the N.C. Wildlife Resources Commission, 512 N. Salisbury Street, Raleigh, NC 27604-1188.

SUBCHAPTER 10I - ENDANGERED AND THREATENED SPECIES

.0001 DEFINITIONS

For the purposes of this Subchapter, the following definition shall apply:

- (1) "Species" means any taxonomic grouping of wildlife the adult members of which interbreed and reproduce their kind;
- (2) "Critical habitat" means any habitat which is considered essential to the conservation of an endangered or threatened wildlife species as listed in Rules .0003 and .0004 of this Subchapter.
 - (a) Critical habitats are recommended for Commission adoption by the Nongame Wildlife Advisory Committee based on the best available scientific evidence.
 - (b) Critical habitats shall include those

areas within the geographical area occupied by the species, on which are found those physical or biological features which are essential to the conservation of the species and which may require special management considerations or protection; and shall also include specific areas outside the geographical area occupied by the species that are determined to be essential to the conservation of the species and which may require special management considerations or protection.

- (c) Critical habitat shall not include the entire geographical area which can be occupied by the threatened or endangered species unless the management and protection of this area has been determined to be essential to the conservation of the species.
- (d) Critical habitat designations shall be listed in Rule .0006 of this Subchapter and may be used by the North Carolina Environmental Management Commission in classifying and assigning standards of water quality under 15A NCAC 2B .0101.

Statutory Authority G.S. 113-132; 113-134; 113-333; 143-239.

TITLE 21 - OCCUPATIONAL LICENSING BOARDS

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina State Board of Dental Examiners intends to amend rules cited as 21 NCAC 16F .0002 - .0005, .0007 - .0008, .0010; adopt 16I .0002 - .0004, .0006; 16R .0001 - .0005; 16S .0101 - .0102 and .0201 - .0205. The following rules are being recodified: 21 NCAC 16I .0002 to .0005; 21 NCAC 16I .0003 to .0007; 21 NCAC 16I .0004 to .0008, and 21 NCAC 16I .0005 to .0009.

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

The public hearing will be conducted at 2:00 p.m. on February 18, 1994 at the Office of the North Carolina State Board of Dental Examiners, Chatham Building of the Koger Executive Center, 3716 National Drive, Suite 221, Raleigh, North

Carolina.

Reason for Proposed Action:

21 NCAC 16F .0002 - To require applicants for certification that all managers and members of a professional limited liability company are licensed to practice dentistry to submit certain information.

21 NCAC 16F .0003 - To require that limited liability company designations shall consist only of the words "Professional Limited Liability Company", or "P.L.L.C. ".

21 NCAC 16F .0004 - To require that applications for a certificate of registration of a P.L.L.C. be accompanied by a certified copy of the articles of organization.

21 NCAC 16F .0005 - To require that a limited liability company submit its application for renewal at least twenty days prior to the date of expiration of the certificate.

21 NCAC 16F .0007 - To require that amendments to articles of organization be forwarded to the Board's office within ten days after filing.

21 NCAC 16F .0008 - To prohibit limited liability companies from employing in clinical positions more than two dental hygienists at the same time for each dentist actively engaged in the practice of dentistry.

21 NCAC 16F .0010 - To require that all required documents submitted to the Board by a limited liability company be attested to by the managers of the limited liability company and duly acknowledged before a notary public or some other officer qualified to administer oaths.

21 NCAC 16I .0002 - To require that as a condition of license renewal, each dental hygienist must complete a minimum of six clock hours of continuing education courses per calendar year.

21 NCAC 16I .0003 - To require that continuing education courses must be directly related to patient care or patient safety and to set out approved continuing education course sponsors.

21 NCAC 16I .0004 - To set out requirements for the reporting of continuing education and to require that all records, reports and certificates relative to continuing education credit hours must be maintained by the licensee for at least three years.

21 NCAC 16I .0006 - To set out the penalty for non-compliance with continuing education requirement.

21 NCAC 16R .0001 - To require that as a condition of license renewal, every dentist must complete a minimum of fifteen clock hours of continuing education courses per calendar year.

21 NCAC 16R .0002 - To require that continuing education courses must be directly related to patient care or patient safety and to set out approved continuing education course sponsors.

21 NCAC 16R .0003 - To set out requirements for the reporting of continuing education and to require that all records, reports and certificates relative to continuing education credit hours must be maintained by the licensee for at least three years.

21 NCAC 16R .0004 - To set out the penalty for non-compliance with the continuing education requirement.

21 NCAC 16R .0005 - To allow exemptions from continuing education requirements for dentists that are retired from the practice of dentistry.

21 NCAC 16S .0101 - To define certain terms of the Caring Dentist Program.

21 NCAC 16S .0102 - To require the Board to enter into agreements to establish the Caring Dentist Program and to set out the requirements of such agreements.

21 NCAC 16S .0201 - To set out the sources of receipt of information concerning suspected impairment and how this information shall be used.

21 NCAC 16S .0202 - To require that information received by the program must remain confidential but that information received as a result of a Board referral shall be freely exchanged with the Board or its authorized agents.

21 NCAC 16S .0203 - To set out guidelines for intervention and referral and to require that information about any dentist licensed by the Board shall be reported to the Board if certain determinations are made.

21 NCAC 16S .0204 - To require that a treatment source or facility receiving referrals from the program must be continually monitored to determine its ability to provide certain services.

21 NCAC 16S .0205 - To set out requirements for monitoring rehabilitation and performance after treatment.

Comment Procedures: Any person desiring to present oral data, views, or arguments on the proposed rules must, at least ten (10) days prior to the proposed hearing, file a notice with the Board. Notice of such request to appear or failure to give timely notice may be waived by the Board in its discretion. Comments should be limited to five minutes. Any person permitted to make an oral presentation is directed to submit a written statement of such presentation to the Board prior to or at the time of such hearing. The Board's address

is Post Office Box 32270, Raleigh, North Carolina 27622-2270. Any person may file written submission of comments or argument at any time up to and including February 18, 1994.

CHAPTER 16 - BOARD OF DENTAL EXAMINERS

SUBCHAPTER 16F - PROFESSIONAL CORPORATIONS AND PROFESSIONAL LIMITED LIABILITY COMPANIES

.0002 APPLICATION

Applications for certification that all proposed owners of stock in a professional corporation or all managers and members of a professional limited liability company are licensed to practice dentistry shall be submitted by letter to the Board's office requesting such certification, and setting forth the following information:

- (1) The proposed name of the corporation or professional limited liability company;
- (2) The names of all proposed owners of the shares of stock to be issued by the corporation, or all members and managers of the professional limited liability company together with their addresses and current dental license numbers; and
- (3) The name or names of the proposed incorporators or the members who executed the articles of organization of the professional limited liability company, their addresses, and the current dental license numbers of such of them as are duly licensed to practice dentistry in the State of North Carolina.

Statutory Authority G.S. 55B-4(4); 57C-2-01; 90-48.

.0003 CORPORATE OR LIMITED LIABILITY COMPANY NAME

Corporate or limited liability company designations shall consist only of the words, "Professional Association," ~~or the abbreviation, "P.A."~~, for professional corporations and "Professional Limited Liability Company, or "P.L.L.C." for professional limited liability companies. ~~and all~~ All ~~corporate~~ names shall be also contain the name or surname of one or more of the shareholders or members.

Statutory Authority G.S. 55B-5; 57C-2-01; 57C-2-30; 90-48.

.0004 CERTIFICATE OF REGISTRATION

(a) Application for a certificate of registration shall be made in writing to the Board, and shall be submitted upon the form provided by the Board for that purpose. The application shall be accompanied by a certified copy of the certificate of incorporation and articles of incorporation of a P.A. or a certified copy of the articles of organization of a P.L.L.C., together with a check in the amount of fifty dollars (\$50.00) in payment of the registration fee.

(b) The initial certificate of registration shall remain effective for one year from the date of issuance thereof, unless suspended or terminated as by law provided, and each subsequent renewal of the certificate shall be effective for a period of one year from the date of issue.

Statutory Authority G.S. 55B-10; 57C-2-01; 90-48.

.0005 APPLICATION FOR RENEWAL

At least 20 days prior to the date of expiration of the certificate, the corporation or limited liability company shall submit its written application for renewal upon a form to be provided by the Board. The application must be accompanied by a check in the amount of twenty-five dollars (\$25.00) in payment of the renewal fee.

Statutory Authority G.S. 55B-11; 57C-2-01; 90-48.

.0007 AMENDMENTS TO ARTICLES OF INCORPORATION OR ORGANIZATION

Amendments to the articles of incorporation or articles of organization shall be forwarded to the Board's office within ten days after the filing of the same in the office of the Secretary of State of North Carolina.

Statutory Authority G.S. 55B-12; 57C-2-01; 57C-2-22; 90-48.

.0008 EMPLOYMENT OF DENTAL HYGIENIST

No corporation or limited liability company shall, at one and the same time, employ in clinical positions more than two dental hygienists for each dentist actively engaged in the ~~corporate~~ practice of dentistry.

Statutory Authority G.S. 90-223(b); 90-233(b).

.0010 CORPORATE OFFICERS OR MANAGERS MUST EXECUTE

DOCUMENTS

All documents required by these rules to be submitted to the Board by the corporation or limited liability company shall be executed by the president or vice president of the corporation, and attested to by the secretary/treasurer or by the managers of the limited liability company, and duly acknowledged before a notary public or some other officer qualified to administer oaths.

Statutory Authority G.S. 55B-12; 57C-2-01; 90-48.

**SUBCHAPTER 16I -ANNUAL
RENEWAL OF DENTAL
HYGIENIST LICENSE**

**.0002 CONTINUING EDUCATION
REQUIRED**

As a condition of license renewal, each dental hygienist must complete a minimum of 6 clock hours of continuing education courses per calendar year.

Statutory Authority G.S. 90-225.1.

**.0003 APPROVED COURSES AND
SPONSORS**

(a) Courses in satisfaction of this requirement must be directly related to patient care or patient safety. Hours spent reviewing dental or dental hygiene publications or videos shall not count toward fulfilling the continuing education requirement.

(b) Approved continuing education course sponsors include:

- (1) providers recognized by the American Dental Association's Continuing Education Recognition Program, the Academy of General Dentistry, the American Dental Hygienists' Association, or components of such organizations;
- (2) North Carolina Area Health Education Centers;
- (3) educational institutions with dental or dental hygiene schools or departments; and
- (4) state or local societies or associations or formally structured study clubs.

Statutory Authority G.S. 90-225.1.

**.0004 REPORTING CONTINUING
EDUCATION**

(a) The number of hours completed to satisfy

this requirement shall be indicated on the renewal application form submitted to the Board and confirmed by the hygienist's signature. Upon request by the Board or its authorized agent, the hygienist shall provide official documentation of attendance at courses indicated. Such documentation must include:

- (1) the title and a course description;
- (2) the number of hours of instruction;
- (3) the date and location of the course attended;
- (4) the name(s) of the course instructor(s); and
- (5) the name of the organization offering or sponsoring the course.

(b) All records, reports and certificates relative to continuing education credit hours must be maintained by the licensee for at least three years and shall be produced upon request of the Board or its authorized agent. Documentation showing completion of reported hours of course work will be required of licensees on a random basis.

Statutory Authority G.S. 90-225.1.

.0006 PENALTY FOR NON-COMPLIANCE WITH CONTINUING EDUCATION REQUIREMENT

If the applicant for a renewal certificate fails to provide proof of completion of reported continuing education hours as required by Rules .0002 and .0004 of this Subchapter, the Board may refuse to issue a renewal certificate until such time as the licensee completes the required hours of education and meets all other qualifications for renewal.

Statutory Authority G.S. 90-225.1.

SUBCHAPTER 16R - CONTINUING EDUCATION REQUIREMENTS: DENTISTS

.0001 CONTINUING EDUCATION REQUIRED

As a condition of license renewal, every dentist must complete a minimum of 15 clock hours of continuing education courses per calendar year.

Statutory Authority G.S. 90-31.1.

.0002 APPROVED COURSES AND SPONSORS

(a) Courses in satisfaction of this requirement must be directly related to patient care or patient safety. Hours spent reviewing dental journals,

publications or videos shall not count toward fulfilling the continuing education requirement.

(b) Approved continuing education course sponsors include:

- (1) those recognized by the Continuing Education Recognition Program of the American Dental Association;
- (2) the Academy of General Dentistry;
- (3) North Carolina Area Health Education Centers;
- (4) educational institutions with dental or dental hygiene schools or departments; and
- (5) state or local societies or associations or formally structured study clubs.

Statutory Authority G.S. 90-31.1.

.0003 REPORTING OF CONTINUING EDUCATION

(a) The number of hours completed shall be indicated on the renewal application form submitted to the Board and confirmed by the dentist's signature. Upon request by the Board or its authorized agent, the dentist shall provide official documentation of attendance at courses indicated. Such documentation must include:

- (1) the title and a description of the course;
- (2) the number of hours of instruction;
- (3) the date and location of the course attended;
- (4) the name(s) of the course instructor(s); and
- (5) the name of the organization offering or sponsoring the course.

(b) All records, reports and certificates relative to continuing education credit hours must be maintained by the licensee for at least three years and shall be produced upon request of the Board or its authorized agent. Documentation showing completion of reported hours of course work will be required of licensees on a random basis.

Statutory Authority G.S. 90-31.1.

.0004 PENALTY FOR NON-COMPLIANCE WITH CONTINUING EDUCATION REQUIREMENT

If the applicant for a renewal certificate fails to provide proof of completion of reported continuing education hours as required by Rules .0001 and .0003 of this Subchapter, the Board may refuse to issue a renewal certificate until such time as the licensee completes the required hours of education and meets all other qualifications for renewal.

Statutory Authority G.S. 90-31.1.

.0005 EXEMPTION FROM CONTINUING EDUCATION

(a) Dentists may request exemption from continuing education requirements by submitting evidence in writing to the Board that the dentist is retired from the practice of dentistry.

(b) In those instances where continuing education is waived and the exempt individual wishes to resume practice, the Board shall require continuing education courses when re-classifying the licensee.

Statutory Authority G.S. 90-31.1.

SUBCHAPTER 16S - IMPAIRED DENTIST PROGRAM

SECTION .0100 - GENERAL

.0101 DEFINITIONS

The following definitions are applicable to impaired dentist programs established in accordance with G.S. 90-48.2:

- (1) "Board" means the North Carolina State Board of Dental Examiners;
- (2) "Impairment" means chemical dependency or mental illness;
- (3) "Board of Directors" means individuals comprising the oversight panel consisting of representatives from the North Carolina Dental Society, the Board, and the UNC School of Dentistry established to function as a supervisory body to the Caring Dentist Program;
- (4) "Director" means the person designated by the Board of Directors to organize and coordinate the activities of the Caring Dentist Program;
- (5) "Caring Dentist Program" means the program established through agreements between the Board and special impaired dentist peer review organizations formed by the North Carolina Dental Society made up of Dental Society members designated by the Society, the Board, and the UNC School of Dentistry to conduct peer review activities as provided in G.S. §90-48.2(a).
- (6) "Caring Dentist Program members" means volunteer Dental Society members selected by the Board of Directors from peer review organizations to serve as parties to interventions, to direct impaired dentists into treatment, and as

monitors of those individuals receiving treatment.

Statutory Authority G.S. 90-48; 90-48.2.

.0102 BOARD AGREEMENTS WITH PEER REVIEW ORGANIZATIONS

The Board shall enter into agreements with special impaired dentist peer review organizations, pursuant to G.S. 90-48.2, to establish the Caring Dentist Program to be supervised by the Board of Directors. Such agreements shall provide for:

- (1) investigation, review and evaluation of records, reports, complaints, litigation, and other information about the practice and practice patterns of licensed dentists as may relate to impaired dentists;
- (2) identification, intervention, treatment, referral, and follow up care of impaired dentists; and
- (3) due process rights for any subject dentist.

Statutory Authority G.S. 90-48; 90-48.2.

SECTION .0200 - GUIDELINES FOR PROGRAM ELEMENTS

.0201 RECEIPT AND USE OF INFORMATION OF SUSPECTED IMPAIRMENT

(a) Information concerning suspected impairment may be received by the Caring Dentist Program through any of the following sources:

- (1) reports of physicians, psychologists or counselors;
- (2) reports from family members, staff or other individuals;
- (3) self-referral; or
- (4) referral by the Board.

(b) When information of suspected impairment is received, the Program shall conduct an investigation and routine inquiries to determine the validity of the report.

(c) Dentists suspected of impairment may be required to submit to personal interviews if the investigation and inquiries indicate the report of impairment may be valid.

Statutory Authority G.S. 90-48; 90-48.2.

.0202 CONFIDENTIALITY

Information received by the Program shall remain confidential and shall not be released to any party outside the membership of the Program. However, information received as a result of a

Board referral shall be freely exchanged with the Board or its authorized agents.

Statutory Authority G.S. 90-48; 90-48.2.

.0203 INTERVENTION AND REFERRAL

(a) Following an investigation, if an impairment is determined to exist and confirmed, an intervention shall be conducted using specialized techniques designed to assist the dentist in acknowledging responsibility for dealing with the impairment. The dentist shall be referred to an appropriate treatment source.

(b) Following an investigation, intervention, or treatment, or upon receipt of a complaint or other information, a peer review organization participating in the Caring Dentist Program shall report to the Board detailed information about any dentist licensed by the Board, if it is determined that:

- (1) the dentist constitutes an imminent danger to the public or himself;
- (2) the dentist refuses to cooperate with the program, refuses to submit to treatment, or is still impaired after treatment and exhibits professional incompetence; or
- (3) it reasonably appears that there are other grounds for disciplinary action.

(c) Program members may consult with medical professionals and treatment sources as necessary in carrying out the Program's directives.

(d) Interventions shall be arranged and conducted as expeditiously as possible. When interventions are conducted as a direct result of a Board-initiated referral, a Board representative may be present.

(e) Treatment sources shall be evaluated and determined applicable before an individual is referred for treatment, and any treatment contracts or aftercare agreements shall be documented and recorded by the Program.

Statutory Authority G.S. 90-48; 90-48.2.

.0204 MONITORING TREATMENT

A treatment source or facility receiving referrals from the Program shall be continually monitored to determine its ability to provide:

- (1) adequate medical and non-medical staffing;
- (2) appropriate treatment;
- (3) affordable treatment;
- (4) adequate facilities; and
- (5) appropriate post-treatment support.

Statutory Authority G.S. 90-48; 90-48.2.

.0205 MONITORING REHABILITATION AND PERFORMANCE AFTER TREATMENT

(a) Program members shall monitor dentists following treatment. Testing for impairment shall be conducted until rehabilitation has been accomplished.

(b) Treatment sources shall submit reports to the Director concerning a dentist's rehabilitation and performance.

(c) Impaired dentists shall submit to periodic personal interviews before the Director or Program members designated by the Director; or, for those referred to the Program by the Board, before the Board's agents. The frequency of personal interviews shall be determined by the dentist's ability to accomplish rehabilitation and adequately perform after treatment.

(d) Complete records shall be maintained by the Program on all dentists reporting for assistance, treatment, or monitoring and such records shall remain confidential in accordance with G.S. 90-48.2(e).

(e) The Program shall maintain statistical information regarding impairment, to be reported to the Board periodically, but no less than once a year.

(f) The Program shall compile and report information periodically to the Board regarding investigations, reports, complaints, intervention, treatment, referral, rehabilitation and follow up care of impaired dentists. Such reports shall not identify the subject dentist unless the dentist was referred by the Board or a determination under Rule .0203(b) of this Section has been made.

Statutory Authority G.S. 90-48; 90-48.2.

Notice is hereby given in accordance with G.S. 150B-21.2 that the Board of Medical Examiners of the State of North Carolina intends to repeal rules cited as 21 NCAC 32L .0001 - .0012; and adopt rules cited as 21 NCAC 32O .0001 - .0021.

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

The public hearing will be conducted at 1:00 p.m. on February 4, 1994 at the NC Medical Board, 1203 Front St., Raleigh, N.C.

Reason for Proposed Action:

21 NCAC 32L .0001 - .0012 - Repealing Subchapter 32L and adopting new PA rules under 32O.

21 NCAC 32O .0001 - .0021 - To adopt rules that bring PA practice in NC into conformity with national standards.

Comment Procedures: Persons interested may present written or oral statements relevant to the actions proposed at a hearing to be held as indicated above. Written statements not presented at the hearing should be directed before February 14, 1994 to the following address: Administrative Procedures, NC Medical Board, P.O. Box 26808, Raleigh, NC 27611-6808.

CHAPTER 32 - BOARD OF MEDICAL EXAMINERS

SUBCHAPTER 32L - APPROVAL OF PHYSICIAN ASSISTANTS

.0001 DEFINITIONS

The following definitions apply to this Subchapter:

- (1) "Physician Assistant or PA" means an auxiliary, paramedical person who functions at the direction of or under the supervision of a physician licensed by the Board and who performs tasks traditionally performed by the physician, such as history taking, physical examination, diagnosis, and treatment.
- (2) "Physician Assistant Applicant" means the individual upon whose behalf an application is submitted who may function before approval by the Board in the same manner in which he functioned as a student under strict supervision as outlined in Rule .0002 of this Subchapter.
- (3) "Supervision" means the physician's function of overseeing, managing, and directing the medical acts performed by the PA as outlined in Rule .0009 of this Subchapter.
- (4) "Primary Supervising Physician" means the physician who, by signing the application to the Board, accepts full medical administrative responsibility for the PA's medical activities and conduct at all times whether he personally is providing supervision or supervision is being provided by a Back up Supervising Physician. The

Primary Supervising Physician shall assume total responsibility to assure the Board that the PA is sufficiently qualified by education and training to perform all medical acts required of the PA and shall assume total responsibility for the PA's performance in the particular field or fields in which the PA is expected to perform medical acts.

- (5) "Back up Supervising Physician" means the physician who, by signing the application to the Board, accepts the responsibility to be available to supervise the PA's activities in the absence of the Primary Supervising Physician only in the practice sites listed in the application approved by the Board. The Back up Supervising Physician is responsible for the activities of the PA only when he is providing supervision.
- (6) "Formulary" means the document which lists generic categories of drugs to be prescribed, ordered, or dispensed by physician extenders under written standing orders from the supervising physician for patient care in approved practice sites.
- (7) "Approved practice sites" means only those practice sites specifically listed in the approved application on file in the Board's office in which the PA may legally perform medical acts.

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

.0002 PHYSICIAN ASSISTANT APPLICANT STATUS

The Physician Assistant Applicant status may be used only by an individual whose application for approval as a Physician Assistant has been received in the Board's office. The Physician Assistant Applicant status may not be used to "try out" a job or work temporarily in a job in which the individual does not intend to obtain Board approval. In the event the individual leaves the job in which he has worked as a Physician Assistant Applicant before Board approval is granted, the individual must submit a written explanation to the Board before he may work in the Physician Assistant Applicant status in another job.

- (1) The Physician Assistant Applicant status applies to:
 - (a) an individual newly graduated from a PA training program; or
 - (b) an individual coming to North Carolina

for the first time who has worked previously as a PA in another state.

(2) ~~A Physician Assistant Applicant, described in Subparagraph (1) of this Rule, may function before approval by the Board under strict supervision with the following limitations:~~

- ~~(a) wear identification as a "Physician Assistant Applicant";~~
- ~~(b) have no prescribing privileges;~~
- ~~(c) have immediate physician countersigning of all notations in all patient charts in all practice locations;~~
- ~~(d) have no remote practice sites. (The supervising physician must always be physically present in the practice site in which the applicant is working.)~~

(3) ~~The Physician Assistant Applicant status does not apply to an individual previously approved as a PA in North Carolina in another practice situation which has terminated who is seeking approval in a new job. The previously approved PA may function prior to approval of the new job as follows:~~

- ~~(a) wear identification as a "Physician Assistant";~~
- ~~(b) use prescribing number previously issued by the Board for prescribing privileges;~~
- ~~(c) have physician countersigning of all notations in all patient charts in all practice locations within 24 hours of PA/patient contact.~~

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

.0003 REQUIREMENTS FOR PA APPROVAL

(a) ~~Before being approved by the Board, an applicant must:~~

- ~~(1) Be of good moral character.~~
- ~~(2) Give evidence that he has successfully completed a PA training program recognized by the Board as set forth in Rule .0006 of this Subchapter.~~

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

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

.0004 APPLICATION FOR PA APPROVAL

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

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

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

(d) ~~The following applications for changes in the PA practice may be administratively approved by the Board's staff and reported to the Board at each meeting:~~

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

(e) ~~Administrative approval is not automatic for the applications listed in this Rule. The changes may be administratively approved at the discretion of the Board's staff. Changes cannot be processed administratively but must be considered by the Board as follows: if any of the background questions are answered "yes" by the PA or primary supervising physician; or if the PA or any of the supervising physicians listed have an investigative, complaint, or public file.~~

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

.0005 PRESCRIBING PRIVILEGES

(a) ~~The PA Applicant and the supervising physicians shall acknowledge in the application that they are familiar with laws and rules of the Board regarding prescribing; and shall agree to~~

comply with these laws and rules by incorporating the laws and rules, including the Formulary, into their written standing orders.

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

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

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

(1) ~~Controlled Substances:~~

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

(B) ~~Verbal orders given to the PA by the supervising physician for administration of a controlled substance to a specific patient may be entered into the patient chart by the PA just as an RN may transcribe a physician's verbal order into a patient chart.~~

(2) ~~Parenteral Medications No parenteral preparations may be prescribed, ordered, dispensed, or administered unless under the order of the supervising physician as set forth in Paragraph (d)(3)(B) of this Rule with the exception of those medications listed on the Formulary as allowed.~~

(3) ~~Excluded Drugs:~~

(A) ~~Any pure form or combination of the generic classes of drugs listed in the Formulary may be prescribed, ordered, or dispensed, unless the drug or class of drug is listed as excluded from the Formulary.~~

(B) ~~The PA may prescribe an excluded drug or class of drug only as follows:~~

(i) ~~after the patient has been previously seen by the supervising physician for initial treatment of that illness and a written order has been entered into the chart by the physician for future treatment by the PA; or~~

(ii) ~~upon a specific written or verbal order obtained from the supervising physician before the prescription or order is issued by the PA.~~

(C) ~~Such a prescription or order written as described in Paragraph (d)(3)(B) of this Rule must be signed by the PA with a notation that it is issued on the specific order of the supervising physician. For example: Mary Smith, PA, on order of John Doe, M.D.~~

(4) ~~Refills A prescription may not indicate a refill with the exception of birth control medications which may be issued for a period not to exceed one year.~~

(5) ~~Dosage Units Amount of drug prescribed, ordered, or dispensed can be no more than 100 dosage units or a one-month supply with the exception of birth control medications which may be issued for a period not to exceed one year.~~

(6) ~~Prescription Notations Every prescription must be noted on the patient's chart. A second prescription for the same medication may be authorized by telephone by the PA and must be entered on the patient's chart and countersigned by the supervising physician within the specified countersigning time approved by the Board.~~

(7) ~~Prescribing Number A prescribing number is assigned by the Board to a PA upon approval by the Board. This number must appear on all prescriptions issued by the PA. The prescribing number is used as the PA's Approval Number.~~

(8) ~~Prescription Blank Format All prescriptions issued by a PA shall contain the name and telephone number of the supervising physician; the name, practice address, telephone number, and prescribing number of the PA, as well as all information required by law. A suggested prescription format is included in the application packet.~~

(9) ~~Pre-signed Prescription Blanks The supervising physician shall not leave pre-signed prescription forms for use by the PA.~~

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

.0006 REQUIREMENTS FOR RECOGNITION OF PA TRAINING PROGRAMS

All PA training programs approved by the American Medical Association Council on Medical Education (AMA) are recognized by the Board.

(1) Application for recognition of a PA training program not approved by the AMA shall be made by letter and supporting documents from the Director of the program and must demonstrate to the satisfaction of the Board that such program fulfills the following requirements:

(a) Sponsorship The training program must be sponsored by a college or university with appropriate arrangements for the clinical training of its students, such as a hospital maintaining a teaching program. There must be evidence that the program has education as its primary orientation and objective.

(b) Director The program must be under the supervision of a qualified director, who has at his disposal the resources of competent personnel adequately trained in the administration and operation of educational programs.

(c) Facilities Adequate space, light and modern equipment must be provided for all teaching functions. A library, containing up to date textbooks, scientific periodicals, and reference material pertaining to clinical medicine, its underlying scientific disciplines, and its specialties, shall be readily accessible to students and faculty.

(d) Curriculum The curriculum must provide adequate instruction in the basic sciences underlying medical practice to provide the trainee with an understanding of the nature of disease processes and symptoms, abnormal tests, and drug actions. This must be combined with instruction, observation, and participation in history taking, physical examination, and therapeutic procedures. This should be in sufficient depth to enable the graduate to integrate and organize historical and physical findings. The didactic

instruction shall follow a planned and progressive outline and shall include an appropriate mixture of classroom lectures, textbook assignments, discussions, demonstrations, and similar activities. Instruction shall include practical instruction and clinical experience under qualified supervision sufficient to provide understanding of a skill in performing those clinical functions which the PA may be asked to perform. There must be sufficient evaluative procedures to assure adequate evidence of competence. Although the student may concentrate his effort and his interest in a particular specialty of medicine, the program must insure that he possesses a broad general understanding of medical practice and therapeutic techniques.

(e) Length of Program Although some variation may be possible for the individual student, dependent on aptitude, previous education and experience, the curriculum shall be designed to require two or more academic years for completion.

(f) Faculty The program must have a faculty competent to teach the didactic and clinical material which comprises the curriculum. The faculty shall include at least one instructor who is a graduate of medicine, licensed to practice in the location of the school, whose training and experience enable him to properly supervise progress and teaching in clinical subjects. He shall be in attendance for sufficient time to insure proper exposure of the student to clinical teaching and practice. The program may utilize instructors other than physicians, but sufficient exposure to clinical medicine must be provided to insure understanding of the patient, his problem, and the diagnostic and therapeutic responses to this problem.

(g) Entrance Requirements The program must, through appropriate entrance requirements, insure that candidates accepted for training possess:

(i) ability to use written and spoken language in effective communication with physicians, patients, and others;

(ii) quantification skills to insure proper calculation and interpretation of tests;

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

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

.0007 TERMINATION OF PA APPROVAL

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

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

- ~~including prescribing, ordering, or dispensing drugs not allowed by the Formulary;~~
- (4) ~~that the PA is impaired physically, mentally, or professionally as a result of using mind-altering chemicals;~~
- (5) ~~that the PA has been convicted in any court, of a felony or other criminal offense;~~
- (6) ~~that the PA is adjudicated mentally incompetent or that the PA's mental or physical condition renders the PA unable to safely function as a PA;~~
- (7) ~~that the PA has failed to comply with any of the provisions of this Subchapter.~~

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

.0008 METHOD OF IDENTIFICATION

The PA shall wear an appropriate name tag spelling out the words "Physician Assistant".

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

.0009 SUPERVISION OF A PA

Supervision shall be provided by the responsible physician as follows:

- (1) ~~Availability:~~
 - (a) ~~The supervising physician shall be available for direct communications by radio, telephone, or telecommunications.~~
 - (b) ~~The supervising physician shall be available on a regularly scheduled basis for referrals of patients from the PA.~~
- (2) ~~Written Standing Orders:~~
 - (a) ~~The supervising physician shall provide in each practice location, for use by the PA and for referral by other personnel, written standing orders and drug protocols to cover most commonly encountered problems in the practice setting.~~
 - (b) ~~The written standing orders shall include a predetermined plan for emergency services.~~
 - (c) ~~The PA shall refer a patient to another physician other than an approved supervising physician only in accordance with written standing orders.~~
- (3) ~~Countersigning:~~
 - (a) ~~The time interval between the PA's contact with the patient and chart review and countersigning by the~~

- supervising physician shall be 72 hours.
- (b) ~~A longer countersigning time interval may be considered by the Board upon specific request. The request should explain the practice circumstances which necessitate the longer countersigning interval.~~
- (c) ~~All entries by a PA into patient charts in all approved practice locations must be countersigned by the supervising physician. Entries include but are not limited to: progress notes; treatment rendered; tests or procedures ordered; and notations of prescriptions or orders; and drugs dispensed or administered.~~
- (4) ~~Supervision Arrangements:~~
- (a) ~~If the PA is to perform duties away from the supervising physician, the application must clearly specify the circumstances which would justify this action and the supervisory arrangements established to protect the patient.~~
- (b) ~~Details must be submitted describing distance, time, topography, physical characteristics, and communication ability between the PA and the supervising physician.~~
- (5) ~~Supervising Physicians:~~
- (a) ~~A physician in a graduate medical education program, whether fully licensed or holding only a resident's training license, cannot be named as a supervising physician.~~
- (b) ~~A physician in a graduate medical education program who is also practicing in a non-training situation may supervise physician assistants in the non-training situation if fully licensed.~~
- (c) ~~All physicians who may supervise the PA in any manner must be approved by the Board before PA supervision occurs.~~
- (6) ~~The PA must be prepared to demonstrate upon request to a member of the Board, or its delegates, the ability to perform the medical acts assigned by the supervising physician.~~

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

.0010 ANNUAL REGISTRATION OF PA APPROVAL

- (a) ~~Physician Assistants approved under these rules shall register their approval annually with the~~

~~Board by July 1 of each year on forms supplied by the Board and shall be accompanied by a registration fee of thirty five dollars (\$35.00).~~

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

Statutory Authority G.S. 90-15.1.

.0011 FEES

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

~~(b) An application fee of one hundred dollars (\$100.00) shall be paid at the time of application for a change of primary supervising physician when that is the only change in the PA employment situation.~~

~~(c) The fee for annual registration, due July 1, is thirty five dollars (\$35.00).~~

~~(d) No portion of the fees in this Rule is refundable.~~

Statutory Authority G.S. 90-15.

.0012 PA FORMS

~~The following documents regarding physician assistants may be obtained from the Board's office:~~

- ~~(1) Rules for Approval of Physician Assistants, Subchapter 32L;~~
- ~~(2) Formulary;~~
- ~~(3) North Carolina Laws Regarding Physician Assistants, G.S. 90-18(13) and 90-18.1;~~
- ~~(4) Application for PA Approval;~~
- ~~(5) Statement of Approval, upon being approved;~~
- ~~(6) Application for Annual Registration, mailed during June to all Physician Assistants approved by May 1;~~
- ~~(7) Certificate of Registration, upon registering.~~

Statutory Authority G.S. 150B-11.

SUBCHAPTER 320 - PHYSICIAN
ASSISTANT REGULATIONS

.0001 DEFINITIONS

The following definitions apply to this Subchapter:

- (1) "Board" means the Board of Medical Examiners of the State of North Carolina.
- (2) "Physician Assistant" means a person licensed by the Board to perform medical acts, tasks, or functions under the supervision of a physician licensed by the Board and who performs tasks traditionally performed by the physician and who has graduated from a physician assistant or surgeon assistant program accredited by the accrediting agency approved by the Board.
- (3) "Physician Assistant License" means the document issued by the Board showing approval for the physician assistant to perform medical acts, tasks, or functions under North Carolina law.
- (4) "Registration" means paying an annual fee and updating practice information requested by the Board as outlined in Rule .0005 of this Subchapter.
- (5) "Supervising Physician" means a physician licensed to practice medicine by the Board and authorized by the Board to supervise physician assistants.
- (a) The "Primary Supervising Physician" is the physician who, by signing the application to the Board, accepts full responsibility for the physician assistant's medical activities and professional conduct at all times whether he personally is providing supervision or if supervision is being provided by a Back-up Supervising Physician. The Primary Supervising Physician shall assume total responsibility to assure the Board that the physician assistant is sufficiently qualified by education and training to perform all medical acts required of the physician assistant and shall assume total responsibility for the physician assistant's performance in the particular field or fields in which the physician assistant is expected to perform medical acts. No more than two physician assistants may be currently registered to a primary supervising physician.

- (b) The "Back-up Supervising Physician" means the physician who, by signing the application to the Board, accepts the responsibility to supervise the physician assistant's activities in the absence of the Primary Supervising Physician only in the practice sites listed in the application approved by the Board. The Back-up Supervising Physician is responsible for the activities of the physician assistant only when he is providing supervision.
- (6) "Supervision" means overseeing the activities of, and accepting the responsibility for, the medical services rendered by a physician assistant in a manner approved by the Board.

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

.0002 QUALIFICATIONS FOR LICENSE

Except as otherwise provided in this Subchapter, an individual shall be licensed by the Board before the individual may practice as a physician assistant. The Board may grant a license as a physician assistant to an applicant who:

- (1) submits an application on forms approved by the Board;
- (2) pays the appropriate fee as determined by the Board;
- (3) has successfully completed an educational program for physician assistants or surgeon assistants accredited by the Board-approved accrediting agency and has passed a certifying examination approved by the Board if initially licensed after April 1, 1994;
- (4) certifies that he or she is mentally and physically able to engage safely in practice as a physician assistant;
- (5) has no licensure, certification, or registration as a physician assistant under current discipline, revocation, suspension or probation for cause resulting from the applicant's practice as a physician assistant, unless the Board considers such condition and agrees to licensure;
- (6) is of good moral character;
- (7) submits to the Board any other information the Board deems necessary to evaluate the applicant's qualifications; and
- (8) has been approved by the Board.

Statutory Authority G.S. 90-6; 90-18(13); 90-18.1.

.0003 TEMPORARY LICENSE

The Board may grant a temporary license to an applicant who meets the qualifications for licensure except that the applicant has not yet taken a Board-approved certifying examination or the applicant has taken a Board-approved certifying examination and is awaiting the results. A temporary license is valid:

- (1) for one year from the date of issue;
- (2) until the results of an applicant's examination are available; or
- (3) until the Board makes a final decision on the applicant's request for licensure; whichever comes first. The Board may extend a temporary license, upon a majority vote of the Board members, for a period not to exceed one year. Under no circumstances may the Board grant more than one extension of a temporary license.

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

.0004 INACTIVE LICENSE STATUS

Any physician assistant who notifies the Board in writing may elect to place his or her license on an inactive status. A physician assistant with an inactive license shall not practice as a physician assistant. Any licensee who engages in practice while his or her license is lapsed or on inactive status shall be considered to be practicing without a license, which shall be grounds for discipline under 21 NCAC 32O .0016. A physician assistant requesting restoration from inactive status shall be required to pay the current renewal fee and shall be required to meet the criteria for renewal as specified in 21 NCAC 32O .0005.

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

.0005 ANNUAL REGISTRATION

Each person who holds a license as a physician assistant in this state will, upon notification from the Board, annually renew said license by:

- (1) submitting the fee required in Rule .0021 of this Subchapter;
- (2) completing the appropriate forms; and
- (3) meeting any other requirement set forth by the Board.

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

.0006 CONTINUING MEDICAL EDUCATION

In order to maintain physician assistant licensure,

documentation must be maintained by the physician assistant of 100 hours of continuing medical education (CME) for every two year period, at least 40 of which must be American Medical Association Category 1 or equivalent. CME documentation must be available for inspection by the Board or an agent of the Board upon request.

The physician assistant who wishes to prescribe controlled substances shall complete at least three hours of CME every two years on the medical and social effects of the misuse and abuse of alcohol, nicotine, prescription drugs (including controlled substances) and illicit drugs.

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

.0007 EXEMPTION FROM LICENSE

Nothing herein shall be construed to require licensure under 21 NCAC 32O of:

- (1) a physician assistant student enrolled in a physician assistant or surgeon assistant educational program accredited by the Board-approved accrediting agency;
- (2) a physician assistant employed in the service of the federal government while performing duties incident to that employment; or
- (3) agents or employees of physicians who perform delegated tasks in the office of a physician but who are not rendering services as a physician assistant or identifying themselves as a physician assistant.

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

.0008 SCOPE OF PRACTICE

Physician assistants perform medical acts, tasks or functions with physician supervision. Physician assistants perform those duties and responsibilities, including the prescribing and dispensing of drugs and medical devices, that are delegated by their supervising physician(s).

Physician assistants shall be considered the agents of their supervising physicians in the performance of all practice-related activities, including but not limited to, the ordering of diagnostic, therapeutic and other medical services.

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

.0009 PRESCRIPTIVE AUTHORITY

A physician assistant is authorized to prescribe, order, compound, dispense, and administer drugs

and medical devices subject to the following conditions:

- (1) The physician assistant has been assigned a license number by the Board which shall be shown on the written prescription.
- (2) The physician assistant has received from the supervising physician written instructions for prescribing drugs and a written policy for periodic review by the physician of the drugs prescribed.
- (3) For compounding and dispensing drugs, the physician assistant shall have made arrangements with a licensed pharmacist for consultation and general supervision, and shall comply with the rules of the N.C. Board of Pharmacy governing this function.
- (4) In order to prescribe controlled substances, the primary supervising physician and the physician assistant must sign the statement that they have read and understand the DEA MID-LEVEL PRACTITIONERS MANUAL and the information sheet provided by the Board. The Board also strongly suggests that the physician and physician assistant continue to update their knowledge of the indications for these substances and their abuse potentials. All prescriptions for substances falling within the categories 2, 2N, 3 and 3N shall not exceed a legitimate seven day supply.
- (5) The physician assistant shall comply with other relevant laws and regulations.
- (6) A prescription issued by a physician assistant shall display the name and telephone number of the responsible supervising physicians (primary or back-up); the name, practice address, telephone number, and prescribing number of the physician assistant, as well as all information required by law.
- (7) Physician assistants may request, receive, and sign for professional samples and may distribute professional samples to patients complying with appropriate federation and state regulations.

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

.0010 SUPERVISION OF PHYSICIAN ASSISTANTS

Supervision shall be continuous but shall not be construed as necessarily requiring the physical

presence of the supervising physician at the time and place that the services are rendered.

It is the obligation of each team of physician(s) and physician assistant(s) to ensure that the physician assistant's scope of practice is identified; that delegation of medical tasks is appropriate to the physician assistant's level of competence; that the relationship of, and access to, the supervising physician is defined; and that a process for evaluation of the physician assistant's performance is established. A statement clearly describing these supervisory arrangements in all settings must be signed by both the supervising physician and the physician assistant and shall be kept on file at all practice sites.

The time interval between the physician assistant's contact with the patient and chart review and countersigning by the supervising physician may be a maximum of seven days for outpatient (clinic/office) charts. Entries by a physician assistant into patient charts of inpatients (hospital, long term care institutions) must comply with the rules and regulations of the institution, but at a minimum, the initial workup and treatment plan, and the discharge summary, must be countersigned by the supervising physician, within seven days of the time of generation of these notes; and, in the acute inpatient setting, the initial work-up, orders and treatment plan must be signed and dated within two working days.

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

.0011 SUPERVISING PHYSICIANS

A physician wishing to supervise a physician assistant must:

- (1) be licensed to practice medicine by the Board;
- (2) notify the Board of the physician's intent to supervise a physician assistant; and,
- (3) submit a statement to the Board that the physician will exercise supervision over the physician assistant in accordance with any rules adopted by the Board and that the physician will retain professional and legal responsibility for the care rendered by the physician assistant.
- (4) It is the responsibility of the supervising physician to ensure that the physician assistant has adequate back-up for any procedure performed by the physician assistant, in any practice location (office, home, hospital, etc.).

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

.0012 NOTIFICATION OF INTENT TO PRACTICE

(a) Prior to the performance of any medical acts, tasks, or functions, a physician assistant licensed by the Board will submit notification of such intent on forms provided by the Board. The physician assistant applicant may be provisionally approved by the Board's administrative staff to begin performing medical acts, tasks, and functions upon receipt of the application form in the Board's office subject to final approval by the Board. Such notification shall include:

- (1) the name, practice address, and telephone number of the physician assistant; and
- (2) the name, practice address, and telephone number of the supervising physician(s).

(b) The physician assistant shall notify the Board of any changes or additions in a previously approved practice setting or in supervising physicians within 15 days of the occurrence.

(c) Intent to practice forms must be submitted for each additional job under a new primary supervising physician.

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

.0013 SATELLITE SETTINGS

Nothing contained herein shall be construed to prohibit the rendering of services by a physician assistant in a setting geographically remote from the supervising physician.

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

.0014 EXCLUSIONS OF LIMITATIONS ON EMPLOYMENT

Nothing herein shall be construed to limit any lawful employment arrangement of a physician assistant licensed under this Subchapter.

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

.0015 ASSUMPTION OF PROFESSIONAL LIABILITY

The legal responsibility for the physician assistant's patient care activities shall be that of the supervising physician(s), including when the physician assistant provides care and treatment for patients in health care facilities.

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

.0016 VIOLATIONS

The Board may, following the exercise of due process, in accordance with provisions of Article 3A of G.S. 150B, discipline any physician assistant who:

- (1) fraudulently or deceptively obtains or attempts to obtain a license;
- (2) fraudulently or deceptively uses a license;
- (3) is convicted of a felony;
- (4) is an habitual user of intoxicants or drugs to such an extent that the physician assistant is unable to safely perform medical acts;
- (5) has been adjudicated as mentally incompetent or has a mental condition that renders the physician assistant unable to safely perform medical acts;
- (6) has committed an act of moral turpitude;
- (7) represents himself or herself as a physician;
- (8) any violation of the Federal Controlled Substances law; or
- (9) lacks professional competence to perform medical acts with a reasonable degree of skill and safety for patients. In this connection, the Board may consider action of a physician assistant indicating failure to properly treat a patient and may require such physician assistant to submit to inquiries or examinations, written or oral, by members of the Board or by others licensed to practice in this State, as the Board deems necessary to determine the professional qualifications of such licensee.

Statutory Authority G.S. 90-14(a)(11); 90-18(13); 90-18.1.

.0017 DISCIPLINARY AUTHORITY

The Board, upon finding that a physician assistant has committed any offense described in Rule .0017 of this Subchapter, may after due process:

- (1) refuse to grant a license;
- (2) administer a reprimand;
- (3) revoke, suspend, limit, or otherwise restrict a license;
- (4) require a physician assistant to submit to the care or counseling or treatment by a physician(s) designated by the Board;
- (5) suspend enforcement of its finding thereof and place the physician assistant on probation with the right to vacate the probationary order for noncompliance; or
- (6) restore or reissue, at its discretion, a

license and impose any disciplinary or corrective measure which it may have imposed.

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

.0018 LOCUM TENENS PERMIT

Locum tenens means the temporary provision of services at a specific site by a substitute physician assistant provider.

The Board may grant a locum tenens permit to any applicant who is licensed in the state. The permit may be granted by an authorized representative of the Board. Such applications for locum tenens permits will be reviewed at the next regularly scheduled Board meeting. The duration of a locum tenens permit shall be finite and shall not exceed six months.

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

.0019 TITLE AND PRACTICE PROTECTION

(a) Any person not licensed under this Subchapter is in violation of G.S. 90-18 and is subject to penalties applicable to the unlicensed practice of medicine if he or she:

- (1) holds himself or herself out as a physician assistant;
- (2) uses any combination or abbreviation of the term "physician assistant" to indicate or imply that he or she is a physician assistant; or
- (3) acts as a physician assistant without being license by the Board.

(b) An unlicensed physician shall not be permitted to use the title of "physician assistant" or to practice as a physician assistant unless he or she fulfills the requirements of this Subchapter.

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

.0020 IDENTIFICATION REQUIREMENTS

Physician assistants licensed under this Subchapter shall keep proof of current licensure available for inspection at their primary place of practice and shall, when engaged in their professional activities, wear a name tag identifying themselves as a "physician assistant."

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

.0021 FEES

The Board charges the following application fees:

- (1) Physician Assistant License Application -

one hundred dollars (\$100.00).

- (2) Temporary License Application - one hundred dollars (\$100.00).
- (3) Intent to Practice Application - two hundred dollars (\$200.00).
- (4) Application for Addition of Back-up Supervising Physicians - fifty dollars (\$50.00).
- (5) Change of Primary Supervising Physician Application - one hundred dollars (\$100.00).
- (6) Locum Tenens Practice Application - one hundred and fifty dollars (\$150.00).
- (7) Annual Registration Application Fee - one hundred dollars (\$100.00).

Application fees are non-refundable.

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

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Real Estate Appraisal Board intends to adopt rules cited as 21 NCAC 57A .0101 - .0102, .0201 - .0210, .0301 - .0306, .0401 - .0408, .0501; 57B .0101 - .0104, .0201 - .0212, .0301 - .0307, .0401 - .0403, .0501 - .0503, .0601 - .0612; 57C .0101 - .0104, .0201, .0301 - .0303, and .0401.

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

The public hearing will be conducted at 10:00 a.m. on February 16, 1994 at the North Raleigh Hilton, 3415 Wake Forest Road, Raleigh, NC.

Reason for Proposed Action:

21 NCAC 57A .0101 - .0102, .0201 - .0210, .0301 - .0306, .0401 - .0408, .0501 - To codify the procedures and practice requirements of the North Carolina Appraisal Board regarding the licensure, certification, and practice of real estate appraisers.

21 NCAC 57B .0101 - .0104, .0201 - .0212, .0301 - .0307, .0401 - .0403, .0501 - .0503, .0601 - .0612 -To codify the procedures and practice requirements of the Real Estate Appraisal Board regarding Real Estate Appraiser Education.

21 NCAC 57C .0101 - .0104, .0201, .0301 - .0303, .0401 - To codify the procedure and practice requirements of the Real Estate Appraisal

Board regarding administrative rule making and administrative hearings.

Comment Procedures: Comments regarding these rules may be made orally or submitted in writing at the public hearing. Written comments not submitted at the hearing may be delivered to Ms. Anita Burt c/o North Carolina Real Estate Commission, P.O. Box 17100, Raleigh, North Carolina 27619, so as to be received by the hearing date.

CHAPTER 57 - REAL ESTATE APPRAISAL BOARD

SUBCHAPTER 57A - LICENSING, CERTIFICATION AND PRACTICE

.0102 FILING AND FEES

(a) Each application for licensure or for certification must be filed in the proper form and must be accompanied by the required application fee plus such additional fee as the Board may from time to time establish to defray the cost of any competency examination administered by a private testing service. The Board may reject and return to the applicant any application which is incomplete, not in proper form, or not accompanied by the required fee or fees. Application fees accompanying complete applications submitted in proper form are not refundable.

(b) The following fees shall be charged:

- (1) application for original residential appraiser license \$150.00;
- (2) application for original residential appraiser certificate \$150.00;
- (3) application for original general appraiser certificate \$150.00.

(c) Payment of application fees shall be made by certified check, bank check or money order payable to the North Carolina Appraisal Board.

Statutory Authority G.S. 93E-1-6; 93E-1-10.

SECTION .0200 - APPRAISER LICENSING AND CERTIFICATION

.0201 QUALIFICATIONS FOR APPRAISER LICENSURE AND CERTIFICATION

(a) Applicants for licensure as a state-licensed residential real estate appraiser and for certification as a state-certified real estate appraiser must satisfy the qualification requirements stated in G.S. 93E-1-6 as further set forth in Subparagraphs (a)(1), (2) and (3) of this Rule, provided however that licensure as a state-licensed residential real estate appraiser is not prerequisite for certification as a state-certified residential or general real estate appraiser:

- (1) Applicants for licensure as a state-licensed residential real estate appraiser shall have completed, within the five-year period immediately preceding the

SECTION .0100 - APPLICATION FOR REAL ESTATE APPRAISER LICENSE OR CERTIFICATE

.0101 FORM

A person who wishes to file an application for a real estate appraiser license or certificate may obtain the required form upon request to the Board. In general, the form calls for information such as the applicant's name and address, the applicant's social security number, a recent passport size photograph of the applicant, places of residence and employment, education, and such other information as may be necessary to identify the applicant and determine his qualifications and fitness for licensure or certification.

Statutory Authority G.S. 93E-1-6(a); 93E-1-10.

date application is made, courses in Introduction to Real Estate Appraisal, Valuation Principles and Practices, and Applied Residential Property Valuation each consisting of at least 30 classroom hours of instruction, or appraisal education found by the Board to be equivalent to such courses; and have at least 2,000 hours of appraisal experience.

- (2) Applicants for certification as a state-certified residential real estate appraiser, within the five-year period immediately preceding the date application is made, shall have completed those courses required for licensure as a state-licensed residential real estate appraiser or equivalent education and, in addition, a course in Introduction to Income Property Appraisal consisting of at least 30 classroom hours of instruc-

tion or equivalent education; and shall have obtained as least 2,000 hours of appraisal experience acquired over a minimum period of two calendar years.

(3) Applicants for certification as a state-certified general real estate appraiser, within the five-year period immediately preceding the date application is made, shall have completed those courses required for certification as a state-certified residential real estate appraiser or equivalent education and, in addition, courses in Advanced Income Capitalization Procedures and Applied Income Property Valuation each consisting of at least 30 classroom hours of instruction or equivalent education; and shall have obtained at least 2,000 hours of appraisal experience acquired over a minimum period of two calendar years of which at least 50 percent must have been in appraising non-residential real estate.

(b) When a state-licensed real state appraiser becomes certified as a state-certified real estate appraiser, his licensure shall be immediately canceled by the Board. When a state-certified residential real estate appraiser becomes certified as a state-certified general real estate appraiser, his certification as a state-certified residential real estate appraiser shall be immediately canceled by the Board.

Statutory Authority G.S. 93E-1-6; 93E-1-10.

.0202 CHARACTER

(a) At a meeting of the Appraisal Board following each real estate appraiser licensing or certification examination, the applicants who have passed the examination shall be considered for licensure or certification. When the moral character of an applicant is in question, action by the Board will be deferred until the applicant has affirmatively demonstrated that he possesses the requisite truthfulness, honesty and integrity.

(b) When the moral character of an applicant is in question, the Board shall notify the applicant and the applicant shall be entitled to demonstrate his character and fitness for licensure or certification at a hearing before the Board.

(c) Notice to the applicant that his moral character is in question shall be in writing, sent by certified mail, return receipt requested, to the address shown upon the application. The applicant shall have 60 days from the date of receipt of this

notice to request a hearing before the Board. Failure to request a hearing within this time shall constitute a waiver of the applicant's right to a hearing on his application for licensing or certification, and the application shall be deemed denied. Nothing in this Rule shall be interpreted to prevent an applicant from re-applying for licensure or certification.

Statutory Authority G.S. 93E-1-10.

.0203 LICENSE AND CERTIFICATE RENEWAL

(a) A holder of an appraiser license or certificate desiring the renewal of such license or certificate shall, during the month of June, apply for same in writing upon the form approved by the Board and shall forward the required fee of two hundred dollars (\$200.00). Forms are available upon request to the Board.

(b) All licensees and certificate holders either active or inactive, resident or non-resident who are required by G.S. 93E-1-7 to complete continuing education as a condition of renewal, shall be required to satisfy the continuing education requirements set forth in Rule .0204 of this Section.

(c) An applicant applying for renewal of a license or certificate obtained by reciprocity must submit with the renewal application a current license history from the appraiser regulatory authority of the state upon whose qualification requirements the reciprocal license or certificate was granted showing that the applicant is currently licensed or certified in good standing. Submission of false or misleading information to the Board in connection with license or certificate renewal shall constitute grounds for disciplinary action.

(d) Any person who acts or holds himself out as a state-licensed or state-certified real estate appraiser while his appraiser license or certificate is expired will be subject to disciplinary action and penalties as prescribed in Chapter 93E of the North Carolina General Statutes.

Statutory Authority G.S. 93E-1-7(a) and (b); 93E-1-10.

.0204 CONTINUING EDUCATION

(a) All real estate appraiser licensees and certificate holders shall, upon the second renewal of their license or certificate following their initial licensure or certification by the Board, and upon each subsequent renewal, present evidence satisfactory to the Board of having obtained, within the immediately preceding licensing/certification

period (July 1- June 30) education consisting of at least ten classroom hours of instruction. Additional hours of approved instruction may be carried forward and recognized for purposes of meeting the continuing education requirement only as provided in Paragraph (c) of this Rule. Except as provided in Paragraphs (f) and (g) of this Rule, such education must have been obtained by taking courses approved by the Board for continuing education purposes. Such education must relate to real estate appraisal and must contribute to the goal of improving the knowledge, skill and competence of state-licensed and state-certified real estate appraisers. There is no exemption from the continuing education requirement for appraisers whose licensed or certified status has been upgraded to the level of certified residential or certified general appraiser since the issuance or most recent renewal of their license or certificate, and courses taken to satisfy the requirements or a higher level of certification may not be applied toward the annual continuing education requirement.

(b) Each appraisal continuing education course must involve a minimum of three and one-half classroom hours of instruction on real estate appraisal or related topics such as the application of appraisal concepts and methodology to the appraisal of various types of property; specialized appraisal techniques; laws, rules or guidelines relating to appraisal; standards of practice and ethics; building construction; financial or investment analysis; land use planning or controls; feasibility analysis; statistics; accounting; and similar topics. The license or certificate holder must have attended at least 90 percent of the scheduled classroom hours for the course in order to receive credit for the course.

(c) A licensee who elects to take approved continuing education courses in excess of the minimum requirement of ten hours per year may carry over into subsequent years a maximum of 20 hours of continuing education credit. Credit for extra hours of approved continuing education may not be carried forward more than two years, and no credit may be applied retroactively.

(d) Course sponsors must provide a prescribed certificate of course completion to each licensee and certificate holder satisfactorily completing a course. The licensee or certificate holder should submit the original of this certificate to the Board as soon as possible after completing the course and must submit such certificate not later than the next June 30 following course completion. In order to renew a license or certificate in a timely manner, the Board must have received from the licensee or

certificate holder proper proof of his having fully satisfied the continuing education requirement prior to processing his license or certificate renewal application. If a licensee or certificate holder fails to provide by June 30 of any year proper proof of having fully satisfied the continuing education requirement, his license or certificate will expire as of that date and he will be subject to the provisions of Rules .0203(d) and .0206 of this Section.

(e) A course may be taken only once for continuing education credit within a three-year period.

(f) A current or former licensee or certificate holder may request that the Board grant continuing education credit for a course taken by the licensee or certificate holder that is not approved by the Board, or for appraisal education activity equivalent to a Board-approved course, by making such request on a form prescribed by the Board and submitting a non-refundable fee of fifty dollars (\$50.00) for each course or type of appraisal education activity to be evaluated. Continuing education credit for a non-approved course will be granted only if the licensee or certificate holder provides satisfactory proof of course completion and the Board finds that the course satisfies the requirements for approval of appraisal continuing education courses with regard to subject matter, course length, instructor qualifications, and student attendance. Appraisal education activities for which credit may be awarded include, but are not limited to, teaching appraisal courses, authorship of appraisal textbooks, and development of instructional materials on appraisal subjects. The awarding of credit for such activities is wholly discretionary on the part of the Board. Licensed or certified appraisers who between July 1 and June 30 of the period for which continuing education credit is requested have taught an appraisal course or courses approved by the Board for continuing education credit will be deemed to have taken an equivalent course and will not be subject to the fifty (\$50.00) fee, provided they submit verification satisfactory to the Board of having taught the course(s).

(g) A state-licensed or state-certified residential real estate appraiser may fully satisfy the continuing education requirement by taking the Applied Residential Property Valuation (R-3) pre-licensing and pre-certification course, provided that he has not taken such course within the previous three years. A state-certified general real estate appraiser may fully satisfy the continuing education requirement by taking either the Applied Residential Valuation (R-3) pre-licensing and pre-certifica-

tion course or the Applied Income Property Valuation (G-3) pre-certification course, provided that he has not taken either of these courses within the previous three years.

(h) A licensee or certificate holder may request in writing and be granted an extension of time to satisfy the continuing education requirements if he provides evidence satisfactory to the Board that he was unable to obtain the necessary education due to an incapacitating illness, military assignment outside the 50 states, or similar condition. If an extension of time is granted, the licensee or certificate holder will be permitted to renew or reinstate, as appropriate, his license or certificate for that period of time for which the extension was granted. The granting of such request and the length of any extension of time granted are wholly discretionary on the part of the Board.

Statutory Authority G.S. 93E-1-7(a) and (b); 93E-1-8(d); 93E-1-10.

.0205 INACTIVE STATUS

(a) A licensee or certificate holder shall be assigned by the Board to inactive status upon written request to the Board.

(b) A licensee or certificate holder whose appraiser license or certificate is on inactive status shall be returned to active status upon making a written request to the Board.

(c) A licensee or certificate holder on inactive status shall not be entitled to act as a state-licensed or state-certified real estate appraiser; however, in order to continue to hold an appraiser license or certificate, the licensee or certificate holder whose license or certificate is on inactive status must renew his license or certificate, including payment of the prescribed renewal fee and completion of all continuing education.

(d) The Board may take disciplinary action against a licensee or certificate holder on inactive status.

Statutory Authority G.S. 93E-1-7; 93E-1-10.

.0206 EXPIRED LICENSE OR CERTIFICATE

(a) Expired real estate appraiser licenses and certificates may be reinstated within 12 months after expiration upon proper application, payment to the Board of the two hundred dollar (\$200.00) renewal fee plus a late filing fee of five dollars (\$5.00) per month for each month or part thereof that such license or certificate is lapsed, and provision of proof of having obtained the continu-

ing education that would have been required had the license or certificate been continuously renewed.

(b) Licenses and certificates expired for more than 12 months may be considered for reinstatement upon proper application, payment of the one hundred fifty dollar (\$150.00) original license or certificate fee, payment of the sixty dollar (\$60.00) late filing fee, and provision of proof of having obtained continuing education equal to the total number of classroom hours that would have been required had the license or certificate been continuously renewed. Such applications will be reviewed by the Board to determine whether an examination and/or additional real estate appraisal education will be required.

Statutory Authority G.S. 93E-1-6(b), 93E-1-7; 93E-1-10.

.0207 PAYMENT OF LICENSE AND CERTIFICATE FEES

Checks given the Board in payment of real estate appraiser license and certificate fees which are returned unpaid shall be considered cause for license or certificate denial, suspension, or revocation.

Statutory Authority G.S. 93E-1-10.

.0208 REPLACEMENT LICENSE OR CERTIFICATE FEE

A licensee or certificate holder may, by filing a prescribed form and paying a five dollar (\$5.00) fee to the Board, obtain a duplicate real estate appraiser license or certificate or pocket card to replace an original license certificate or pocket card which has been lost, damaged or destroyed or if the name of the licensee or certificate holder has been lawfully changed. The Board, at its discretion, may require a licensee or certificate holder requesting a duplicate license or certificate to submit an affidavit stating the reason for the request.

Statutory Authority G.S. 93E-1-7(d); 93E-1-10.

.0209 FEDERAL APPRAISER REGISTRY

Licensees and certificate holders who are qualified for enrollment in the federal roster or registry of state-licensed and state-certified real estate appraisers may apply for enrollment or for the renewal or reinstatement of such enrollment in writing upon a form approved by the Board. The application form must be accompanied by a fee of

\$20 plus any additional fee that may be required by the appropriate federal agency or instrumentality.

Statutory Authority G.S. 93E-1-10; 93E-1-11(d).

.0210 TEMPORARY PRACTICE

(a) A real estate appraiser from another state who is licensed or certified by the appraiser licensing or certifying agency in such state may apply for registration to receive temporary appraiser licensing or certification privileges in this State by filing with the Board a notarized application on a form prescribed by the Board for such purpose which shall set forth and include:

- (1) the applicant's name, address, social security number and such other information as may be necessary to identify the applicant;
- (2) an original statement by the appraiser licensing or certifying agency in the applicant's resident state issued under seal no more than thirty days prior to the application date setting forth:
 - (A) the applicant's name, business name and address;
 - (B) the type license or certificate held by the applicant and the license or certificate number;
 - (C) the dates of licensure or certification and the expiration date of the applicant's current license or certificate;
 - (D) whether or not the license or certificate was issued as a result of passing a license/certification examination, by reciprocity, or by some other means; and
 - (E) a complete record of any disciplinary actions taken or disciplinary proceedings pending against the applicant;
- (3) an irrevocable consent that service of process in any action against the applicant arising out of the applicant's appraisal activities in this State may be made by delivery of the process on the Executive Director of the Board;
- (4) a statement that the applicant has read and agrees to abide by all appraiser laws and rules in this State and agrees to cooperate with any investigation initiated by the Board including supplying relevant documents and personally appearing before the Board or the

Board's investigators;

- (5) information sufficient to identify the appraisal assignment to be performed under the temporary practice permit, including the projected beginning and ending dates for performing such appraisal assignment, but shall not require the applicant to divulge any information concerning the appraisal assignment which would breach the applicant's duty of confidentiality to his client under the provisions of the Uniform Standards of Professional Appraisal Practice; and
- (6) such other information as may be necessary to determine the applicant's eligibility for temporary appraisal licensing or certification privileges in this State.

(b) Upon filing a properly completed application accompanied by a fee of fifty dollars (\$50.00) and otherwise satisfying the Appraisal Board as to his qualifications, eligibility and moral fitness for temporary licensing or certification privileges, an applicant shall be granted a temporary practice permit by the Board authorizing the applicant to perform in this State the appraisal assignment described in such application, provided that the length of time projected by the applicant for completion of the assignment is reasonable given the scope and complexity of the assignment.

(c) Licensing and certification privileges granted under the provisions of this Rule shall expire upon the completion of the appraisal assignment described in the application for temporary licensing or certification privileges or on the expiration date set forth in the temporary practice permit, whichever shall come first. However, upon a showing by the permittee satisfactory to the Appraisal Board that, notwithstanding the permittee's diligent attention to the appraisal assignment, additional time is needed to complete the assignment, the Board shall extend the licensing or certification privileges granted under the permittee's temporary practice permit to afford him additional time to complete the appraisal assignment.

(d) Persons granted temporary licensing or certification privileges under this Rule shall not advertise or otherwise hold themselves out as being a North Carolina state-licensed or state-certified appraiser.

Statutory Authority G.S. 93E-1-9(c) and (d); 93E-1-10; Title XI, Section 1122(a); 12 U.S.C. 3351(a).

SECTION .0300 - APPRAISER EXAMINATIONS

.0301 TIME AND PLACE

Examinations for real estate appraiser licenses and certificates will be scheduled at such times and places as determined by the Executive Director and the Board-approved private testing service. Applicants will be scheduled for examination based on their successful completion of appraiser qualification requirements stated in G.S. 93E-1-6 and filing an application with the Board. Violation of examination procedures and instructions shall be grounds for denial, suspension or revocation of a license or certificate.

Statutory Authority G.S. 93E-1-6(c); 93E-1-10.

.0302 SUBJECT MATTER AND PASSING SCORES

(a) The examination for licensure as a state-licensed real estate appraiser and for certification as a state-certified residential real estate appraiser shall test applicants on the following subject areas:

- (1) Influences on Real Estate Value;
- (2) Legal Considerations in Appraisal;
- (3) Types of Value;
- (4) Economic Principles;
- (5) Real Estate Markets and Analysis;
- (6) Valuation Process;
- (7) Property Description;
- (8) Highest and Best Use Analysis;
- (9) Appraisal Statistical Concepts;
- (10) Sales Comparison Approach;
- (11) Site Value;
- (12) Cost Approach;
- (13) Income Approach (Gross Rent Multipliers, Estimation of Income and Expenses, Operating Expense Ratios);
- (14) Valuation of Partial Interests; and
- (15) Appraisal Standards and Ethics.

(b) In addition to the subjects areas listed in Paragraph (a) of this Rule, the examination for certification as a state-certified general real estate appraiser shall test applicants on the following subject areas:

- (1) Direct Capitalization;
- (2) Cash Flow Estimates;
- (3) Measures of Cash Flow; and
- (4) Discounted Cash Flow Analysis.

(c) Prior to taking the examination, applicants will be informed of the score required to pass. Applicants who pass the examination will only be notified that they have passed. Applicants who

have failed will be informed of their actual score.

Statutory Authority G.S. 93E-1-6(c); 93E-1-10.

.0303 RE-EXAMINATION

If an applicant for a real estate appraiser license or certificate fails to pass or appear for any examination for which he has been scheduled by the Board-approved private testing service, he shall re-apply for examination and shall pay the prescribed examination testing fees to the Board-approved private testing service.

Statutory Authority G.S. 93E-1-6(b) and (c); 93E-1-10.

.0304 CHEATING AND RELATED MISCONDUCT

Applicants shall not cheat or attempt to cheat on an examination by any means, including both giving and receiving assistance, and shall not communicate in any manner for any purpose with any person other than an examination supervisor during an examination. Violation of this Rule shall be grounds for dismissal from an examination, invalidation of examination scores, and denial of a real estate appraiser license or certificate, as well as for disciplinary action if the applicant holds an appraiser license or certificate.

Statutory Authority G.S. 93E-1-6(c); 93E-1-10.

.0305 CONFIDENTIALITY OF EXAMINATIONS

Licensing and certification examinations are confidential. No applicant, licensee, or certificate holder shall obtain, attempt to obtain, receive or communicate to other persons examination questions. Violation of this Rule shall be grounds for denial of a real estate appraiser license or certificate if the violator is an applicant and disciplinary action if the violator holds an appraiser license or certificate.

Statutory Authority G.S. 93E-1-6(c); 93E-1-10.

.0306 EXAMINATION REVIEW

(a) An applicant who fails an examination may review his examination in the presence of a Board-designated representative. Applicants who review their examinations may not be accompanied by any other person at a review session, nor may any other person review an examination on behalf of an applicant. Applicants who pass an examination may not review their examinations.

(b) The Board will establish and publish a schedule for examination review. An applicant who fails to review his examination at the established date and time will be deemed to have waived his right to review his examination.

Statutory Authority G.S. 93E-1-6(c); 93E-1-10.

SECTION .0400 - GENERAL APPRAISAL PRACTICE

.0401 USE OF TITLES

(a) A state-licensed residential real estate appraiser shall utilize the term "state-licensed residential real estate appraiser" and a state-certified residential real estate appraiser shall utilize the term "state-certified residential real estate appraiser" when performing an appraisal of real estate or any interest therein, and when referring to himself as an appraiser. A state-certified general real estate appraiser shall utilize either the term "state-certified general real estate appraiser" or "state-certified residential/general real estate appraiser" when performing appraisals of all types of real estate or any interest therein, and when referring to himself as an appraiser.

(b) Licensure or certification as a real estate appraiser is granted only to persons and does not extend to a business entity operated by a state-licensed or state-certified real estate appraiser.

Statutory Authority G.S. 93E-1-10.

.0402 DISPLAY OF LICENSES AND CERTIFICATES

(a) The real estate appraiser license or certificate of a state-licensed or state-certified real estate appraiser shall be prominently displayed at the appraiser's place of business, provided that the license or certificate of a managing appraiser and the license or certificate of each licensee or certificate holder engaged in real estate appraisal activities at the office of the managing appraiser shall be prominently displayed at such office.

(b) The annual license or certificate renewal pocket card issued by the Board to each state-licensed or state-certified real estate appraiser shall be retained by the licensee or certificate holder as evidence of licensure or certification.

Statutory Authority G.S. 93E-1-10.

.0403 ADVERTISING

(a) When advertising or otherwise holding himself out as a real estate appraiser, a state-

licensed residential real estate appraiser shall identify himself as a "state-licensed residential real estate appraiser", a state-certified residential real estate appraiser shall identify himself as a "state-certified residential real estate appraiser", and a state-certified general real estate appraiser shall identify himself as either a "state-certified general real estate appraiser" or a "state-certified residential/general real estate appraiser".

(b) A state-licensed or state-certified real estate appraiser doing business as a partnership, association, corporation or other business entity shall not represent in any manner to the public that the partnership, association, corporation or other business entity is either licensed or certified by the State of North Carolina to engage in the business of real estate appraising.

(c) In the event that any licensee or certificate holder shall advertise in any manner using a firm name, corporate name, or an assumed name which does not set forth the surname of the licensee or certificate holder, he shall first notify the Board in writing of such name and furnish the Board with a copy of each registration of assumed name certificate filed with the office of the county register of deeds in compliance with Section 66-68, North Carolina General Statutes.

Statutory Authority G.S. 93E-1-10.

.0404 CHANGE OF NAME OR ADDRESS

All licensees and certificate holders shall notify the Board in writing of each change of business address, residence address, or trade name within ten days of said change. The address shall be sufficiently descriptive to enable the Board to correspond with and locate the licensee or certificate holder.

Statutory Authority G.S. 93E-1-10.

.0405 APPRAISAL REPORTS

(a) Each written appraisal report prepared by or under the direction of a state-licensed or state-certified real estate appraiser shall bear the signature of the state-licensed or state-certified appraiser, the license or certificate number of the licensee or certificate holder in whose name the appraisal report is issued, and the designation "state-licensed residential real estate appraiser", "state-certified residential real estate appraiser", or the designation "state-certified general real estate appraiser", or "state-certified residential/general real estate appraiser", as applicable. Each such appraisal

report shall also indicate whether or not the state-licensed or state-certified appraiser has personally inspected the property, and shall identify any other person who assists in the appraisal process other than by providing clerical assistance.

(b) Every state-licensed and state-certified real estate appraiser shall affix or stamp to all appraisal reports a seal of a design authorized by the Board which shall set forth the name and license or certificate number of the appraiser in whose name the appraisal report is issued and shall identify the appraiser as a "state-licensed residential real estate appraiser", a "state-certified residential real estate appraiser", or as a "state-certified general real estate appraiser" or "state-certified residential/-general real estate appraiser", as applicable.

(c) A state-licensed or state-certified real estate appraiser who signs an appraisal report prepared by another person, including a subcontractor, acting under the direction or supervision of the appraiser shall be fully responsible for the content of the report.

(d) A written appraisal report shall be issued on all real estate appraisals performed in connection with federally related transactions.

Statutory Authority G.S. 93E-1-10.

.0406 MANAGING APPRAISER

(a) A "managing appraiser" shall be designated with the Board for each appraisal firm and each combined real estate brokerage and appraisal firm for which real estate appraisals are performed by:

- (1) two or more state-licensed or state-certified real estate appraisers who are employed by or associated with the firm; or
- (2) unlicensed or uncertified assistants, other than clerical employees, who are employed by or associated with the firm and who assist a state-licensed or state-certified real estate appraiser in the performance of real estate appraisals.

If one or more state-certified general real estate appraisers is employed by or associated with the firm, the managing appraiser must be a state-certified general real estate appraiser. If one or more state-certified residential real estate appraisers is employed by or associated with the firm, the managing appraiser must be a state-certified residential or general real estate appraiser. If only state-licensed residential real estate appraisers are employed by or associated with the firm, the managing appraiser may be a state-licensed residential real estate appraiser.

(b) The designated managing appraiser shall be responsible for:

- (1) the proper display of licenses and certificates of all state-licensed and state-certified real estate appraisers employed by or associated with the firm, and ascertaining whether each licensee or certificate holder employed by or associated with the firm has complied with Rule .0203 of this Subchapter;
- (2) the proper notification to the Board of any change of business address or trade name of the firm and the registration of any assumed business name adopted by the firm for its use;
- (3) the proper conduct of advertising of appraisal services by or in the name of the firm;
- (4) the proper retention and maintenance of records relating to appraisals conducted by or on behalf of the firm;
- (5) the maintenance of a record for each of the firm's unlicensed and uncertified assistants that generally describes the nature and extent of assistance rendered in connection with each appraisal; and
- (6) the maintenance of a record for each of the firm's state-licensed and state-certified residential real estate appraisers that generally describes the nature and extent of assistance rendered by the state-licensed residential real estate appraiser when assisting a state-certified residential or general real estate appraiser and any assistance rendered by the state-certified residential real estate appraiser when assisting a state-certified general real estate appraiser in performing an appraisal.

No license or certificate holder shall be managing appraiser of more than one appraisal firm or combined real estate brokerage and appraisal firm.

(c) Each managing appraiser shall notify the Board in writing of any change in his status as managing appraiser within ten days following the change.

Statutory Authority G.S. 93E-1-10.

.0407 SUPERVISION OF UNLICENSED AND UNCERTIFIED ASSISTANTS

A state-licensed or state-certified real estate appraiser may employ a person or persons not licensed or certified as a real estate appraiser to assist in the performance of real estate appraisals,

provided that the state-licensed or state-certified real estate appraiser:

- (1) actively and personally supervises the unlicensed and uncertified assistant;
- (2) reviews all appraisal reports and supporting data used in connection with appraisals in which the services of an unlicensed and uncertified assistant is utilized;
- (3) complies with all provisions of Rule .0405 of this Section regarding appraisal reports; and
- (4) prepares and furnishes to the managing appraiser, if applicable, and to each unlicensed and uncertified assistant whose services were utilized in connection with the appraisal, a report on a form prescribed by the Board describing the nature and extent of assistance rendered by the unlicensed and uncertified assistant in connection with the appraisal, and places a copy of such report in the supporting file for the appraisal.

Statutory Authority G.S. 93E-1-3(b); 93E-1-10.

.0408 SUPERVISION OF LICENSED AND CERTIFIED RESIDENTIAL APPRAISERS

(a) When a state-licensed residential real estate appraiser assists a state-certified residential or general real estate appraiser in the performance of a real estate appraisal and the resulting appraisal report is to be signed by the state-certified real estate appraiser, the state-certified real estate appraiser shall:

- (1) actively and personally supervise the state-licensed real estate appraiser;
- (2) review the appraisal report and supporting data used in connection with the appraisal;
- (3) comply with all provisions of Rule .0405 of this Section regarding appraisal reports; and
- (4) prepare and furnish to the managing appraiser, if applicable, and to each state-licensed real estate appraiser whose services were utilized in connection with the appraisal, a report on a form prescribed by the Board describing the nature and extent of assistance rendered by the state-licensed real estate appraiser in connection with the appraisal, and place a copy of such report in the supporting file for the appraisal.

(b) When a state-certified residential real estate appraiser assists a state-certified general real estate appraiser in the performance of a real estate appraisal and the resulting appraisal report is to be signed by the state-certified general real estate appraiser, the state-certified general real estate appraiser shall perform those supervisory acts set forth in Paragraph (a) of this Rule with regard to the activities of the state-certified residential real estate appraiser.

Statutory Authority G.S. 93E-1-10.

SECTION .0500 - STANDARDS OF APPRAISAL PRACTICE

.0501 APPRAISAL STANDARDS

(a) Every state-licensed and state-certified real estate appraiser shall, in performing the acts and services of a state-licensed or state-certified real estate appraiser, comply with those appraisal practice standards known as the "Uniform Standards of Professional Appraisal Practice" promulgated by the Appraisal Standards Board of the Appraisal Foundation, which standards, including subsequent amendments and editions of those standards which may from time to time be approved, are hereby adopted by reference in accordance with G.S. 150B-21.6. For the purpose of this Rule, the "Uniform Standards of Professional Appraisal Practice" shall include the Preamble, Ethics Provision, Competency Provision, Departure Provision, Jurisdictional Exception, Definitions, Supplemental Standards, Statements on Appraisal Standards, and Standards 1, 2, and 3.

(b) A copy of the portions of the "Uniform Standards of Professional Appraisal Practice" specified in Paragraph (a) of this Rule is included in the Board's Licensing and Certification booklet available free of charge.

Statutory Authority G.S. 93E-1-10.

SUBCHAPTER 57B - REAL ESTATE APPRAISAL EDUCATION

SECTION .0100 - COURSES REQUIRED FOR LICENSURE OR CERTIFICATION

.0101 LICENSED RESIDENTIAL REAL ESTATE APPRAISER COURSE REQUIREMENTS

Each applicant for licensure as a state-licensed residential real estate appraiser shall complete the

following prelicensure courses, each consisting of a minimum of 30 classroom hours:

- (1) Introduction to Real Estate Appraisal (R-1);
- (2) Valuation Principles and Procedures (R-2); and
- (3) Applied Residential Property Valuation (R-3).

Credit for these courses must be earned from a Board-approved course sponsor or school and all courses shall comply with the course content standards prescribed in Rule .0302 of this Subchapter. These courses must be commenced and completed sequentially in the order listed and within the five-year period immediately preceding the date application for licensure is made to the Board.

Statutory Authority G.S. 93E-1-6(a); 93E-1-8(a); 93E-1-10.

.0102 CERTIFIED RESIDENTIAL REAL ESTATE APPRAISER COURSE REQUIREMENTS

(a) In addition to the courses specified in Rule .0101 of this Section, an applicant for certification as a state-certified residential real estate appraiser is required to complete the following precertification course involving a minimum of 30 classroom hours: Introduction to Income Property Appraisal (G-1). This course must be taken after the applicant's successful completion of the prelicensing courses specified in Rule .0101 of this Section. Credit for this course must be earned from a Board-approved course sponsor or school, and all courses must be completed sequentially in the order listed.

(b) An applicant who is not a state-licensed residential real estate appraiser must have completed all required courses within the five-year period immediately preceding the date application is made to the Board.

(c) An applicant who is a state-licensed residential real estate appraiser must have completed the required 30 classroom hour course in Introduction to Income Property Appraisal (G-1) within the five-year period immediately preceding the date application is made to the Board.

Statutory Authority G.S. 93E-1-6(b); 93E-1-8(a); 93E-1-10.

.0103 CERTIFIED GENERAL REAL ESTATE APPRAISER COURSE REQUIREMENTS

(a) In addition to the courses specified in Rules .0101 and .0102 of this Section, an applicant for certification as a state-certified general real estate appraiser is required to complete the following precertification courses, each involving a minimum of 30 classroom hours:

- (1) Advanced Income Capitalization (G-2); and
- (2) Applied Income Property Valuation (G-3).

These courses must be commenced and completed sequentially in the order listed after the applicant's successful completion of the courses specified in Rules .0101 and .0102 of this Section. Credit for all courses must be earned from a Board-approved course sponsor or school, and all courses shall comply with the course content standards prescribed in Rule .0302 of this Subchapter.

(b) An applicant who is not a state-licensed or state-certified residential real estate appraiser must have completed all the required courses within the five-year period immediately preceding the date application is made to the Board.

(c) An applicant who is a state-licensed or state-certified residential real estate appraiser must have commenced and completed all courses required beyond those required for his current licensure or certification within the five-year period immediately preceding the date application is made to the Board.

Statutory Authority G.S. 93E-1-6(c); 93E-1-8(a); 93E-1-10.

.0104 COURSE EXEMPTIONS FOR EQUIVALENT EDUCATION

A person desiring an exemption from the course requirements stated in Rules .0101, .0102 and .0103 of this Section must make application for exemption upon a form prescribed by the Board. The Board will grant exemptions only upon a finding that the person requesting the exemption possesses education determined by the Board to be equivalent to the course or courses for which exemption is requested.

Statutory Authority G.S. 93E-1-6(a); 93E-1-10.

SECTION .0200 - COURSE SPONSOR STANDARDS FOR PRELICENSING AND PRECERTIFICATION EDUCATION

.0201 PURPOSE AND APPLICABILITY

This Section establishes minimum standards for approval of all real estate appraisal prelicensing

and precertification course sponsors and schools. These standards must be satisfied in order for course sponsors and schools to obtain and maintain approval of their courses for appraiser precertification and precertification education credit. Schools and course sponsors must obtain course approval from the Board prior to conducting precertification and precertification courses and prior to advertising or otherwise representing that a course is or may be approved for credit in North Carolina.

Statutory Authority G.S. 93E-1-8(a); 93E-1-10.

.0202 APPLICATION FOR APPROVAL

Schools and other course sponsors seeking approval to conduct real estate appraisal precertification courses or precertification courses must make written application to the Board upon a form prescribed by the Board.

Statutory Authority G.S. 93E-1-8(a); 93E-1-10.

.0203 CRITERIA FOR APPROVAL

Approval to conduct real estate appraisal precertification and/or precertification courses shall be granted to a school or course sponsor when it is shown to the satisfaction of the Board that:

- (1) the school or course sponsor has submitted all information required by the Board;
- (2) the school or course sponsor complies with the standards described in this Section; and
- (3) the courses to be conducted comply with the standards described in Section .0300 of this Subchapter.

Statutory Authority G.S. 93E-1-8(a); 93E-1-10.

.0204 FACILITIES AND EQUIPMENT

(a) Sponsors shall certify at the time of application for approval that classrooms shall be of sufficient size to accommodate comfortably all students enrolled in a course, shall have adequate light, heat, cooling and ventilation and shall be free of distractions which would disrupt class sessions.

(b) Classrooms shall contain, at a minimum, a chalkboard and student desks or worktables sufficient to accommodate all students enrolled in a course.

Statutory Authority G.S. 93E-1-8(a); 93E-1-10.

.0205 ENROLLMENT CONTRACTS

Schools and course sponsors shall execute a written contract with each student enrolled and shall provide a copy of such contract to the student. Such contract shall state the amount of tuition and fees paid, the school's policy regarding refund of tuition and fees, and the title and dates of the courses for which the student is enrolled.

Statutory Authority G.S. 93E-1-8(a); 93E-1-10.

.0206 ADMISSIONS POLICY AND PRACTICE

Schools and course sponsors shall not discriminate in their admissions policy, practice or general operations against any person on the basis of familial status, sex, race, color, creed, national origin, religious preference or handicap. A statement to this effect shall be included in all bulletins, catalogues or similar official publications.

Statutory Authority G.S. 93E-1-8(a); 93E-1-10.

.0207 ADMINISTRATION

One person must be designated as the director for each approved school or course sponsor and shall be responsible for administrative matters. The director shall ensure that the policies and general operations of the school or course sponsor comply with the provisions of Sections .0200 and .0300 of this Subchapter. The director must be possessed of good character and reputation.

Statutory Authority G.S. 93E-1-8(a); 93E-1-10.

.0208 ACCOMMODATIONS FOR PERSONS WITH DISABILITIES

The Board may suspend, revoke or deny renewal of approval of a private real estate school or course sponsor to conduct appraiser precertification and precertification courses upon finding that any court of competent jurisdiction has found the school or course sponsor official or instructor in the employ of the school or course sponsor to be in violation of any applicable federal or state law or regulation prohibiting discrimination on the basis of disability, requiring places of public accommodation to be in compliance with prescribed accessibility standards, or requiring that courses related to licensing or certification for professional or trade purposes be offered in a place and manner accessible to persons with disabilities.

Statutory Authority G.S. 93E-1-8(a); 93E-1-10.

.0209 CERTIFICATION OF COURSE COMPLETION

Approved schools or course sponsors must provide each passing student with a course completion certificate in a format prescribed by the Board. Certificates of course completion must be on an official document bearing the letterhead or insignia of the school or course sponsor and must have the original signature or signature stamp of the school or course sponsor director.

Statutory Authority G.S. 93E-1-8(a); 93E-1-10.

.0210 COURSE RECORDS

(a) Schools and course sponsors must retain on file for three years copies of all grade and attendance records for each approved course and must make such records available to the Board upon request.

(b) Schools and course sponsors must retain on file for two years a master copy of each final course examination, and such file copy shall indicate the answer key, course title, course dates and name of instructor. Examination file copies shall be made available to the Board upon request.

Statutory Authority G.S. 93E-1-8(a); 93E-1-10.

.0211 PROGRAM CHANGES

Approved schools and course sponsors must obtain advance approval from the Board for any changes to be made with respect to course content, course completion standards, instructors, or textbooks as prescribed in Section .0300 of this Subchapter. Requests for approval of such changes must be in writing.

Statutory Authority G.S. 93E-1-8(a); 93E-1-10.

.0212 WITHDRAWAL OR DENIAL OF BOARD APPROVAL

The Board may deny or withdraw approval of any school or course sponsor upon finding that:

- (1) the school or course sponsor director has refused or failed to comply with any of the provisions of Sections .0200 and .0300 of this Subchapter;
- (2) the school or course sponsor has made any false statements or presented any false information in connection with an application for Board approval or renewal of the sponsor or its courses; or
- (3) the school or course sponsor director has performed any act which constitutes improper, fraudulent, or dishonest

conduct.

Statutory Authority G.S. 93E-1-8(a); 93E-1-10.

SECTION .0300 - COURSE STANDARDS FOR PRELICENSING AND PRECERTIFICATION EDUCATION

.0301 PURPOSE

This Section establishes minimum standards for real estate appraisal prelicensing and precertification courses prescribed by G.S. 93E-1-6(a).

Statutory Authority G.S. 93E-1-8(a); G.S. 93E-1-10.

.0302 COURSE CONTENT

(a) All courses shall consist of instruction in the subject areas and at the competency and instructional levels prescribed in the Board's course syllabi. Copies of the syllabi are available free of charge upon request to the Board.

(b) Courses may also include coverage of additional related subject areas not prescribed by the Board; however, any such course must provide additional class time above the minimum requirement of the 30 classroom hours for the coverage of such additional subject areas.

(c) Classroom time and instructional materials may be utilized for instructional purposes only and not for promoting the interests of or recruiting employees for any particular real estate appraiser, appraisal firm or appraisal trade organization.

Statutory Authority G.S. 93E-1-6(a), (b), (c); 93E-1-8(a); 93E-1-10.

.0303 COURSE COMPLETION STANDARDS

(a) Academic standards for course completion must reasonably assure that students receiving a passing grade possess adequate knowledge and understanding of the subject areas prescribed for the course. A student's grade must be based solely on his or her performance on examinations and on graded homework and classwork assignments.

(b) Course completion requirements must include a comprehensive final course examination which covers all prescribed subject areas and which accounts for at least 50 percent of a student's grade for the course. Final course examinations are subject to review and approval by the Board. Take-home or open-book final course

examinations are prohibited. Schools and course sponsors may, within 90 days of the course ending date, allow a student one opportunity to make up any missed course examination or to retake any failed course examination without repeating the course.

(c) The minimum attendance required for satisfactory course completion is 80 percent of all scheduled classroom hours for the course.

Statutory Authority G.S. 93E-1-8(a); 93E-1-10.

.0304 COURSE SCHEDULING

(a) All courses must have fixed beginning and ending dates, and schools and course sponsors may not utilize a scheduling system that allows students to enroll late for a course and then complete their course work in a subsequently scheduled course. Late enrollment is permitted only if the enrolling student can satisfy the minimum attendance requirement set forth in Rule .0303(c) of this Section.

(b) Courses may be scheduled in a manner that provides for class meetings of up to eight classroom hours in any given day and 40 classroom hours in any given seven-day period; however equivalent credit for courses scheduled for more than 30 classroom hours per seven-day period will be limited to 30 classroom hours per seven-day period.

(c) A classroom hour consists of 50 minutes of classroom instruction and ten minutes of break time. For any class meeting that exceeds 50 minutes in duration, breaks at the rate of ten minutes per hour must be scheduled and taken at reasonable times.

Statutory Authority G.S. 93E-1-8(a); 93E-1-10.

.0305 TEXTBOOKS

Each course must utilize a textbook or course materials which are approved by the Board as well as any additional instructional materials which may be prescribed by the Board for such course.

Statutory Authority G.S. 93E-1-8(a); 93E-1-10.

.0306 INSTRUCTOR REQUIREMENTS

(a) Except as indicated in Paragraph (b) of this Rule, all appraisal precicensing and precertification courses or courses deemed equivalent by the Board must be taught by instructors who possess good moral character and reputation and either the minimum appraisal education and experience qualifications listed in this Rule or other qualifica-

tions that are found by the Rule to be equivalent to those listed. These qualification requirements must be met on a continuing basis. The minimum qualifications are as follows:

(1) Residential appraiser courses: 120 classroom hours of real estate appraisal education equivalent to the residential appraiser education courses prescribed in Rules .0101 and .0102 of this Subchapter and either two years' full-time experience as a residential real estate appraiser within the previous five years or three years' full-time experience as a general real estate appraiser within the previous five years, with at least one-half of such experience being in residential property appraising. Instructors must also be either state-certified residential or state-certified general real estate appraisers.

(2) General appraiser courses: 180 classroom hours of real estate appraisal education equivalent to the general appraiser education courses prescribed in Rules .0101, .0102 and .0103 of this Subchapter and three years' full-time experience as a general real estate appraiser within the previous five years, with at least one-third of such experience being in income property appraising. Instructors must also be state-certified general real estate appraisers.

(b) Guest lecturers who do not possess the qualifications stated in Paragraph (a) of this Rule may be utilized to teach collectively up to one-third of any course, provided that each guest lecturer possesses education and experience directly related to the particular subject area he is teaching.

Statutory Authority G.S. 93E-1-8(a); 93E-1-10.

.0307 CRITERIA FOR COURSE RECOGNITION

(a) Entities other than approved schools and course sponsors seeking recognition of their appraiser precicensing or precertification courses as equivalent to the North Carolina appraisal precicensing or precertification courses required by G.S. 93E-1-6 and specified in Rules .0101, .0102 and .0103 of this Subchapter must make written application to the Board on a form prescribed by the Board.

(b) Courses must be conducted in accordance

with the minimum course standards prescribed in this Section, provided that the following exceptions to those standards shall apply:

- (1) Courses may be structured differently from those course content requirements prescribed in the Board's course syllabi; however, appropriate prerequisites for advanced courses must be established and each course for which Board recognition is sought must consist of a minimum of 15 classroom hours.
- (2) Various combinations of courses may be recognized as equivalent to single North Carolina appraisal precertification and precertification courses; however, equivalent credit will only be granted in increments of 30 classroom hours.

Statutory Authority G.S. 93E-1-8(a); 93E-1-10.

SECTION .0400 - COURSE SPONSOR FEES FOR PRELICENSING AND PRECERTIFICATION EDUCATION

.0401 APPLICABILITY

This Section applies to all course sponsors other than private real estate appraisal schools, North Carolina colleges, universities, junior colleges, community or technical colleges accredited by the Southern Association of Colleges and Schools, and agencies of the federal, State or local government.

Statutory Authority G.S. 93E-1-8 (a),(b); 93E-1-10.

.0402 ORIGINAL COURSE APPROVAL FEE

The original application fee shall be three hundred dollars (\$300.00) for each course which the Board is being requested to evaluate and recognize. The fee shall be paid by certified check, bank check or money order payable to the North Carolina Appraisal Board and is non-refundable. A course sponsor may offer approved courses as frequently as is desired during the period for which approval is granted without paying additional course fees.

Statutory Authority G.S. 93E-1-6(a),(b); 93E-1-10.

.0403 FEE FOR RENEWAL OF COURSE APPROVAL

(a) Board approval of courses expires on the next June 30 following the date of issuance. In order to assure continuous approval of courses,

applications for renewal of Board approval, accompanied by the prescribed renewal fee, must be filed with the Board annually on or before June 1. All applications for renewal of course approval received on or before June 30 which are incomplete as of that date, as well as all applications for renewal of course approval submitted after June 30, shall be treated as original course approval applications.

(b) The annual fee for renewal of Board approval shall be fifty dollars (\$50.00) for each course for which renewal of Board approval is requested. The fee shall be paid by check payable to the North Carolina Appraisal board and is non-refundable.

Statutory Authority G.S. 93E-1-8(a),(b); 93E-1-10.

SECTION .0500 - PRIVATE REAL ESTATE APPRAISAL SCHOOL FEES FOR PRELICENSING AND PRECERTIFICATION EDUCATION

.0501 APPLICABILITY

This Section applies to all private real estate appraisal schools offering precertification and precertification courses.

Statutory Authority G.S. 93E-1-8(a),(b); 93E-1-10.

.0502 ORIGINAL COURSE APPROVAL FEE

The original application fee shall be forty dollars (\$40.00) for each real estate appraisal precertification or precertification course for which the applicant requests approval. The fee shall be paid by certified check, bank check or money order payable to the North Carolina Appraisal Board and is non-refundable. The school may offer approved courses as frequently as is desired during the course approval period without paying additional course fees.

Statutory Authority G.S. 93E-1-8(a),(b); 93E-1-10.

.0503 FEE FOR RENEWAL OF COURSE APPROVAL

(a) Approval of private school courses expires on the next June 30 following the date of issuance. In order to assure continuous approval, applications for renewal of course approval, accompanied by the prescribed renewal fee, must be filed with the Board annually on or before June 1. All applications for renewal of course approval

received on or before June 30 which are incomplete as of that date, as well as all applications for renewal of course approval submitted after June 30, shall be treated as original course approval applications.

(b) The course renewal fee shall be twenty dollars (\$20.00) for each previously approved appraisal prelicensing or precertification course for which the applicant requests continuing approval. The fee shall be paid by check payable to the North Carolina Appraisal Board and is non-refundable.

Statutory Authority G.S. 93E-1-8(a),(b); 93E-1-10.

SECTION .0600 - CONTINUING EDUCATION COURSES

.0601 PURPOSE AND APPLICABILITY

This Section establishes minimum standards for appraisal continuing education courses authorized by G.S. 93E-1-8 (c) and required by Rule .0204 of Subchapter 57A. These standards must be satisfied in order for course sponsors to obtain and maintain approval of their courses for appraiser continuing education credit. Except as provided in Rule .0602(a) of this Section, any school, organization, agency, individual, or other entity is eligible to become a continuing education course sponsor. Course sponsors must obtain course approval from the Board prior to conducting the course for continuing education credit and prior to advertising or otherwise representing that a course is or may be approved for continuing education credit in North Carolina. To request credit for a continuing education course which has not been approved by the Board, a licensee or certificate holder must follow the procedure set forth in 21 NCAC 57A .0204(f).

Statutory Authority G.S. 93E-1-8(c); 93E-1-10.

.0602 APPLICATION AND FEE

(a) Course sponsors seeking approval of their courses as appraisal continuing education courses must make written application to the Board on a form prescribed by the Board. A course sponsor must be the owner of the proprietary rights to the course for which approval is sought or must have the permission of the course owner to seek course approval. If the course for which approval is sought is one that may be offered outside North Carolina, and the course owner wants the Board to approve such course when it is conducted outside North Carolina, application must be made by the

course owner. After receipt of a properly completed application the Board will review the application and notify the sponsor of its decision. Decisions to approve or withhold approval lie within the sole discretion of the Board.

(b) The original application fee shall be one hundred dollars (\$100.00) for each course for which approval is sought, provided that no fee is required if the course sponsor is an accredited North Carolina college, university, junior college, or community or technical college, or if the course sponsor is an agency of the federal, state or local government. The fee shall be paid by certified check, bank check or money order payable to the North Carolina Appraisal Board and is non-refundable. A course sponsor may offer approved courses as frequently as is desired during the period for which approval is granted without paying additional fees.

Statutory Authority G.S. 93E-1-8(c),(d).

.0603 CRITERIA FOR COURSE APPROVAL

The following requirements must be satisfied in order for course sponsors to obtain approval of a course for appraiser continuing education credit:

- (1) The subject matter of the course must comply with the requirements of Rule .0204 of Subchapter 57A and the information to be provided in the course must be both accurate and current.
- (2) The course must involve a minimum of three and one-half classroom hours of instruction on acceptable subject matter. A classroom hour consists of 50 minutes of classroom instruction and 10 minutes of break time.
- (3) The course instructor(s) must possess good moral character and either two years' full-time experience that is directly related to the subject matter to be taught, or a baccalaureate or higher degree in a field that is directly related to the subject matter to be taught, or two years' full-time experience teaching the subject matter to be taught, or an equivalent combination of such education and experience. If two or more instructors will be utilized to teach a course during the approval period and the course will be taught in states other than North Carolina, it is sufficient for the course sponsor to show that it has minimum instructor requirements comparable to

these requirements.

- (4) The course must be one involving a qualified instructor who will be physically present in the classroom at all times and who will personally provide the instruction for the course. The course instructor may utilize videotape instruction, remote television instruction or similar types of instruction by other persons to enhance or supplement his personal instruction; however, such other persons may not be considered to be the official course instructor and the official course instructor must be physically present when such indirect instruction by other persons is being utilized. No portion of the course may consist of correspondence instruction.
- (5) The course must be an educational program intended to improve the knowledge, skill and competence of state-licensed and state-certified real estate appraisers and participation must be open to all state-licensed and state-certified real estate appraisers. Activities not eligible for approval as a continuing education course include trade organization conferences, in-house training programs of a firm, organization or agency, or similar activities.
- (6) The course sponsor must certify that the course will be conducted in accordance with the operational requirements stated in Rule .0606 of this Section and that the course sponsor will comply with all other applicable rules contained in this Section.

Statutory Authority G.S. 93E-1-8(c); 93E-1-10.

.0604 PRELICENSING AND PRECERTIFICATION COURSES

(a) Appraisal precertification or precertification courses conducted by North Carolina approved schools will not be separately approved as appraisal continuing education courses. State-licensed and state-certified appraisers may obtain continuing education credit for these courses only to the extent permitted by Rule .0204 of Subchapter 57A.

(b) Appraisal trade organization courses which are approved by the Board as equivalent to those North Carolina appraisal precertification or precertification courses entitled Introduction to Real Estate Appraisal (R-1), Valuation Principles and Procedures (R-2), Introduction to Income

Property Appraisal (G-1), and Advanced Income Capitalization Procedures (G-2) will not be approved as appraisal continuing education courses. Other appraisal trade organization courses which are not approved by the Board under Section .0300 of this Subchapter as equivalent to the North Carolina appraisal precertification or precertification courses listed in this Paragraph, but which are substantially similar in content and level of instruction to such courses, will also not be approved as appraisal continuing education courses.

(c) Appraisal trade organization courses which are formally recognized by the Board as equivalent, wholly or in part, to those North Carolina appraisal precertification or precertification courses entitled Applied Residential Property Valuation (R-3) and Applied Income Property Valuation (G-3) will automatically be considered to be Board-approved continuing education courses, to the extent permitted by Rule .0204 of Subchapter 57A, and the appraisal trade organization is not required to submit an application for approval of these courses under this Section; provided, however, that the appraisal trade organization must at all times assure compliance with Rules .0606, .0607, and .0608 of this Section in order to retain such approval for these courses.

Statutory Authority G.S. 93E-1-8(c); 93E-1-10.

.0605 CONTINUING EDUCATION CREDIT HOURS

The course approval issued to a course sponsor will include the number of hours of continuing education credit that will be awarded for the course. The minimum number of continuing education credit hours awarded for a course will be three and one-half hours, and the maximum number of continuing education credit hours awarded for a course, regardless of its length, will be thirty hours. Continuing education credit hours may be carried forward into subsequent licensing periods only as provided in Rule .0204(c) of Subchapter 57A.

Statutory Authority G.S. 93-1-8(c); 93E-1-10.

.0606 COURSE OPERATIONAL REQUIREMENTS

Course sponsors must at all times assure compliance with the criteria for course approval stated in Rule .0603 of this Section and must also comply with the following requirements relating to

scheduling, advertising and conducting approved appraisal continuing education courses:

- (1) Courses must be scheduled and conducted in a manner that limits class sessions to a maximum of eight classroom hours in any given day and that includes appropriate breaks for each class session.
- (2) Course sponsors must not utilize advertising of any type that is false or misleading in any respect. If the number of continuing education credit hours awarded by the Board for a course is less than the number of scheduled classroom hours for the course, any course advertisement or promotional materials which indicate that the course is approved for appraiser continuing education credit in North Carolina must specify the number of continuing education credit hours awarded by the Board for the course.
- (3) Course sponsors must, upon request, provide any prospective student a description of the course content sufficient to give the prospective student a general understanding of the instruction to be provided in the course.
- (4) Courses must be conducted in a facility that provides an appropriate learning environment. At a minimum, the classroom must be of sufficient size to accommodate comfortably all enrolled students, must be equipped with student desks or worktables with chairs for all enrolled students, must have adequate light, heat, cooling and ventilation, and must be free of distractions that would disrupt class sessions.
- (5) The course sponsor must require students to attend at least 90 percent of the scheduled classroom hours in order to satisfactorily complete the course, even if the number of continuing education credit hours awarded by the Board for the course is less than the number of scheduled classroom hours. Attendance must be monitored during all class sessions to assure compliance with the attendance requirement.
- (6) Instructors must require reasonable student attentiveness during class sessions. Students must not be permitted to engage in activities that are not related to the instruction being provided.
- (7) Course sponsors for which an application

fee is required by Rules .0602(b) and .0611(b) of this Section must fairly administer course cancellation and fee refund policies. In the event a scheduled course is canceled, reasonable efforts must be made to notify preregistered students of the cancellation and all prepaid fees received from such preregistered students must be refunded within 30 days of the date of cancellation or, with the student's permission, applied toward the fees for another course.

Statutory Authority G.S. 93E-1-8(c); 93E-1-10.

.0607 CERTIFICATION OF COURSE COMPLETION

Course sponsors must promptly issue a certificate of course completion to all students who satisfactorily complete an approved course. If the course sponsor is located in North Carolina, the certificate, which the student must submit to the Board to verify course completion, must be on a form or in a format prescribed by the Board and must bear the original signature or signature stamp of a person designated by the course sponsor to sign such certificate. The North Carolina-based course sponsor must notify the Board in advance of the person(s) designated to sign certificates of course completion for courses conducted in North Carolina. If the course sponsor is not located in North Carolina, the certificate provided for submission to the Board must show the name of the course sponsor, the name of the course, the number of classroom hours, the course dates, the state or city where the course was conducted, and the full name of the student.

Statutory Authority G.S. 93E-1-8(c); 93E-1-10.

.0608 SUBMISSION OF COURSE ROSTER

Course sponsors must, within 30 days of course completion, submit to the Board a roster of all North Carolina state-licensed and state-certified appraisers who satisfactorily completed the course.

Statutory Authority G.S. 93E-1-8(c); 93E-1-10.

.0609 CHANGES DURING THE APPROVAL PERIOD

Course sponsors must obtain advance approval from the Board for any changes to be made in approved courses with regard to the number of classroom hours, course content or instructors.

Requests for approval of such changes must be in writing.

Statutory Authority G.S. 93E-1-8(c); 93E-1-10.

.0610 COURSE RECORDS

Course sponsors must retain on file for three years records of student registration and attendance for each approved course that is conducted and must make such records available to the Board upon request.

Statutory Authority G.S. 93E-1-8(c); 93E-1-10.

.0611 RENEWAL OF APPROVAL AND FEES

(a) Board approval of appraisal continuing education courses expires on the next June 30 following the date of issuance. In order to assure continuous approval, applications for renewal of Board approval, accompanied by the prescribed renewal fee, must be filed with the Board annually on or before June 1. Applications for renewal of Board-approved continuing education courses which are not received by June 30 shall be treated as original applications for approval of continuing education courses.

(b) The annual fee for renewal of Board approval shall be fifty dollars (\$50.00) for each course for which renewal of approval is requested, provided that no fee is required for course sponsors that are exempted from original application fees by Rule .0602(b) of this Section. The fee shall be paid by check payable to the North Carolina Appraisal Board and is non-refundable.

Statutory Authority G.S. 93E-1-8(c),(d); 93E-1-10.

.0612 WITHDRAWAL OR DENIAL OF APPROVAL

The Board may deny or withdraw approval of any course upon finding that:

- (1) the course sponsor has made any false statements or presented any false information in connection with an application for course approval or renewal of course approval;
- (2) the course sponsor has refused or failed to comply with any of the provisions of this Section;
- (3) the course sponsor has engaged in a pattern of consistently canceling scheduled courses; or
- (4) the instruction provided in a course is of

unsatisfactory quality.

Statutory Authority G.S. 93E-1-8(c); 93E-1-10.

**SUBCHAPTER 57C - ADMINISTRATIVE
LAW PROCEDURES**

**SECTION .0100 - APPRAISAL
BOARD HEARINGS**

**.0101 FORM OF COMPLAINTS AND
OTHER PLEADINGS**

(a) There shall be no specific form required for complaints. To be sufficient, a complaint shall be in writing, identify the respondent licensed or certified appraiser and shall reasonably apprise the Board of the facts which form the basis of the complaint.

(b) When investigating a complaint, the scope of the investigation shall not be limited to the persons or transactions described or alleged in the complaint. Persons making complaints may at any time submit additional information or may otherwise amend their complaints.

(c) Persons who make complaints are not parties to contested cases heard by the Board, but may be witnesses in the cases.

(d) There shall be no specific form required for answers, motions or other pleadings relating to contested cases before the Board, except they shall be in writing. To be sufficient, the document must identify the case to which it refers and reasonably apprise the Board of the matters it alleges, answers, or requests. In lieu of submission in writing, motions, requests and other pleadings may be made on the record during the course of the hearing before the Board.

(e) Hearings in contested cases before the Board shall be governed by the provisions of Article 3A of Chapter 150B of the General Statutes.

Statutory Authority G.S. 93E-1-10.

.0102 PRESIDING OFFICER

The Appraisal Board may designate any of its members to preside over the hearing in a contested case. When no designation is made, the Chairman of the Board shall preside, or, in his absence, the Vice Chairman shall preside. The presiding officer shall rule on motions or other requests made in a contested case prior to the conduct of the hearing in that case except when the ruling on the motion would be dispositive of the case. When the ruling on a motion or request would be dispositive of the case, the presiding officer shall

make no ruling and the motion or request shall be determined by a majority of the Board.

Statutory Authority G.S. 93E-1-10.

.0103 SUBPOENAS

(a) The Executive Director of the Appraisal Board and the Board's Legal Counsel shall have the authority to issue subpoenas in the name of the Board.

(b) The presiding officer in a contested case shall also have the authority to issue subpoenas relating to that contested case.

Statutory Authority G.S. 93E-1-10.

.0104 PETITION TO REOPEN PROCEEDING

(a) After a final decision has been reached by the Board in a contested case, a party may petition the Board to reconsider a case. Petitions will not be granted except when the petitioner can show that the reasons for reconsidering the case are to introduce newly discovered evidence which was not presented at the initial hearing because of some justifiable, excusable or unavoidable circumstance. Upon the running of the 30 day period for seeking judicial review, such petitions will have no effect.

(b) Decisions on petitions to reopen cases are within the discretion of the Board.

Statutory Authority G.S. 93E-1-10.

SECTION .0200 - PETITIONS FOR RULES

.0201 PETITION FOR RULEMAKING HEARINGS

(a) Any person wishing to file a petition requesting the adoption, amendment or repeal of a rule by the Board shall file a written petition with the Executive Director.

(b) The petition shall include the following information:

- (1) name, address and occupation of petitioner;
- (2) a summary of the proposed action (adoption, amendment or repeal of a rule or rules);
- (3) a draft of the proposed rule or other action;
- (4) a complete statement of the reason for the proposed action; and
- (5) an identification of the persons or class of persons most likely to be affected by the proposed action.

(c) The Board shall decide whether to allow or deny a rule-making petition.

Statutory Authority G.S. 93E-1-10; 150B-20.

SECTION .0300 - RULE-MAKING

.0301 WRITTEN SUBMISSIONS

Any person may file a written submission containing data, comments or arguments after publication of a rule-making notice and prior to the decision of the Board to adopt, amend or repeal the rule or rules in question. Written submissions should be addressed to the Board and should clearly state the rule or proposed rule to which the comments are directed.

Statutory Authority G.S. 93E-1-10; 150B-21.2(e).

.0302 PRESIDING OFFICER

The presiding officer at the hearing shall have complete control of the proceedings, including: recognition of speakers, time allotments for presentations, the right to question speakers, direction of the discussion, and management of the hearing.

Statutory Authority G.S. 93E-1-10.

.0303 RECORD OF PROCEEDINGS

A record of rule-making proceedings will be available for public inspection during regular office hours at the Board's office. This record will contain the original petition, if any, the notice, all written memoranda and information submitted, and a record or summary of oral presentations, if any, and, in any case where a proposal was rejected, the reason therefor.

Statutory Authority G.S. 93E-1-10; 150B-21.

SECTION .0400 - DECLARATORY RULINGS

.0401 REQUESTS FOR RULINGS: DISPOSITION OF REQUESTS

(a) All requests for declaratory rulings shall be written and filed with the Board. The request must contain the following information:

- (1) the name, address and signature of petitioner;
- (2) a concise statement of the manner in which petitioner is aggrieved by the rule or statute in question, or its potential application to him;
- (3) a statement of the interpretation given

the statute or rule in question by petitioner;

- (4) a statement of the reasons, including any legal authorities, in support of the interpretation given the statute or rule by petitioner.

(b) The Board shall either deny the request, stating the reasons therefor, or issue a declaratory ruling. When in its discretion, the Board determines that the issuance of a declaratory ruling is undesirable, it may refuse to issue such ruling.

(c) The Board shall not issue a declaratory ruling when the petitioner or his or her request is the subject of, or materially related to, a matter under investigation by the Board or a contested case before the Board.

Statutory Authority G.S. 93E-1-10.

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Real Estate Commission intends to amend rules cited as 21 NCAC 58A .0503, .0505; 58D .0203 and .0209.

*The proposed effective dates of these rules are:
21 NCAC 58A .0503 and .0505 - May 1, 1994.
21 NCAC 58D .0203 and .0209 - April 1, 1994.*

The public hearing will be conducted at 9:00 a.m. on February 16, 1994 at the North Raleigh Hilton, 3415 Wake Forest Road, Raleigh, NC.

Reason for Proposed Action:

21 NCAC 58A .0503 and .0505 - To codify changes in procedures regarding renewal and reinstatement of real estate licenses.

21 NCAC 58D .0203 and .0209 - To codify changes in fees authorized by recent statutory revisions and affecting licensed and certified real estate appraisers.

Comment Procedures: Comments regarding these rules may be made orally or submitted in writing at the public hearing. Written comments not submitted at the hearing may be delivered to Ms. Anita Burt c/o North Carolina Real Estate Commission, P.O. Box 17100, Raleigh, North Carolina 27619, so as to be received by the hearing date.

CHAPTER 58 - REAL ESTATE

COMMISSION

SUBCHAPTER 58A - REAL ESTATE BROKERS AND SALESMEN

SECTION .0500 - LICENSING

.0503 LICENSE RENEWAL; PENALTY FOR NON-RENEWAL

(a) Licenses due to expire June 30, 1994 which are renewed on or before that date will be renewed for a period of not less than 13 nor more than 24 months as determined by the last digit of the licensee's license number. The last digit of each license number shall correspond to a month of the calendar year, with the number (1) representing January and continuing in sequence with the number zero representing October. The required renewal fee shall be prorated according to the number of months between June 30, 1994 and the new expiration date based upon an annual renewal fee of twenty-five (\$25.00) dollars. Subsequent license periods shall be 12 months in length. Any licensee desiring the renewal of a license which is due to expire June 30, 1994, shall, ~~during the month of June,~~ apply for same renewal in writing within 45 days prior to license expiration by submitting to the Commission a renewal application ~~upon~~ on a form approved by the Commission and shall forward the required fee of twenty-five dollars (\$25.00), accompanied by the required fee. Forms are available upon request to the Commission.

(b) All licenses issued by the Commission on or after July 1, 1994, excluding licenses reinstated as provided in Rule .0505 of this Section, shall expire on the last day of the sixth month following issuance unless renewed on or before that date. The month of license issuance shall be counted in determining the six-month license period. Subsequent license periods shall be 12 months in length. Any licensee desiring renewal of a license issued on or after July 1, 1994 shall apply for renewal in writing within 45 days prior to license expiration by submitting to the Commission a renewal application on a form approved by the Commission accompanied by the required annual license renewal fee of twenty-five dollars (\$25.00). Forms are available upon request to the Commission.

(c) In order to renew a license on active status for a license period beginning on or after July 1, 1995, any person renewing a license shall, upon the second renewal of such license following initial licensure, and upon each subsequent renewal, present evidence satisfactory to the Commission of

having obtained all required continuing education. A person renewing a license on inactive status shall not be required to have obtained any continuing education in order to renew such license.

(b) (d) Any person or corporation which engages in the business of broker or salesman while his or its license is lapsed will be subject to the penalties prescribed in the license law.

Statutory Authority G.S. 93A-3(c); 93A-4(c),(d); 93A-4A(a),(c); 93A-6.

.0505 REINSTATEMENT OF EXPIRED LICENSE

~~Expired licenses may be reinstated within 12 months after expiration upon proper application and payment of the twenty five dollar (\$25.00) renewal fee plus five dollar (\$5.00) late filing fee. Licenses expired for more than 12 months may be considered for reinstatement upon proper application and payment of thirty dollar (\$30.00) fee for brokers and thirty dollar (\$30.00) fee for salesmen. Such applications will be reviewed by the Commission to determine whether an examination and/or real estate education will be required.~~

(a) Except as provided in Subparagraph (b) of this Rule, licenses expired for 12 months or fewer may be reinstated upon proper application and payment of the twenty-five dollar (\$25.00) renewal fee plus five dollar (\$5.00) late filing fee. In order to reinstate such license on active status for a license period beginning on or after July 1, 1995, the applicant shall also present evidence satisfactory to the Commission of having obtained all continuing education required for the previous license period. A person reinstating such a license on inactive status shall not be required to have obtained any continuing education in order to reinstate such license. The reinstated license shall expire on the last day of the 12th month following the date the license expired unless renewed on or before that date.

(b) Licenses expired for 12 months or fewer that are reinstated between July 1, 1994 and June 30, 1995 shall be reinstated in accordance with the license renewal procedures and requirements described in Rule .0503(a) of this Section. Any licensee desiring reinstatement of his license shall pay a five dollar (\$5.00) late filing fee in addition to the required license renewal fee.

(c) Reinstatement of licenses expired for more than 12 months may be considered upon proper application and payment of a thirty dollar (\$30.00) fee. Applicants must satisfy the Commission that they possess the current knowledge, skills and

competence necessary to function in the real estate business in a manner that protects and serves the public interest. In this regard, the Commission may require such applicants to complete real estate education and/or pass the license examination, and will make such determination based on the length of time an applicant's license has been expired, the applicant's real estate or related education and experience, and whether the applicant is applying for reinstatement of the license on active status or inactive status. Any license reinstated on or after July 1, 1994 which has been expired for more than 12 months shall, upon reinstatement, expire on the last day of the 12th month following reinstatement unless renewed on or before that date. The month of license reinstatement shall be counted in determining the license period.

Statutory Authority G.S. 93A-3(c); 93A-4(c),(d); 93A-4A(a),(c).

SUBCHAPTER 58D - REAL ESTATE APPRAISERS

SECTION .0200 - APPRAISER LICENSING AND CERTIFICATION

.0203 LICENSE AND CERTIFICATE RENEWAL

(a) A holder of an appraiser license or certificate desiring the renewal of such license or certificate shall, during the month of June, apply for same in writing upon the form approved by the Commission and shall forward the required fee of ~~one hundred dollars (\$100.00)~~ two hundred dollars (\$200.00). Forms are available upon request to the Commission.

(b) As a condition of renewal, all licensees and certificate holders, either active or inactive, resident or non-resident, shall be required to satisfy the continuing education requirements set forth in Rule .0204 of this Section.

(c) An applicant applying for renewal of a license or certificate obtained by reciprocity must submit with the renewal application a current license history from the appraiser regulatory authority of the state upon whose qualification requirements the reciprocal license or certificate was granted showing that the applicant is currently licensed or certified in good standing. Submission of false or misleading information to the Board in connection with license or certificate renewal shall constitute grounds for disciplinary action.

(d) Any person who acts or holds himself out as a state-licensed or state-certified real estate ap-

praiser while his appraiser license or certificate is expired will be subject to disciplinary action and penalties as prescribed in Chapter 93A of the North Carolina General Statutes.

Statutory Authority G.S. 93A-74(a), (b); 93A-77.

.0209 FEDERAL APPRAISER REGISTRY

Licensees and certificate holders who are qualified for enrollment in the federal roster or registry of state-licensed and state-certified real estate appraisers may apply for enrollment or for the renewal or reinstatement of such enrollment in writing upon a form approved by the Commission accompanied by the fee established for that purpose by the appropriate federal agency or instrumentality plus an additional fee of twenty dollars (\$20.00) to cover the Commission's administrative costs associated with this service.

Statutory Authority G.S. 93A-79(e); 93A-77.

The Rules Review Commission (RRC) objected to the following rules in accordance with G.S. 143B-30.2(c). State agencies are required to respond to RRC as provided in G.S. 143B-30.2(d).

ADMINISTRATION

State Employees Combined Campaign

*1 NCAC 35 .0103 - Organization of the Campaign
Agency Revised Rule*

*RRC Objection 11/18/93
Obj. Removed 11/18/93*

AGRICULTURE

Aquaculture

2 NCAC 53 .0001 - Aquaculture Licenses

RRC Objection 12/16/93

COMMERCE

Banking Commission

4 NCAC 3F .0202 - Permissible Investments

RRC Objection 12/16/93

ENVIRONMENT, HEALTH, AND NATURAL RESOURCES

Coastal Management

*15A NCAC 7H .2002 - Approval Procedures
Agency Responded
No Action*

*RRC Objection 09/17/93
Obj. Cont'd 10/21/93
Obj. Cont'd 11/18/93*

Agency Revised Rule

Obj. Removed 12/16/93

15A NCAC 7H .2004 - General Conditions

RRC Objection 09/17/93

Agency Responded

Obj. Cont'd 10/21/93

No Action

Obj. Cont'd 11/18/93

Agency Revised Rule

Obj. Removed 12/16/93

Environmental Management

*15A NCAC 2D .0518 - Msc Volatile Organic Compound Emissions
Agency Revised Rule*

*RRC Objection 11/18/93
Obj. Removed 11/18/93*

*15A NCAC 2D .0948 - VOC Emissions from Transfer Operations
Agency Revised Rule*

*RRC Objection 11/18/93
Obj. Removed 11/18/93*

*15A NCAC 2L .0103 - Policy
Agency Revised Rule*

*RRC Objection 09/17/93
RRC Objection 09/17/93*

Rule Returned to Agency

Obj. Cont'd 10/21/93

Agency Filed Rule for Codification Over RRC Objection

Eff. 11/04/93

Health: Epidemiology

15A NCAC 19A .0206 - Infection Control - Health Care Settings

RRC Objection 12/16/93

<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>12/16/93</i>
<i>15A NCAC 19C .0703 - Method of Reporting</i>	<i>RRC Objection</i>	<i>12/16/93</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>12/16/93</i>
Health: Personal Health		
<i>15A NCAC 21A .0817 - Grant Proposals</i>	<i>RRC Objection</i>	<i>12/16/93</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>12/16/93</i>
Laboratory Services		
<i>15A NCAC 20A .0006 - Fees</i>	<i>RRC Objection</i>	<i>12/16/93</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>12/16/93</i>
Mining: Mineral Resources		
<i>15A NCAC 5B .0003 - Procedures for Obtaining Permits: Bonding Reqs.</i>	<i>RRC Objection</i>	<i>12/16/93</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>12/16/93</i>
Solid Waste Management		
<i>15A NCAC 13B .1705 - Design, Constr./Operation/Structural Fill Facilities</i>	<i>RRC Objection</i>	<i>12/16/93</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>12/16/93</i>
<i>15A NCAC 13B .1708 - Other Uses for Coal Combustion By-products</i>	<i>RRC Objection</i>	<i>12/16/93</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>12/16/93</i>
<i>15A NCAC 13B .1710 - Annual Reporting</i>	<i>RRC Objection</i>	<i>12/16/93</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>12/16/93</i>
HUMAN RESOURCES		
Facility Services		
<i>10 NCAC 3R .2114 - Information Required of Applicant</i>	<i>RRC Objection</i>	<i>12/16/93</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>12/16/93</i>
<i>10 NCAC 3R .3405 - Required Staffing and Staff Training</i>	<i>RRC Objection</i>	<i>12/16/93</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>12/16/93</i>
<i>10 NCAC 3R .3505 - Required Staffing and Staff Training</i>	<i>RRC Objection</i>	<i>12/16/93</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>12/16/93</i>
<i>10 NCAC 3R .3906 - Required Staffing and Staff Training</i>	<i>RRC Objection</i>	<i>12/16/93</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>12/16/93</i>
Mental Health: General		
<i>10 NCAC 14A .1603 recodified as 14U .0303 - Registered Nurse</i>	<i>RRC Objection</i>	<i>11/18/93</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>11/18/93</i>
<i>10 NCAC 14A .1903 recodified as 14U .0603 - Space Requirements</i>	<i>RRC Objection</i>	<i>11/18/93</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>11/18/93</i>
<i>10 NCAC 14A .2204 recodified as 14U .0904 - Treatment or Habilitation Plan</i>	<i>RRC Objection</i>	<i>11/18/93</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>11/18/93</i>
<i>10 NCAC 14A .2208 recodified as 14U .0908 - Rel Planning/Res/Inpatient Svcs</i>	<i>RRC Objection</i>	<i>11/18/93</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>11/18/93</i>
<i>10 NCAC 14A .2304 recodified as 14U .1004 - Testing Services</i>	<i>RRC Objection</i>	<i>11/18/93</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>11/18/93</i>
<i>10 NCAC 14A .2404 recodified as 14U .1104 - Invol Admin/Psychotropic Med</i>	<i>RRC Objection</i>	<i>11/18/93</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>11/18/93</i>

10 NCAC 14J .0206 - Procedures: Seclusion, Restraints, or Isolation Time Out	RRC Objection	12/16/93
Agency Revised Rule	Obj. Removed	12/16/93

INSURANCE

Financial Evaluation Division

11 NCAC 11B .0611 - Deposits: Bonds: Excess Insurance - Groups	RRC Objection	12/16/93
Agency Revised Rule	Obj. Removed	12/16/93
11 NCAC 11H .0011 - Insolvency or Hazardous Financial Condition	RRC Objection	11/18/93
Agency Revised Rule	Obj. Cont'd	11/18/93
Agency Revised Rule	Obj. Removed	12/16/93

Special Services Division

11 NCAC 13 .0318 - Request for Cancellation Notice	RRC Objection	11/18/93
Agency Revised Rule	Obj. Removed	11/18/93

JUSTICE

Departmental Rules

12 NCAC 1 .0106 - ADA Dispute Resolution Procedure	RRC Objection	12/16/93
Agency Revised Rule	Obj. Removed	12/16/93

Private Protective Services

12 NCAC 7D .0108 - Law Enforcement Officers Special Provisions	RRC Objection	11/18/93
No Response from Agency	Obj. Cont'd	12/16/93
12 NCAC 7D .0203 - Renewal or Re-issue of Licenses and Trainee Permits	RRC Objection	12/16/93
Agency Revised Rule	Obj. Removed	12/16/93
12 NCAC 7D .0401 - Experience Reqs. a Private Investigator License	RRC Objection	12/16/93
Agency Revised Rule	Obj. Removed	12/16/93

Sheriffs' Education and Training Standards Commission

12 NCAC 10B .1003 - Basic Law Enforcement Certificate	RRC Objection	11/18/93
Agency Revised Rule	Obj. Removed	11/18/93

LICENSING BOARDS AND COMMISSIONS

Dental Examiners

21 NCAC 16D .0102 - Restrictions on Practice	RRC Objection	12/16/93
Agency Revised Rule	Obj. Removed	12/16/93
21 NCAC 16H .0203 - Permitted Functions of Dental Assistant II	RRC Objection	12/16/93
Agency Revised Rule	Obj. Removed	12/16/93
21 NCAC 16Q .0301 - Sedation Credentials and Permit	RRC Objection	12/16/93
Agency Revised Rule	Obj. Removed	12/16/93

Electrolysis Examiners

21 NCAC 19 .0604 - Program Directors	RRC Objection	10/21/93
Agency Revised Rule	Obj. Removed	11/18/93
21 NCAC 19 .0613 - Student/Teacher Ratio and Equipment	RRC Objection	10/21/93

*Agency Revised Rule**Obj. Removed 11/18/93***Opticians***21 NCAC 40 .0202 - Registration of Place of Business**RRC Objection 12/16/93**Agency Revised Rule**Obj. Removed 12/16/93**21 NCAC 40 .0314 - Apprenticeship and Internship Requirements: Registration**RRC Objection 12/16/93**Agency Revised Rule**Obj. Removed 12/16/93***Practicing Psychologists***21 NCAC 54 .1605 - Fees**RRC Objection 11/18/93**Agency Revised Rule**Obj. Removed 11/18/93***Refrigeration Examiners***21 NCAC 60 .0101 - Structure of Board**RRC Objection 11/18/93**Agency Repealed Rule**Obj. Removed 11/18/93**21 NCAC 60 .0207 - Requirements for Examination Applicants**RRC Objection 11/18/93**Agency Revised Rule**Obj. Removed 11/18/93***Therapeutic Recreation***21 NCAC 65 .0005 (Recodified as 21 NCAC 65 .0002)- Meetings**RRC Objection 12/16/93**Agency Revised Rule**Obj. Removed 12/16/93**21 NCAC 65 .0008 (Recodified as 21 NCAC 65 .0004) - Academic -TRS Exam.**RRC Objection 12/16/93**21 NCAC 65 .0011 (Recodified as 21 NCAC 65 .0007) - Cert. Ren. Eff. 7/1/95**RRC Objection 12/16/93**Agency Revised Rule**Obj. Removed 12/16/93**21 NCAC 65 .0013 (Recodified as 21 NCAC 65 .0008) - Revocation**RRC Objection 12/16/93**Agency Revised Rule**Obj. Removed 12/16/93***STATE PERSONNEL****Office of State Personnel***25 NCAC 1D .0308 - Salary Increases**RRC Objection 11/18/93**Agency Revised Rule**Obj. Removed 11/18/93**25 NCAC 1E .0301 - Sick Leave Credits**RRC Objection 11/18/93**Agency Revised Rule**Obj. Removed 11/18/93**25 NCAC 1E .1102 - Maximum Amount**RRC Objection 11/18/93**Agency Revised Rule**Obj. Removed 11/18/93**25 NCAC 1E .1105 - Retention of Benefits**RRC Objection 11/18/93**Agency Revised Rule**Obj. Removed 11/18/93***TRANSPORTATION****Deputy Secretary - Transit, Rail, and Aviation***19A NCAC 6C .0112 - Allowable Project Costs**RRC Objection 11/18/93**Agency Revised Rule**Obj. Removed 11/18/93**19A NCAC 6C .0128 - State Aid to Airports Program Guidance Handbook**RRC Objection 11/18/93**Agency Repealed Rule**Obj. Removed 11/18/93***Director of Administration**

<i>19A NCAC 5B .0101 - Fiscal Section Operations</i>	<i>RRC Objection</i>	<i>11/18/93</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>11/18/93</i>
Division of Highways		
<i>19A NCAC 2C .0102 - Minimum Standards for Secondary Roads</i>	<i>RRC Objection</i>	<i>12/16/93</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>12/16/93</i>
<i>19A NCAC 2C .0103 - Addition of Roads to the Secondary Road System</i>	<i>RRC Objection</i>	<i>12/16/93</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>12/16/93</i>
<i>19A NCAC 2C .0204 - Utility Requirements for Subdivision Roads</i>	<i>RRC Objection</i>	<i>12/16/93</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>12/16/93</i>
<i>19A NCAC 2C .0206 - Bridge and Dam Requirements for Subdivision Roads</i>	<i>RRC Objection</i>	<i>12/16/93</i>
<i>Agency Repealed Rule</i>	<i>Obj. Removed</i>	<i>12/16/93</i>
<i>19A NCAC 2C .0211 - Street Intersections for Subdivision Streets</i>	<i>RRC Objection</i>	<i>12/16/93</i>
<i>Agency Repealed Rule</i>	<i>Obj. Removed</i>	<i>12/16/93</i>
<i>19A NCAC 2C .0213 - Subdivision Name Markers</i>	<i>RRC Objection</i>	<i>12/16/93</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>12/16/93</i>
<i>19A NCAC 2D .0502 - Ticket Conditions</i>	<i>RRC Objection</i>	<i>11/18/93</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>11/18/93</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>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>11/18/93</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>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>11/18/93</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>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>11/18/93</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>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>11/18/93</i>
<i>19A NCAC 2E .0606 - Exceptions to the Policy</i>	<i>RRC Objection</i>	<i>11/18/93</i>
<i>Agency Repealed Rule</i>	<i>Obj. Removed</i>	<i>11/18/93</i>

Division of Motor Vehicles

<i>19A NCAC 3B .0616 - Approval: Com School: Community College Instructors</i>	<i>RRC Objection</i>	<i>11/18/93</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>11/18/93</i>
<i>19A NCAC 3B .0620 - Grounds for Revocation or Denial of Certification</i>	<i>RRC Objection</i>	<i>11/18/93</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>12/16/93</i>
<i>19A NCAC 3B .0621 - Denial/Revocation: Company Examiner: Instructor Cert.</i>	<i>RRC Objection</i>	<i>11/18/93</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>12/16/93</i>
<i>19A NCAC 3C .0223 - Registration: Motor Homes: Etc.</i>		
<i>Rule Returned to Agency for Failure to Comply with APA</i>		<i>11/18/93</i>
<i>19A NCAC 3C .0436 - Highway Use Tax</i>	<i>RRC Objection</i>	<i>11/18/93</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>12/16/93</i>
<i>19A NCAC 3C .0521 - Taxicab</i>	<i>RRC Objection</i>	<i>11/18/93</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>11/18/93</i>
<i>19A NCAC 3D .0231 - Hearings Pursuant to Articles 12 & 15 of Chapter 20</i>	<i>RRC Objection</i>	<i>12/16/93</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>12/16/93</i>
<i>19A NCAC 3D .0515 - Safety Inspection Licensing and Procedures</i>	<i>RRC Objection</i>	<i>12/16/93</i>
<i>19A NCAC 3D .0602 - Collection of Assessments</i>	<i>RRC Objection</i>	<i>12/16/93</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>12/16/93</i>
<i>19A NCAC 3D .0702 - Information for Manufacturer</i>	<i>RRC Objection</i>	<i>12/16/93</i>
<i>Agency Repealed Rule</i>	<i>Obj. Removed</i>	<i>12/16/93</i>

RRC OBJECTIONS

<i>19A NCAC 3D .0823 - Vehicle Registration and Identification Required</i>	<i>RRC Objection</i>	<i>12/16/93</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>12/16/93</i>
<i>19A NCAC 3D .0825 - Reproduction of Forms</i>	<i>RRC Objection</i>	<i>12/16/93</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>12/16/93</i>
<i>19A NCAC 3G .0205 - Issuing of Original Certificate</i>	<i>RRC Objection</i>	<i>11/18/93</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>12/16/93</i>
<i>19A NCAC 3I .0505 - Confidentiality</i>	<i>RRC Objection</i>	<i>11/18/93</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>12/16/93</i>
<i>19A NCAC 3J .0202 - Original Application</i>	<i>RRC Objection</i>	<i>12/16/93</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>12/16/93</i>
<i>19A NCAC 3J .0604 - Contract Provisions</i>	<i>RRC Objection</i>	<i>12/16/93</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>12/16/93</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.

10 NCAC 26I .0101 - PURPOSE: SCOPE AND NOTICE OF CHANGE IN LEVEL OF CARE

Thomas R. West, Administrative Law Judge with the Office of Administrative Hearings, declared Rule 10 NCAC 26I .0101 void as applied in *Dorothy McNeil Moore v. N.C. Department of Human Resources, Division of Medical Assistance* (93 DHR 1342).

10 NCAC 26I .0102 - REQUEST FOR RECONSIDERATION AND RECIPIENT APPEALS

Thomas R. West, Administrative Law Judge with the Office of Administrative Hearings, declared Rule 10 NCAC 26I .0102 void as applied in *Dorothy McNeil Moore v. N.C. Department of Human Resources, Division of Medical Assistance* (93 DHR 1342).

10 NCAC 26I .0104 - FORMAL APPEALS

Thomas R. West, Administrative Law Judge with the Office of Administrative Hearings, declared Rule 10 NCAC 26I .0104 void as applied in *Dorothy McNeil Moore v. N.C. Department of Human Resources, Division of Medical Assistance* (93 DHR 1342).

This Section contains the full text of some of the more significant Administrative Law Judge decisions along with an index to all recent contested cases decisions which are filed under North Carolina's Administrative Procedure Act. Copies of the decisions listed in the index and not published are available upon request for a minimal charge by contacting the Office of Administrative Hearings, (919) 733-2698.

<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>ALJ</u>	<u>DATE OF DECISION</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
ADMINISTRATION				
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	
Travel, Incorporated v. Administration	93 DOA 0362	Nesnow	11/08/93	
ALCOHOLIC BEVERAGE CONTROL COMMISSION				
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 Isacc 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	
Alcoholic Beverage Control Comm. v. Sydner Jan Mulder	93 ABC 0354	Morgan	11/10/93	8:17 NCR 1712
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	
Pink Bell v. ABC Commission	93 ABC 0595	Morgan	12/20/93	
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	
Linda R. Cunningham v. Alcoholic Beverage Control Commission	93 ABC 0633	Morrison	11/03/93	
Charles Edward Hare, Club Paradise v. Alcoholic Beverage Ctl. Comm.	93 ABC 0644	Gray	08/10/93	
Alcoholic Beverage Control Comm. v. Katherine Mary Dufresne	93 ABC 0667	Reilly	12/13/93	

CONTESTED CASE DECISIONS

<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>ALJ</u>	<u>DATE OF DECISION</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
Alcoholic Beverage Control Comm. v. Jerome Hill T/A Corner Pocket	93 ABC 0672	Gray	11/23/93	
Venus L. Smith v. Alcoholic Beverage Control Commission	93 ABC 0701	Becton	12/08/93	
Alcoholic Beverage Control Comm. v. Partnership t/a RJ's Store	93 ABC 0860	Mann	09/29/93	
Alcoholic Beverage Control Comm. v. Ervin Ray Winstead	93 ABC 0890	Chess	12/30/93	
Alcoholic Bev. Control Comm. v. Mild & Wild, Inc., Sheila Scholz	93 ABC 1475	Nesnow	03/23/93	
COMMERCE				
Lester Moore v. Weatherization Assistance Program	93 COM 0105	Gray	03/08/93	
CRIME CONTROL AND PUBLIC SAFETY				
George W. Paylor v. Crime Victims Compensation Comm.	91 CPS 1286	Morgan	04/27/93	
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	
Mark A. McCrimmon v. Crime Victims Compensation Comm.	93 CPS 0652	Becton	12/20/93	8:20 NCR 2016
Rendall K. Rothrock v. Crime Victims Compensation Comm.	93 CPS 0821	West	12/28/93	
John Pressley Moore v. Crime Victims Compensation Comm.	93 CPS 1405	Morrison	12/29/93	
EMPLOYMENT SECURITY COMMISSION				
William H. Peace III v. Employment Security Commission	91 EEO 0536	Chess	10/12/93	8:19 NCR 1914
ENVIRONMENT, HEALTH, AND NATURAL RESOURCES				
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	
Calvin Blythe Davis & George Thomas Davis v. EHR	91 EHR 0794	Morrison	12/02/93	
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	
Utley 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	
Thomas G. McHugh v. DEHNR	92 EHR 0742	Becton	12/28/93	
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	
Southchem, Inc. v. Environment, Health, & Natural Resources	92 EHR 0925	Chess	11/08/93	
Elizabeth City/Pasquotank Cty Mun Airport Auth v. EHR	92 EHR 1140	Gray	04/13/93	
W.E. Moulton & Wife, Evelyn Moulton v. Macon County Health Dept.	92 EHR 1144	Morgan	11/15/93	
Interstate Brands Corp & Donald Leffew v. Env., Health, & Nat. Res.	92 EHR 1201 ^{*1}	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 ^{*1}	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 Speciality Contractors, Inc. v. EHR	92 EHR 1660	Reilly	05/21/93	

* Consolidated cases.

<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>ALJ</u>	<u>DATE OF DECISION</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
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	
Erly 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 Haney 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
Tony Tomson, Diane Clase & William J. Stevenson v. EHR	93 EHR 0466*12	Reilly	11/30/93	
Tony Tomson, Diane Clase & William J. Stevenson v. EHR	93 EHR 0467*12	Reilly	11/30/93	
Hamilton Beach/Proctor-Silex, Inc. v. Environment, Health, & Natrl Res	93 EHR 0477	Reilly	06/29/93	
Tim Whitfield v. Environment, Health, & Natural Resources	93 EHR 0520	Gray	12/16/93	
Tony Worrell v. Environment, Health, & Natural Resources	93 EHR 0587	Morgan	11/08/93	
L. Terry Fuqua v. Environment, Health, & Natural Resources	93 EHR 0624	Reilly	11/08/93	
Seth B. Gaskill Jr. v. N.C. Coastal Resources Commission	93 EHR 0635	Nesnow	11/18/93	
Richard L. Goodman v. Environment, Health, & Natural Resources	93 EHR 0783	Reilly	11/24/93	
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	
Charles Watson v. DEHNR	93 EHR 0981	West	12/20/93	
Heatcraft Inc. v. Environment, Health, & Natural Resources	93 EHR 1021	Morrison	12/20/93	

HUMAN RELATIONS COMMISSION

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

HUMAN RESOURCES

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	
Eugene Johnson v. Human Resources	92 CSE 1229	Nesnow	11/16/93	
Edward E. Brandon v. Human Resources	92 CSE 1237	Gray	04/16/93	
James Sisk Jr. v. Human Resources	92 CSE 1238	Reilly	11/17/93	
Thomas M. Birdwell III v. Human Resources	92 CSE 1240	Reilly	12/09/93	
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	

<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>ALJ</u>	<u>DATE OF DECISION</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
Aaron James Alford v. Human Resources	92 CSE 1253	Becton	12/06/93	
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	
Connell R. Goodson v. Human Resources	92 CSE 1267	Gray	12/07/93	
Byron Christopher Williams v. Human Resources	92 CSE 1270	Nesnow	04/26/93	
Elijah G. Deanes v. Human Resources	92 CSE 1273	Nesnow	11/17/93	
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	
William A. Wilson III v. Human Resources	92 CSE 1315	Reilly	12/07/93	
Eric Stanley Stokes v. Human Resources	92 CSE 1316*	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	
Johnny Victor Dehity v. Human Resources	92 CSE 1393	Mann	11/15/93	
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	
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	
Kenneth Lamar Massey v. Human Resources	92 CSE 1447	Reilly	12/07/93	
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	
Kenneth Wayne Wiggins v. Human Resources	92 CSE 1458	Gray	12/13/93	
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	
Raymond L. Head v. Human Resources	92 CSE 1510	Mann	11/18/93	
Mark R. Charles v. Human Resources	92 CSE 1511	Becton	11/17/93	
Michael W. Bentley v. Human Resources	92 CSE 1512	Nesnow	06/09/93	
Robert D. Knoll Jr. v. Human Resources	92 CSE 1515	Nesnow	11/17/93	
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	
Clearnee Ray Taylor v. Human Resources	92 CSE 1538	Morrison	11/18/93	
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	

CONTESTED CASE DECISIONS

<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>ALJ</u>	<u>DATE OF DECISION</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
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	
George A. Rinell v. Human Resources	92 CSE 1569	Gray	12/09/93	
Edward Fitch v. Human Resources	92 CSE 1572	Reilly	05/11/93	
David Robinette v. Human Resources	92 CSE 1573	Mann	07/14/93	
Harvey H. Boyd v. Human Resources	92 CSE 1574	Reilly	12/09/93	
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	
Derrick Carter v. Human Resources	92 CSE 1595	Gray	11/17/93	
Charles Wayne Pierce v. Human Resources	92 CSE 1596	Morrison	07/14/93	
Gregory L. Vernoy v. Human Resources	92 CSE 1610	Gray	11/09/93	
Donna G. Knotts 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	
Rawn Weigel v. Human Resources	92 CSE 1630	Mann	11/18/93	
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	
Milton Kendricks v. Human Resources	92 CSE 1647	Gray	12/07/93	
Joe K. Martin v. Human Resources	92 CSE 1650	Reilly	09/10/93	
Eric Stanley Stokes v. Human Resources	92 CSE 1652*3	Reilly	03/25/93	
Erskin J. Thompson v. Human Resources	92 CSE 1653	Gray	11/17/93	
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	
James Eric Frost v. Human Resources	92 CSE 1669	Mann	11/18/93	
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	
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	
Rodney H. Allen, MD v. Human Resources	92 CSE 1707	Morrison	11/18/93	
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	

<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>ALJ</u>	<u>DATE OF DECISION</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
E. Burt Davis Jr. v. Human Resources	92 CSE 1780	Gray	11/17/93	
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	
Charles E. Whiteley v. Human Resources	93 CSE 0183	Becton	11/10/93	
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	
Charles A. Morgan v. Human Resources	93 CSE 0518	West	11/09/93	
Glenda K. Hollifield v. Human Resources	93 CSE 0545	West	10/11/93	
Quinton Brickhouse v. Human Resources	93 CSE 0576	Gray	11/17/93	
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	
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-Lohavichan-Melton Rentals, Bio-Medical Applications of North Carolina, Inc., d/b/a BMA of Raeford and Webb-Lohavichan 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-Lohavichan-Melton Rentals, Bio-Medical Applications of North Carolina, Inc., d/b/a BMA of Raeford and Webb-Lohavichan 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-Lohavichan-Melton Rentals, Bio-Medical Applications of North Carolina, Inc., d/b/a BMA of Fayetteville d/b/a Fayetteville Kidney Center and Webb-Lohavichan 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	
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 & Valdese 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	
Nell Brooks v. Child Day Care Section, Cherokee Cty Dept/Social Svcs	93 DHR 0343	Becton	11/29/93	8:18 NCR 1832
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	

CONTESTED CASE DECISIONS

<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>ALJ</u>	<u>DATE OF DECISION</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
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	
A.C., by & through her agent & personal rep. Hank Neal v. Human Res.	93 DHR 0529	Nesnow	12/06/93	8:19 NCR 1926
Venola Hall, Agape Day Care v. Human Resources	93 DHR 0535	Mann	10/22/93	
Warren Cty NC Lucious Hawkins v. Human Resources, C. Robin Britt	93 DHR 0540	Gray	12/06/93	
Christopher Durrer, Wilson Memorial Hospital v. Human Resources	93 DHR 0566	Chess	09/17/93	
Mary McDuffie v. Human Resources Child Development	93 DHR 0651	Becton	09/10/93	
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	
Thomas M. Moss v. Human Resources	93 DHR 0864	Chess	11/05/93	
Rosa Wall v. Nurse Aide Registry, Charge of Abuse	93 DHR 0881	West	12/15/93	
Frank S. & Susie R. Wells v. New Hanover Cty. Dept of Social Sves.	93 DHR 0922	Nesnow	11/08/93	
Mattie and Johnny Smith v. Lenoir County Department of Social Services	93 DHR 1176	Morrison	12/29/93	

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	
Jarmaine Knight v. Ms. Shirley H. Williams, Insurance	93 INS 1056	West	12/01/93	

JUSTICE

Philip B. Cates v. Justice, Attorney General's Office	90 DOJ 0353	Morgan	08/30/93	8:13 NCR 1281
Donald Willard Johnson v. Criminal Justice Ed. & Training Stds. Comm.	92 DOJ 0420	West	11/05/93	8:17 NCR 1705
Jennings Michael Bostic v. Sheriffs' Ed. & Training Stds. Comm.	92 DOJ 0656*	West	06/22/93	
Colin Carlisle Mayers v. Sheriffs' Ed. & Training Stds. Comm.	92 DOJ 0761	Morrison	05/10/93	
Jennings Michael Bostic v. Sheriffs' Ed. & Training Stds. Comm.	92 DOJ 0829*	West	06/22/93	
Michael Charles Kershner v. Criminal Justice Ed & Training Stds Comm	92 DOJ 0869	Morgan	08/11/93	
George Wilton Hawkins v. Criminal Justice Ed. & Training Stds. Comm.	92 DOJ 1081*	Morgan	07/09/93	
Marilyn Jean Britt v. Criminal Justice Ed. & Training Stds. Comm.	92 DOJ 1088	Morrison	03/16/93	
Tim McCoy Deck v. Criminal Justice Ed. & Training Stds. Comm.	92 DOJ 1367	Chess	04/01/93	
Richard Zander Frink v. Criminal Justice Ed. & Training Stds. Comm.	92 DOJ 1465	Nesnow	05/28/93	
Sherri Ferguson Revis v. Sheriffs' Ed. & Training Stds. Comm.	92 DOJ 1756	Gray	03/23/93	
Mark Thomas v. Sheriffs' Ed. & Training Standards Commission	93 DOJ 0151	West	04/21/93	
George Wilton Hawkins v. Sheriffs' Ed. & Training Stds. Comm.	93 DOJ 0156*	Morgan	07/09/93	
Noel B. Rice v. Criminal Justice Ed. & Training Standards Comm.	93 DOJ 0174	Morrison	12/13/93	
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 Stds. Comm.	93 DOJ 0357	Morrison	09/13/93	
Lloyd Harrison Bryant Jr. v. Criminal Justice Ed & Training Stds 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 Sves. Bd. v. Fred D. Rector	93 DOJ 0479	Mann	08/19/93	
Private Protective Sves. Bd. v. Alan D. Simpson	93 DOJ 0480	West	07/21/93	
William M. Medlin v. Sheriffs' Ed. & Training Stds. Comm.	93 DOJ 0569	Chess	10/06/93	
Karl L. Halsey Sr. v. Criminal Justice Ed. & Training Stds. Comm.	93 DOJ 0625	Gray	12/01/93	
Charles Freeman v. Sheriffs' Ed. & Training Stds. Comm.	93 DOJ 0685	Nesnow	12/06/93	
Shayne K. MacKinnon v. Sheriffs' Ed. & Training Stds. Comm.	93 DOJ 0686	Nesnow	12/16/93	
Carl Michael O'Byrne v. Alarm Systems Licensing Board	93 DOJ 0844	Nesnow	09/08/93	8:13 NCR 1300
Gary D. Cunningham v. Private Protective Services Board	93 DOJ 0845	Reilly	12/22/93	
Private Protective Services Board v. Michael A. McDonald	93 DOJ 0975	Gray	11/29/93	
Levon Braswell v. Private Protective Services Board	93 DOJ 1003	Morrison	12/29/93	8:20 NCR 2020
Dale Alvin Floyd v. Private Protective Services Board	93 DOJ 1472	Morrison	12/30/93	

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	
Pastor Larry C. Taylor Warsaw Church of God v. Labor	93 DOL 0961	West	11/16/93	

MORTUARY SCIENCE

<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>ALJ</u>	<u>DATE OF DECISION</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
Board of Mortuary Science v. Triangle Funeral Chapel, Inc.	92 BMS 1169	Reilly	04/29/93	8:4 NCR 396
PUBLIC INSTRUCTION				
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	
Virginia Willoughby v. Craven County Board of Education	93 EDC 1143	Mann	12/17/93	8:20 NCR 2022
STATE PERSONNEL				
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*	Mann	05/04/93	
Lawrence D. Wilkie, Jerry R. Evans, Jules R. Hancart, James H. Johnson, James D. Fishel v. Justice	90 OSP 1065*	Mann	05/04/93	
Lawrence D. Wilkie, Jerry R. Evans, Jules R. Hancart, James H. Johnson, James D. Fishel v. Justice	90 OSP 1066*	Mann	05/04/93	
Lawrence D. Wilkie, Jerry R. Evans, Jules R. Hancart, James H. Johnson, James D. Fishel v. Justice	90 OSP 1067*	Mann	05/04/93	
Lawrence D. Wilkie, Jerry R. Evans, Jules R. Hancart, James H. Johnson, James D. Fishel v. Justice	90 OSP 1068*	Mann	05/04/93	
Connie B. Lee v. Justice	91 OSP 0011	Morgan	10/05/93	8:15 NCR 1498
Donald Allen Rutshman 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	
William H. Peace III v. Employment Security Commission	91 OSP 0572	Chess	10/12/93	
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*	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*	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* ¹²	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*	West	03/08/93	
Jimmy D. Wilkins v. Transportation	92 OSP 0432*	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. Mazingo 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 Wheless v. Lise M. Miller, University Payroll Off., NC St. Univ.	92 OSP 0744* ¹⁰	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 Ransley 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 Wheless v. Lise M. Miller, University Payroll Off., NC St. Univ.	92 OSP 1124* ¹⁰	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

CONTESTED CASE DECISIONS

<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>ALJ</u>	<u>DATE OF DECISION</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
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	
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
Alphonso Walker v. Human Resources	92 OSP 1615	Chess	12/16/93	
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 ^{*2}	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	12/13/93	
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	
FR. "Don" Bowen v. Human Resources	93 OSP 0253	Morgan	08/06/93	
Michael L. Pegram v. Correction	93 OSP 0275 ^{*8}	Reilly	06/28/93	
Jerry D. Doss Sr. v. Correction	93 OSP 0287	Gray	05/17/93	
Odessa Parker v. Durham County Dept. of Social Services	93 OSP 0366	Nesnow	12/15/93	
Debbie Renee Robinson v. Correction	93 OSP 0383	Nesnow	06/07/93	
Sharon Brandon v. Dorothea Dix Hospital	93 OSP 0419	Gray	12/06/93	
Shaw Boyd v. Correction	93 OSP 0438	Morgan	11/12/93	8:18 NCR 1838
Ida Gaynell Williams v. Wilson County Dept. of Social Services	93 OSP 0440	Gray	12/01/93	
Linda R. Wharton v. N.C. A & T University	93 OSP 0456	Chess	09/22/93	
Michael L. Pegram v. Correction	93 OSP 0472 ^{*8}	Reilly	06/28/93	
Ralph W. Burcham v. Transportation	93 OSP 0493	Chess	10/15/93	8:16 NCR 1558
Claudius S. Wilson v. Human Resources	93 OSP 0498	Gray	12/15/93	
Edward D. Day Jr., John D. Warlick, Gary W. Beecham v. Correction	93 OSP 0522 ^{*13}	Morrison	12/14/93	8:19 NCR 1922
Edward D. Day Jr., John D. Warlick, Gary W. Beecham v. Correction	93 OSP 0523 ^{*13}	Morrison	12/14/93	8:19 NCR 1922
Carrie Lee Gardner v. Human Resources	93 OSP 0537	Reilly	12/21/93	
Alvin Lamonte Breedon v. OPC Mental Health	93 OSP 0551	Gray	11/23/93	
Edward D. Day Jr., John D. Warlick, Gary W. Beecham v. Correction	93 OSP 0567 ^{*13}	Morrison	12/14/93	8:19 NCR 1922
Hubert L. Holmes v. Transportation	93 OSP 0572	Reilly	08/17/93	
Vernell Ellis Turner v. NC A & T Police Dept, NC Agricultural Tech U	93 OSP 0577	Becton	11/03/93	
Everette E. Newton v. University of NC at Chapel Hill	93 OSP 0589	Reilly	12/07/93	
Constance Smith-Rogers v. Human Resources	93 OSP 0593	Reilly	12/21/93	
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 Kovolenko 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	

CONTESTED CASE DECISIONS

<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>ALJ</u>	<u>DATE OF DECISION</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
David Henry v. Correction	93 OSP 0789	Gray	11/29/93	
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	
William G. Beam v. Transportation	93 OSP 0828	West	12/29/93	
Mary U. Rote v. Carteret Community Action, Inc. & Carteret Cty.	93 OSP 0831	Morrison	12/29/93	
Terry P. Chappell v. Correction	93 OSP 0834	Nesnow	10/11/93	
Willie David Moore v. Correction (Piedmont Correctional Inst.)	93 OSP 1043	Nesnow	12/03/93	
STATE TREASURER				
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	
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	
Shirley M. Smith v. Bd./Trustees/Teachers' & St. Emp. Ret. Sys.	92 DST 1776	Reilly	11/18/93	8:18 NCR 1829
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
Catherine D. Whitley v. Bd./Trustees/Teachers & St. Emp. Ret. Sys.	93 DST 0727	Reilly	11/18/93	
TRANSPORTATION				
Yates Construction Co., Inc. v. Transportation	92 DOT 1800	Morgan	03/25/93	
American S&P Auto v. Commissioner, Div. of Motor Vehicles	93 DOT 1070	Morrison	12/02/93	
William G. Oglesby v. Division of Motor Vehicles	93 DOT 1375	Morrison	12/29/93	
UNIVERSITY OF NORTH CAROLINA HOSPITALS				
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
COUNTY OF WAKE

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
93 CPS 0652

V.

**CRIME VICTIMS COMPENSATION
COMMISSION,
Respondent.**

RECOMMENDED DECISION

The Petitioner filed a Petition for a Contested Case Hearing with the Office of Administrative Hearings on June 23, 1993. The Petitioner later filed a Prehearing Statement in which he alleged that the Respondent actions in denying him compensation were improper in that the Petitioner could not have possibly foreseen that the proprietor of a convenience store would utilize deadly force to prevent him from fleeing from the scene of the theft. The undersigned agrees that the use of deadly force was unforeseeable. Therefore, the Petitioner's misconduct was not a proximate cause of his injury and he is entitled to receive compensation from the Crime Victims Compensation Fund.

Respondent: Robert T. Hargett, Associate Attorney General, North Carolina Department of Justice, Raleigh, North Carolina.

Did the Commission properly deny the Petitioner's claim based on the Petitioner's contributory misconduct?

N.C. Gen. Stat. §15B-11(b)

1. It is stipulated that in lieu of the testimony of Frederick Eugene Sineath, Mark A. McCrimmon, Charlie Lemmonds, and Wesley White, the parties stipulate to the admission into evidence of the transcript of the probable cause hearing in the case of State of North Carolina v. Frederick Eugene Sineath taken at 11:25 a.m., Thursday, 28 May 1992, and the depositions of Mark A. McCrimmon and Frederick Eugene Sineath taken 24 September 1993.

2. It is stipulated that all parties have been correctly designated. It is further stipulated that there is no question as to misjoinder or nonjoinder of parties.

EXHIBITS

The following exhibits offered by the Respondent, were received in evidence:

- R1. Transcript of probable cause hearing taken on 28 May 1992.
- R2. Deposition transcript of Mark Anthony McCrimmon taken on September 24, 1993.
- R3. Deposition transcript of Frederick Eugene Sineath taken on September 24, 1993.
- R4. Plaintiff's Answers to Defendant's First Set of Interrogatories, Request for Admissions, and Request for Production of Documents.

Based upon the official documents in the file, sworn testimony of the witnesses, and other competent and admissible evidence, the undersigned makes the following:

FINDINGS OF FACT

Stipulated Facts

- 1. The Petitioner filed a timely Application for Compensation with the North Carolina Crime Victims Compensation Commission on 12 December 1992.
- 2. The Petitioner's claim was subsequently denied by the Respondent based upon a theory of contributory misconduct, and the Petitioner filed a timely Petition for a Contested Case Hearing with the Office of Administrative Hearings on or about 22 June 1993.

Adjudicated Facts

- 3. On March 20, 1992, the Petitioner was in a convenience store, the Hillcrest Trading Post, and was intoxicated.
- 4. The Petitioner took \$20.00 bill from another customer's hand.
- 5. The Petitioner had a drink bottle in his left hand and used his right hand to pull open the exit door.
- 6. The exit door opens to the inside and swings toward the right.
- 7. The proprietor of the convenience store, Frederick A. Sineath ordered the Petitioner to stop and then shot the Petitioner in the back as he was opening the exit door.
- 8. The Petitioner fell in the doorway.
- 9. Mr. Sineath called 911 and the Petitioner was transported to a hospital for treatment.
- 10. As a result of his being shot, the Petitioner is paralyzed.
- 11. Mr. Sineath has been charged with assault in Moore County Superior Court.

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

CONCLUSIONS OF LAW

- 1. Mr. Sineath's use of deadly force to prevent the Petitioner's flight from the premises was criminally

injurious conduct.

2. The Petitioner's snatching of the twenty dollars and attempting to exit the store with the money and not paying for the bottle of soda was unlawful and, therefore, misconduct of the type that could bar an award from the Crime Victim's Compensation Fund.
3. The North Carolina Crime Victims Compensation Act provides that "[a] claim may be denied and an award of compensation may be reduced upon a finding of contributory misconduct by the claimant" N.C. Gen. Stat. §15B-11(b) (1987). The question of what constitutes "contributory misconduct" was addressed by the North Carolina Court of Appeals in Evans v. N.C. Department of Crime Control and Public Safety, 101 N.C. App. 108, 398 S.E.2d 880 (1990). The Court of Appeals held that "[c]onsistent with principles of tort law, in order for claimant's misconduct to be contributory it must combine with criminal action on the part of another to become a 'real efficient and proximate cause of the injury.'" (Citation omitted).
4. The North Carolina Supreme Court has defined proximate cause as:

a cause which in natural and continuous sequence, unbroken by any new and independent cause, produced the plaintiff's injuries, and without which the injuries would not have occurred, and one from which a person of ordinary prudence could have reasonably foreseen that such a result, or consequences of a generally injurious nature, was probable under all the facts as they existed.

Hairston v. Alexander Tank & Equipment Co., 310 N.C. 227, 33, 311 S.E.2d 559, 565 (1984) (emphasis added).
5. The issue revolving around foreseeability in this case is best summarized by the parties different phrasing of the issue: Petitioner contends that the issue is "Was the action of Mr. Sineath a reasonably foreseeable result of Mr. McCrimmon's conduct?"; Respondent contends the issue is "Was it reasonably foreseeable to the petitioner that his misconduct could result in some injury?"
6. In order for the Petitioner's misconduct to be contributory, it must combine with criminal action by Mr. Sineath to become a "real, efficient and proximate cause of the injury." Evans v. N.C. Department of Crime Control and Public Safety, 101 N.C. App. 108, 398 S.E.2d 880 (1990); Crouse v. Woodruff, 48 N.C. App. 712, 721, 269 S.E.2d 706, 708 (1980).
7. The Court in Evans held, quoting from Adams v. Mills, 312 N.C. 181, 193, 322 S.E.2d 164, 172 (1984), "The test of foreseeability as an element of proximate cause does not require that the actor should have been able to foresee the injury in the precise manner in which it actually occurred." Neither is it necessary for the Petitioner to foresee the events which are merely possible, but only those which are reasonably foreseeable. Id.
8. Foreseeability is that which a person of ordinary prudence would reasonably have foreseen as the probable consequence of his actions. Bogle v. Duke Power Co., 27 N.C. App. 318, 219 S.E.2d 308, cert. den. 289 N.C. 296, 222 S.E.2d 695 (1967).
9. General principles of tort law state that a person is not entitled to use deadly force to defend personal property. Thus, neither Mr. Sineath nor the patron were entitled to shoot the Petitioner and it is not reasonable to hold the Petitioner responsible for being able to foresee that others than himself would also act in a manner that is beyond what the law allows.
10. It was not reasonably foreseeable that Mr. Sineath would use deadly force to prevent the Petitioner from fleeing his premises with the patron's twenty dollars and the bottle of soda. Even though it is not necessary that the Petitioner have foreseen the exact nature of the harm that might befall him, it

is necessary that he or any reasonable person in his position have been able to foresee a category of harm. It was foreseeable that either the patron or the store keeper might have given chase, called the police, or made some effort to prevent the Petitioner's flight. What was not reasonably foreseeable was that deadly force which was beyond what the law would have allowed would have been utilized to prevent the Petitioner from escaping.

11. Since Mr. Sineath's actions were not foreseeable, the Petitioner's misconduct was not a proximate cause of the injury he sustained and pursuant to the provisions of the Victims Compensation Act and Evans, supra, the Commission cannot use the Petitioner's misconduct as a basis for denying or reducing the Petitioner's claim.

RECOMMENDED DECISION

The North Carolina Crime Victims Compensation Commission will make the Final Decision in this contested case. It is recommended that the Commission adopt the Findings of Fact and Conclusions of Law set forth above and allow the Petitioner's claim.

DISCUSSION

Although the Victims Compensation Act is primarily intended to provide some compensation to innocent victims of crime, it nevertheless provides that compensation should only be denied to an individual whose misconduct is a proximate cause of the injury sustained. Thus, the legislature apparently contemplated that there would be some instances where a person guilty of misconduct would, nevertheless, be entitled to compensation as a victim. While the Petitioner because of his own wrong doing is not a very sympathetic victim, application of the basic principles of tort law to the facts as the Victims Compensation Act directs one to do, leads to the conclusion that his own misdeed does not bar recovery in this instance.

ORDER

It is hereby ordered that the agency serve a copy of the Final Decision on the Office of Administrative Hearings, P.O. Drawer 27447, Raleigh, N.C. 27611-7447, in accordance with North Carolina General Statutes section 150B-36(b).

NOTICE

Before the Commission makes the FINAL DECISION, it is required by North Carolina General Statutes section 150B-36(a) to give each party an opportunity to file exceptions to this RECOMMENDED DECISION, and to present written arguments to those in the agency who will make the final decision.

The agency is required by North Carolina General Statutes section 150B-36(b) to serve a copy of the Final Decision on all parties and to furnish a copy to the Parties' attorney of record.

This the 20th day of December, 1993.

Brenda B. Becton
Administrative Law Judge

LEVON BRASWELL,
Petitioner,

V.

**NORTH CAROLINA PRIVATE PROTECTIVE
SERVICES BOARD,
Respondent.**

PROPOSAL FOR DECISION

The above-entitled matter was heard before Fred G. Morrison Jr., Senior Administrative Law Judge, on December 28, 1993, in Raleigh, North Carolina.

The Petitioner appeared pro se. The Respondent was represented by Attorney Charles F. McDarris.

Was the North Carolina Private Protective Services Board (hereinafter Board) correct in denying the application of Petitioner for unarmed guard registration for lack of good moral character?

G.S. 74C-1 et seq.
12 NCAC 7D .0701 et seq.

1. Petitioner's application for unarmed guard registration has been denied by the Board because investigation revealed that he was convicted on April 24, 1985, for assault with a deadly weapon inflicting serious injury. This conviction was the result of a spat with his wife's grandmother. He served several months in prison before being paroled from which he was satisfactorily discharged. He has been rehabilitated.
2. Petitioner served in the armed services and was given an honorable discharge. He attends church regularly and has a good reputation among associates.

12 NCAC 7D .0703(3) requires that an applicant for registration be of good moral character. That rule also provides that a conviction within the last five years of a crime involving violence shall be prima facie evidence of a lack of good moral character. Petitioner's conviction was more than five years ago. Based on this evidence, it is concluded that Petitioner does not lack good moral character.

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

PROPOSAL

That the denial of Petitioner's application for unarmed guard registration be reversed.

NOTICE

All parties to this action have the right to file exceptions and proposed finding of fact and to present oral and written arguments to the Private Protective Services Board before it reaches a final decision. Any party desiring to exercise this right should contact the Board promptly.

This the 29th of December, 1993.

Fred G. Morrison Jr.
Senior Administrative Law Judge

3. Whether the Craven County Board of Education is obligated to temporarily enroll Danyun Walker in its school system and provide him with a free and appropriate education during the pendency of proceedings to resolve the issue of his ultimate entitlement to the Respondent's educational services.
4. Whether Danyun Walker currently is a resident or a domiciliary of Craven County, North Carolina.

STIPULATIONS

The Stipulations are contained in the Prehearing Order filed with the Administrative Law Judge immediately prior to the contested case hearing on December 3, 1993. On the record, the parties stipulated, without objection, that the time for filing the Final Decision was extended up to and including Friday, December 17, 1993.

Based upon the Stipulations and the greater weight of the admissible evidence, the undersigned makes the following:

FINDINGS OF FACT

1. The Office of Administrative Hearings has jurisdiction over the parties and the subject matter of this contested case pursuant to Chapters 115C and 150B of the North Carolina General Statutes and the Individuals With Disabilities Education Act (IDEA), 20 U.S.C. Section 1400 et seq.
2. Virginia Willoughby is a citizen and resident of Vanceboro, Craven County, North Carolina, and her grandson, Danyun Walker has been living in her home with her and her husband, Otto Willoughby, since June, 1993.
3. Danyun Walker is 16 years of age and as of April 1993 was receiving special education services in the Duval County, Florida public schools in a program for the profoundly mentally handicapped. Danyun is non-verbal and has been evaluated as profoundly mentally handicapped. (Petitioner's Exhibit #4)
4. In August, 1993, the Petitioner attempted to enroll Danyun Walker in the Craven County Public Schools for the current school year, after Danyun came to Craven County to live with Petitioner and her husband. (Respondent's Exhibits #2 and #3; Prehearing Stipulation #3c)
5. The Respondent, through its employees and agents, refused to enroll Danyun in its schools except on condition that Mrs. Willoughby pursue legal guardianship or court ordered custody of Danyun. (Respondent's Exhibit #1)
6. Danyun Walker is not being provided with educational services by the Respondent Board of Education. (Prehearing Stipulation #3d)
7. Respondent Craven County Board of Education is a local educational agency receiving monies pursuant to the federal Individuals With Disabilities Education Act, 20 U.S.C. Section 1400 et seq. (Prehearing Stipulation #3e)
8. Respondent is the agency responsible for providing special education services in the Craven County Schools pursuant to the North Carolina Special Education Act, G.S. 115, Article 9 (hereinafter referred to as the "State Act"). (Prehearing Stipulation #3e)
9. Danyun Walker's parents are not domiciliaries of Craven County nor the State of North Carolina, nor do they reside in the State of North Carolina.
10. Based on the uncontroverted and credible testimony of Petitioner, Virginia Willoughby, Danyun Walker is living with Petitioner with the consent of Danyun's mother, Queenie Walker, and Queenie

Walker wishes for Danyun to receive a free and appropriate education from the Respondent Board of Education.

11. Based on the uncontroverted and credible testimony of Petitioner Virginia Willoughby, Danyun Walker is not living in Craven County merely for the purpose of attending school there but is living with Mrs. Willoughby because Petitioner and Danyun's mother believe Mrs. Willoughby to be better able to provide for Danyun's needs in general. It is Danyun's mother's intention that Danyun remain with Petitioner indefinitely. Danyun's mother is not presently as capable of caring for her son in Florida because of the absence of her husband from the home and pending graduation of Danyun's 17 year old brother.

12. Based on the uncontroverted and credible testimony of Petitioner Virginia Willoughby, she is providing for the daily needs of Danyun Walker, including feeding him, clothing him, and assisting with his activities of daily living and she is acting as a parent for him.

13. Petitioner is now acting as parent for Danyun.

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

CONCLUSIONS OF LAW

1. The Office of Administrative Hearing has jurisdiction over the person and subject matter of this contested case pursuant to Chapters 115C and 150B of the North Carolina General Statutes and the Individuals With Disabilities Act (IDEA), 20 U.S.C. Section 1400 et seq.

2. Danyun Walker is a child with a disability or disabilities for purposes of IDEA and is a child with special needs pursuant to the State Act.

3. IDEA provides for procedural safeguards including the right to an impartial due process hearing for the parents or guardian of a child with a disability. The implementing regulations for IDEA at 34 CFR 300.13 define "parent" for purposes of proceedings under that law to include: "a person acting as a parent." Therefore, Petitioner has standing to maintain this action pursuant to IDEA and its implementing regulations.

4. The State Act provides at G.S. 115C-116 for the right of review of proposed decisions regarding the educational needs of a child with special needs and it provides this right to the "parent, guardian, or surrogate parent of the child. The State Procedures Governing Programs and Services for Children with Special Needs at Section .1501(G), defines the word "parent" to include "a person acting as a parent of a child." Therefore, Petitioner has standing to maintain this action pursuant to the State Act and regulations.

5. Pursuant to the Rehabilitation Act of 1973 as amended, 29 U.S.C.A. 794 (hereinafter, Section 504), Danyun Walker has a right not to be discriminated against because of handicap or disability in public education programs receiving federal financial assistance.

6. The State Act at G.S. 115C-110(i) provides "[e]ach local educational agency shall provide free and appropriate special education and related services ... for all children with special needs who are residents of, or whose parents or guardians are residents of, the agency's district..." It is clear from a reading of this section and related statutory provisions, that it does not impose an obligation that a child with special needs be "domiciled" in the local educational agency's district to be entitled to a free appropriate special education and related services. The Act only requires that the child be a resident of the district.

7. IDEA at 20 U.S.C.A. Section 1414(a)(1) requires local educational agencies to provide assurances that all children with disabilities, "residing within the jurisdiction of the local educational agency are identified, located, and evaluated" etc., and further at Section 1414(a)(5) requires assurances by local educational agencies to establish an individualized education program for each child with a disability.

8. The implementing regulations for Section 504 at 34 C.F.R. 104.33(a) provide:

"[a] recipient that operates a public elementary or secondary education program shall provide a free appropriate public education to each qualified handicapped person who is in the recipient's jurisdiction, regardless of the nature of severity of the person's handicap."

The official comments following this regulation at page 430 and 431 of the 1992 version of the CFR state in part:

"Under Sec. 104.33(a), a recipient is responsible for providing a free appropriate public education to each qualified handicapped person who is in the recipient's jurisdiction. The word "in" encompasses the concepts of both domicile and actual residence...."

9. Under North Carolina case decisions, the term residence is generally taken to mean one's place of actual abode, whether temporary or permanent as opposed to "domicile" which denotes one's permanent, established home. Although a child's domicile may be at the home of his parent, he may also have a residence elsewhere.

10. Danyun Walker is a resident of Craven County, North Carolina, for purposes of this proceeding since his present actual place of abode is located there and the Petitioner and Danyun's mother intend that he reside in Craven County indefinitely. It is not necessary to determine whether or not he is a domiciliary of Craven County, North Carolina for purposes of this proceeding.

11. Since Danyun Walker is a resident of Craven County, North Carolina, the Respondent Board of Education is obligated to provide Danyun Walker with a free and appropriate education and related services through an appropriate individualized education plan pursuant to Chapter 115C of the North Carolina General Statutes, IDEA, and Section 504.

12. IDEA at 20 U.S.C.A. Section 1415(e)(3) provides that during the pendency of proceedings such as these relating to the educational rights of a child with disability "if applying for initial admission to a public school" the child "shall, with the consent of the parents or guardian, be placed in the public school program until all such proceedings have been completed." The North Carolina Procedures Governing Programs and Services for Children with Special Needs also require at .1517 that in proceedings such as this "[i]f the complaint involves an application for initial admission to public school, the child, with the consent of the parents, must be placed in a public school until the completion of all the proceedings."

13. Appendix C to Part 300 of Title 34 of the Code of Federal Regulations provides some interpretation of the regulations implementing IDEA. There at page 76 of the CFR revised as of July 1, 1993, in answer to the question "5. For a child with a disability receiving special education for the first time, when must an IEP be developed -- before placement or after placement," it says in part,

...the IEP must be developed before placement., The above requirement does not preclude temporarily placing an eligible child with a disability in a program as part of the evaluation process -- before the IEP is finalized -- to aid in determining the most appropriate placement for the child. It is essential that the temporary placement not become the final placement before the IEP is finalized. In order to ensure that this does not happen, the State might consider requiring LEAs to take the following actions:

a. Develop an interim IEP for the child that sets out the specific conditions and timelines for the trial placement...

b. Ensure that the parents agree to the interim placement before it is carried out, and that they are involved throughout the process of developing, reviewing, and revising the child's IEP.

c. Set a specific timeline (E.G. 30 days) for completing the evaluation and making judgments about the most appropriate placement for the child.

d. Conduct an IEP meeting at the end of the trial period in order to finalize the child's IEP....

14. Consent for Danyun's admission to Respondent's public school system has been given by both Petitioner and Danyun's mother. Danyun Walker is therefore entitled to immediate placement in the public school program of the Respondent whether or not the Final Decision herein is appealed for further review.

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

FINAL DECISION

1. Respondent is charged with the statutory duty to provide Danyun Walker with a free appropriate public education and related services pursuant to an individual education program.

2. Respondent Board of Education is obligated to immediately place Danyun Walker in its public school program and provide him with an appropriate temporary educational program as is reasonable during the pendency of any further appeal or review of this decision, or during any needed evaluation of Danyun for the purpose of development of his individual education program. Respondent Board of Education should be guided in its development of an interim IEP for Danyun Walker by the interpretation found in Appendix C to Part 300 of title 34 of the Code of Federal Regulations, as found in Conclusion of Law #13.

3. This cause is retained for further orders as may be necessary.

NOTICE

In order to appeal this Decision, the person seeking review must file a written notice of appeal with the North Carolina Superintendent of Public Instruction. The written notice of appeal must be filed within thirty (30) days after the person is served with a copy of this Decision. G.S. 115C-116(h) and (i).

This the 17th day of December, 1993.

Julian Mann, III
Chief 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

TITLE	DEPARTMENT	LICENSING BOARDS	CHAPTER
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
1569 - 1719	17 - December
1720 - 1849	18 - December
1850 - 1941	19 - January
1942 - 2031	20 - January

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

ADMINISTRATION

Administration's Minimum Criteria, 5
 Auxiliary Services, 1724
 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
 Credit Union Division, 1724

Savings Institutions Division: Savings Institutions Commission, 461
State Ports Authority, 811, 1570

COMMUNITY COLLEGES

Community Colleges, 1527

ENVIRONMENT, HEALTH, AND NATURAL RESOURCES

Coastal Management, 279, 571, 962, 1405, 1862
Comprehensive Conservation and Management Plan, 882
Departmental Rules, 465
Environmental Management, 210, 556, 658, 797, 893, 1254, 1748, 1858
Health Services, 283, 335, 425, 465, 572, 709, 762, 966, 1098, 1417, 1663, 1782, 1850
Marine Fisheries, 28, 568, 1573
Mining: Mineral Resources, 829
NPDES Permit, 710
Radiation Protection, 1662
Soil and Water Conservation Commission, 214, 1322
Vital Records, 1525
Wildlife Resources Commission, 32, 663, 831, 965, 1255, 1409, 1613, 1723, 1773, 1957
Wildlife Resources Commission Proclamation, 1851
Zoological Park, 337

FINAL DECISION LETTERS

Voting Rights Act, 4, 407, 460, 795, 880, 1371, 1514, 1569, 1722, 1942

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, 1720

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, 1725
Medical Assistance, 25, 414, 553, 712, 888, 1316, 1742, 1943
Medical Care Commission, 644, 1312
Mental Health, Developmental Disabilities and Substance Abuse Services, 7, 413, 516, 1086, 1217, 1852
Social Services Commission, 237, 733, 1091, 1376, 1743

INSURANCE

Actuarial Services, 555, 657, 1249, 1321, 1403
Agent Services Division, 1399
Engineering and Building Codes Division, 1248
Financial Evaluation Division, 1093, 1317, 1946
Life and Health Division, 1094, 1318, 1400, 1956
Medical Database Commission, 463, 737, 1956
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, 1744

LICENSING BOARDS

Architecture, 43
Certified Public Accountant Examiners, 1418
Chiropractic Examiners, 1806
Cosmetic Art Examiners, 969, 1526
Dental Examiners, State Board of, 763, 1960
Electrolysis Examiners, Board of, 841, 1457
Foresters, Registration for, 674
Geologists, Board of, 285
Landscape Architects, 1256
Medical Examiners, Board of, 591, 1458, 1685, 1965
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, 1807, 1880
Real Estate Appraisal Board, 1976
Real Estate Commission, 53, 364, 1996
Refrigeration Examiners, 1148, 1526
Social Work, Certification Board for, 428, 1808
Therapeutic Recreation Certification Board, 1328

LIST OF RULES CODIFIED

List of Rules Codified, 61, 290, 432, 593, 769, 845, 1264, 1535, 1687, 1881

PUBLIC EDUCATION

Elementary and Secondary Education, 427, 470, 1873

SECRETARY OF STATE

Land Records Management Division, 1792

STATE PERSONNEL

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

STATE TREASURER

Local Government Commission, 1795
Retirement Systems, 337, 1146

TAX REVIEW BOARD

Orders of Tax Review, 503, 1516

TRANSPORTATION

Highways, Division of, 669, 836

Motor Vehicles, Division of, 1145, 1875

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