

# *The* **NORTH CAROLINA REGISTER**

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**EXECUTIVE ORDERS**

**IN ADDITION**  
Tax Review Board

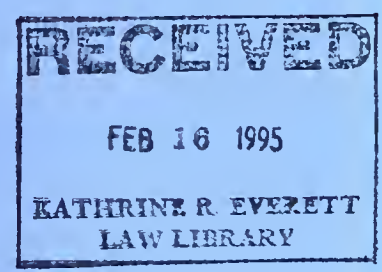
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**ISSUE DATE:** February 15, 1995



## 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 fact 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 request that it will remain with its initial position. The Codifier, thereafter, enters 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 may not 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 occupational licensing boards. The NCAC comprises approximately 15,000 letter size, single spaced pages of material of which approximately 35% 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 ten dollars and 50 cents (\$2.50) for 10 pages or less, plus fifty cents (\$0.15) per each additional page.
- (2) The full publication consists of 53 volumes, totaling in excess of 15,000 pages. It is supplemented monthly with replacement pages. A one year subscription to the full publication including supplements can be purchased for seven hundred and fifty dollars (\$750.00). Individual volumes may also be purchased with supplement service. Renewal subscriptions for supplements to the initial publication are available.

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

### **CITATION TO THE NORTH CAROLINA REGISTER**

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

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

# NORTH CAROLINA REGISTER



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# NORTH CAROLINA REGISTER

## Publication Schedule

(November 1994 - September 1995)

Volume and Issue Number	Issue Date	Last Day for Filing	Last Day for Electronic Filing	Earliest Date for Public Hearing 15 days from notice	* End of Required Comment Period 30 days from notice	Last Day to Submit to RRC	** Earliest Effective Date
9:15	11/01/94	10/11/94	10/18/94	11/16/94	12/01/94	12/20/94	02/01/95
9:16	11/15/94	10/24/94	10/31/94	11/30/94	12/15/94	12/20/94	02/01/95
9:17	12/01/94	11/07/94	11/15/94	12/16/94	01/03/95	01/20/95	03/01/95
9:18	12/15/94	11/22/94	12/01/94	12/30/94	01/17/95	01/20/95	03/01/95
9:19	01/03/95	12/08/94	12/15/94	01/18/95	02/02/95	02/20/95	04/01/95
9:20	01/17/95	12/21/94	12/30/94	02/01/95	02/16/95	02/20/95	04/01/95
9:21	02/01/95	01/10/95	01/18/95	02/16/95	03/03/95	03/20/95	05/01/95
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9:23	03/01/95	02/08/95	02/15/95	03/16/95	03/31/95	04/20/95	06/01/95
9:24	03/15/95	02/22/95	03/01/95	03/30/95	04/17/95	04/20/95	06/01/95
10:1	04/03/95	03/13/95	03/20/95	04/18/95	05/03/95	05/22/95	07/01/95
10:2	04/17/95	03/24/95	03/31/95	05/02/95	05/17/95	05/22/95	07/01/95
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10:4	05/15/95	04/24/95	05/01/95	05/30/95	06/14/95	06/20/95	08/01/95
10:5	06/01/95	05/10/95	05/17/95	06/16/95	07/03/95	07/20/95	09/01/95
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*This table is published as a public service, and the computation of time periods are not to be deemed binding or controlling. Time is computed according to 26 NCAC 2B .0103 and 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 day of the next calendar month.*

**EXECUTIVE ORDER NO. 69  
GOVERNOR'S COUNCIL ON  
CHILDREN, YOUTH, AND  
FAMILIES**

WHEREAS, the State of North Carolina should promote and encourage collaboration and collaborative planning and delivery of services among State agencies that serve the needs of children and families;

WHEREAS, the State of North Carolina should make more effective use of existing federal and state resources and programs;

WHEREAS, the State of North Carolina should streamline government, including the delivery of services and eliminate duplication; and

WHEREAS, the State of North Carolina should promote and enhance state-level leadership in achieving these goals;

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

**Section 1. Establishment.**

The Governor's Council on Children, Youth, and Families is hereby established.

**Section 2. Duties.**

(a) The Governor's Council on Children, Youth, and Families shall:

- (i) Provide state-level leadership on issues affecting children, youth, and families, including children with special needs;
- (ii) Foster collaboration and coordination between and among the many state agencies with responsibility for providing services to children, youth, and families;
- (iii) Help develop and carry out a unified and comprehensive long-range children's and families' agenda; and
- (iv) Promote accountability for achieving the State's goals in a timely and effective manner.

(b) The Council shall meet biannually and report to the Governor on its progress in meeting the intent and purpose set forth in this Executive Order. The Governor may convene the Council at other times during the year as necessary to achieve these goals.

(c) The Governor shall chair the Council. The Governor shall appoint a Vice-Chair of the Council, who shall chair the Council in his absence.

(d) The Governor shall set the agenda for the Council's meetings and shall take into consideration its reports in setting policy for children, youth, and families.

(e) The Council may establish such committees, task forces, or other working groups as are necessary to assist in performing its duties. The Council may invite non-members to serve on such groups.

(f) Existing executive commissions, councils, and advisory committees with responsibility for issues affecting children, youth, and families shall advise and assist the Council in performing its duties and responsibilities.

**Section 3. Membership.**

(a) The Council shall consist of the following members or their designees:

- (i) The Governor's Senior Education Advisor;
- (ii) The Secretary of Environment, Health, and Natural Resources;
- (iii) The Secretary of Human Resources;
- (iv) The Secretary of Cultural Resources;
- (v) The Secretary of Commerce;
- (vi) The Secretary of Transportation; and
- (vii) The Secretary of Administration.

(b) The following individuals shall be invited to serve as members of the Council and may appoint a designee:

- (i) The Lieutenant Governor;
- (ii) The Superintendent of Public Instruction;
- (iii) The Chair of the State Board of Education;
- (iv) The Commissioner of Labor;
- (v) The President of the North Carolina Community College System;
- (vi) The President of the University of North Carolina;
- (vii) The Director of the Administrative Office of the Courts;
- (viii) The Chair of the North Carolina Partnership for Children, Inc.;
- (ix) The Chairs of the House of Representatives and Senate appropriations subcommittees for human resources (one from each body); and
- (x) The Chairs of the House of Representatives and Senate substantive committees with responsibility for human services

programs affecting children, youth and families (one from each body).

**Section 4. Staff Assistance.**

The Department of Human Resources shall provide clerical support and other services required by the Council.

This order shall be effective immediately.

Done in the City of Raleigh this the 24th day of January, 1995.

**EXECUTIVE ORDER NO. 70  
REISSUING EXECUTIVE ORDER  
NO. 37, CITIZEN ACCESS TO  
PUBLIC RECORDS MAINTAINED  
BY STATE GOVERNMENT**

WHEREAS, Executive Order No. 37, signed January 28, 1994, expired October 28, 1994; and

WHEREAS, Executive Order No. 37 implemented a trial period for the Departments of Administration and Transportation to develop an electronic register of public information; and

WHEREAS, the Information Resources Management Commission has reviewed the implementation of Executive Order No. 37 and has recommended that the trial period be extended.

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

Executive Order No. 37, Citizen Access to Public Records Maintained by State Government, is hereby reissued, without changes, until July 1, 1995. The IRMC is requested to make further recommendations prior to the expiration of this Order.

This Order shall be effective immediately.

Done in the City of Raleigh this the 25th day of January, 1995.

**EXECUTIVE ORDER NO. 71  
EXTENDING EXECUTIVE ORDERS  
2, 6, 9, 10, 11, 15, 16, 17 AND 19**

By the power vested in me as Governor by the Constitution and laws of the State of North Caroli-

na, **IT IS ORDERED:**

The following Executive Orders are hereby extended:

- A. Executive Order No. 2, Small Business Council;
- B. Executive Order No. 6, Entrepreneurial Development Board;
- C. Executive Order No. 9, Commission for a Competitive North Carolina;
- D. Executive Order No. 10, Quality Leadership Awards Council;
- E. Executive Order No. 11, Governor's Council of Fiscal Advisors;
- F. Executive Order No. 15, Coordinating Committee on the Americans with Disabilities Act;
- G. Executive Order No. 16, The Geographic Information Coordinating Council;
- H. Executive Order No. 17, North Carolina Emergency Response Commission; and
- I. Executive Order No. 19, Center for the Prevention of School Violence.

This Order shall be effective immediately and shall expire two years from this day.

Done in the City of Raleigh this the 26th day of January, 1995.

STATE OF NORTH CAROLINA

BEFORE THE  
TAX REVIEW BOARD

COUNTY OF WAKE

IN THE MATTER OF: )  
The Proposed Assessment of corporate income )  
tax for the taxable years of 1988, 1989, 1990 )  
assessed against BellSouth Telecommunications, )  
Inc. (formerly Southern Bell Telephone and )  
Telegraph Company). )  
)

ADMINISTRATIVE  
DECISION NUMBER: 287

THIS MATTER was heard before the Tax Review Board on 9 November 1994 in the City of Raleigh, Wake County, North Carolina. It involves an appeal by BellSouth Telecommunications, Inc. (formerly Southern Bell Telephone and Telegraph Company), (hereinafter "Taxpayer") from the Final Decision of Michael A. Hannah, Assistant Secretary for Legal and Administrative Services (hereinafter "Assistant Secretary") entered on 20 April 1994, sustaining a proposed assessment of corporate income tax for the taxable years of 1988, 1989 and 1990.

Chairman Harlan E. Boyles presided over the hearing with acting member, the Honorable Hugh Wells, Chairman, Utilities Commission and duly appointed member, Jeff D. Batts, Attorney at Law participating.

Joseph D. Joyner, Jr. and C. Wells Hall, III, Attorneys at Law, appeared of behalf of the Taxpayer; Kay Linn Miller, Associate Attorney General, appeared on behalf of the Department of Revenue.

AND IT APPEARING TO THE BOARD AS FOLLOWS: that the findings of fact made by the Assistant Secretary were supported by competent, material and substantial evidence in the record; that based upon the findings of fact, the Assistant Secretary's conclusions of law were fully supported by the findings of fact; therefore based upon the findings of fact and conclusions of law, the decision of the Assistant Secretary should be confirmed.

IT IS THEREFORE ORDERED, that the Final Decision of the Assistant Secretary is **confirmed** in every respect.

Entered this the 20th day of January, 1995.

TAX REVIEW BOARD

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

\_\_\_\_\_  
Hugh Wells, Ex Officio Member  
Chairman Utilities Commission

\_\_\_\_\_  
Jeff D. Batts, Appointed Member



STATE OF NORTH CAROLINA

BEFORE THE  
TAX REVIEW BOARD

COUNTY OF WAKE

IN THE MATTER OF: )  
The Proposed Assessment of corporate )  
income tax for the taxable years ended 30 )  
June 1988 and 30 June 1989 assessed )  
against J. W. Cook & Sons, Inc. )  
)

ADMINISTRATIVE  
DECISION NUMBER: 288

THIS MATTER was heard before the Tax Review Board on 9 November 1994 in the City of Raleigh, Wake County, North Carolina. It involves an appeal by J. W. Cook & Sons, Inc., (hereinafter "Taxpayer") from the Final Decision of the Deputy Secretary of Revenue (hereinafter "Deputy Secretary") entered on 28 August 1992, sustaining a proposed assessment of corporate income tax for the taxable years ended 30 June 1988 and 30 June 1989.

Chairman Harlan E. Boyles presided over the hearing with acting member, the Honorable Hugh Wells, Chairman, Utilities Commission and duly appointed member, Jeff D. Batts, Attorney at Law participating.

William P. Pinna, Attorney at Law, appeared on behalf of the Taxpayer; Kay Linn Miller, Associate Attorney General, appeared on behalf of the Department of Revenue.

AND IT APPEARING TO THE BOARD AS FOLLOWS: that the findings of fact made by the Deputy Secretary were supported by competent, material and substantial evidence in the record; that based upon the findings of fact, the Deputy Secretary's conclusions of law were fully supported by the findings of fact; therefore based upon the findings of fact and conclusions of law, the decision of the Deputy Secretary should be confirmed.

IT IS THEREFORE ORDERED, that the Final Decision of the Deputy Secretary is confirmed in every respect.

Entered this the 20th day of January, 1995.

TAX REVIEW BOARD

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

\_\_\_\_\_  
Hugh Wells, Ex Officio Member  
Chairman Utilities Commission

\_\_\_\_\_  
Jeff D. Batts, Appointed Member



STATE OF NORTH CAROLINA

BEFORE THE  
TAX REVIEW BOARD

COUNTY OF WAKE

IN THE MATTER OF: )  
The Proposed Assessment of additional sales )  
and use tax for the period of January 1, 1986 )  
through February 28, 1990 by the North )  
Carolina Secretary of Revenue assessed against )  
Robert L. Sutphen, d/b/a/ Southern Straw )  
)

ADMINISTRATIVE  
DECISION NUMBER: 289

THIS MATTER was heard before the Tax Review Board (hereinafter "Board") on 13 September 1994 in the City of Raleigh, Wake County, North Carolina. It involves an appeal by Robert L. Sutphen, d/b/a/ Southern Straw (hereinafter "Taxpayer") from the decision of the Michael A. Hannah, Assistant Secretary for Legal and Administrative Services (hereinafter "Assistant Secretary") entered on 21 March 1994 sustaining a proposed assessment of sales and use tax, plus penalties and interest, for the period of January 1, 1986 through February 28, 1990.

Chairman Harlan E. Boyles presided over the hearing with acting member, the Honorable Hugh Wells, Chairman Utilities Commission and duly appointed member, Jeff D. Batts, Attorney at Law participating.

Robert L. Sutphen appeared pro se; Kay Linn Miller, Associate Attorney General, appeared on behalf of the Department of Revenue.

### ISSUE

Under G.S. § 105-241.2, the Tax Review Board is granted jurisdiction to hear appeals timely filed by a taxpayer regarding administrative review of the taxpayer's liability for the tax or additional tax assessed by the Secretary. The issue considered is:

1. Did the Taxpayer file a timely notice of intent to file a petition for review and a timely petition requesting review with the Tax Review Board?

Under the guidelines of G.S. § 105-241.2(a), the Taxpayer must take the following action in order to obtain administrative review:

1. Within 30 days after the Secretary's final decision is issued, file with the Tax Review Board, with a copy to the Secretary, notice of intent to file a petition for review.
2. Within 60 days after the Secretary's final decision is issued, file with the Tax Review Board, with a copy to the Secretary, a petition requesting administrative review and stating in concise terms the grounds upon which review is sought.

THE TAX REVIEW BOARD CONSIDERED THE FOLLOWING FACTS AND DOCUMENTS FILED IN THIS MATTER:

1. On 21 March 1994, the Secretary's final decision was mailed to the Taxpayer.
2. On 19 May 1994, Taxpayer's attorney wrote the Board requesting review of the case.
3. On 26 May 1994, the Board's Executive Secretary acknowledged receipt of the 19 May 1994 letter as an untimely notice of intent to file a petition for review.
4. On 16 August 1994, Taxpayer filed a letter with the Board setting forth his reasons for requesting administrative review.

BASED UPON THE FOREGOING FACTS, THE TAX REVIEW BOARD CONCLUDES AS A MATTER OF LAW:

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

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

Entered this 27th day of January, 1995.

**TAX REVIEW BOARD**

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Harlan E. Boyles, Chairman  
State Treasurer

---

Hugh Wells, Ex Officio Member  
Chairman Utilities Commission

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Jeff D. Batts, Appointed Member

**TITLE 7 - DEPARTMENT OF  
CULTURAL RESOURCES**

*Notice is hereby given in accordance with G.S. 150B-21.2 that the Department of Cultural Resources, Division of State Library intends to amend rule cited as 7 NCAC 2E .0301.*

*The proposed effective date of this action is May 1, 1995.*

*Instructions on How to Demand a Public Hearing (must be requested in writing within 15 days of notice): A public hearing may be requested by sending a written request to Caroline Shepard, State Library of North Carolina, 109 E. Jones St., Raleigh, NC 27601-2807, fax (919) 733-8748.*

*Reason for Proposed Action: This Rule change is being made to be more responsive to units of local government by formally adopting the special provision that was included in the Current Operations Appropriations Act of 1993 (Senate Bill 27, Section 38).*

*Comment Procedures: Comments may be submitted in writing to Caroline Shepard, State Library of North Carolina, 109 E. Jones St., Raleigh, NC 27601-2807, fax (919) 733-8748.*

**CHAPTER 2 - DIVISION OF  
STATE LIBRARY**

**SUBCHAPTER 2E - LIBRARY  
DEVELOPMENT SERVICES**

**SECTION .0300 - ALLOCATION  
OF STATE AID TO PUBLIC LIBRARIES**

**.0301 QUALIFICATIONS FOR GRANTS**

Libraries requesting funding from the aid to public libraries fund must meet the following requirements:

- (1) Be legally established as required by North Carolina statutes.
- (2) Provide library services easily available without discrimination to all residents of the political subdivision supporting the library.
- (3) Employ a director having a valid North Carolina public librarian certificate and successful experience as a public librarian

or administrator.

- (4) Secure operational funds from local government sources at least equal to the amount budgeted the previous year. A grant to a local library system from the Aid to Public Libraries Fund shall not be terminated but shall be reduced proportionately by the Department of Cultural Resources if the local funding for a public library was reduced by the local governing body as part of an overall general budgetary reduction reflecting local economic conditions and local government fiscal constraints. State funds shall not replace local funds appropriated for public library operations.
- (5) Expend funds as authorized in the adopted budget. Any library having an unencumbered operational balance of more than 17 percent of the previous year's operating receipts will have the difference deducted from its state allocation.
- (6) Obtain aggregate operational funds from local sources at least equaling state aid.
- (7) Pay salaries for professional positions funded from state aid that are no less than the scale required by the Division of State Library.
- (8) Obtain an annual audit of library accounts by a certified public accountant and submit a copy of this audit to the Division of State Library.
- (9) Submit a copy of bylaws and personnel policies to the Division of State Library.
- (10) Compile an assessment of the library needs of the community, prepare and annually revise a long-range plan of service, and submit copies of needs assessment and long-range plans of service to the Division of State Library.
- (11) Submit a copy of the agreement establishing the regional or county library, if composed of more than one local governmental unit.
- (12) Meet the following stipulations when establishing a new library or withdrawing from a larger system:
  - (a) qualify for state aid on the first day of the fiscal year,
  - (b) operate successfully during that year,
  - (c) apply for state aid after the year of successful operation.

*Statutory Authority G.S. 125-7; 143B-10.*



**TITLE 10 - DEPARTMENT OF  
HUMAN RESOURCES**

*Notice is hereby given in accordance with G.S. 150B-21.2 that the Division of Aging intends to amend rules cited as 10 NCAC 22J .0308; 22R .0201 and .0202.*

*The proposed effective date of this action is May 1, 1995.*

*The public hearing will be conducted at 2:00 p.m. on March 3, 1995 at the Division of Aging, 693 Palmer Drive, Room 127, Raleigh, NC.*

**Reason for Proposed Action:**

**10 NCAC 22J .0308** - Clarification of who may serve as in-home aides for the elderly.

**10 NCAC 22R .0201 - .0202** - Clarification of boards of commissioners and area agencies on aging responsibilities through the Home and Community Care Block Grant for Older Adults.

**Comment Procedures:** Written comments will be received by the Director of the Division of Aging through March 18, 1995. Verbal comments will be heard at the public hearing.

**CHAPTER 22 - AGING**

**SUBCHAPTER 22J - IN-HOME AIDE  
SERVICES FOR OLDER ADULTS**

**SECTION .0300 - SERVICE PROVISION**

**.0308 SELECTION OF AIDES**

~~The following persons shall be allowed to serve as in-home aides:~~

- ~~(1) Non relatives who are 18 years of age or older who are qualified to perform the tasks needed by the client.~~
- ~~(2) Relatives of the client, who for this purpose are parent, spouse, child or sibling, who are 18 years of age or older and who give up employment or the opportunity for employment in order to perform the service and who are qualified to perform the tasks needed by the client.~~

~~Note: Persons who cannot serve as in-home aides are those under 18 years of age; those who are not qualified to perform the tasks needed by the client; and those who are relatives of the client, who for~~

~~this purpose are parent, spouse, child, or sibling who are unemployed or who do not have to give up employment in order to provide the service.~~

Agencies must have written policy regarding who may serve as in-home aides. The written policy shall include, at a minimum, the following requirements about who may serve as in-home aides:

- (1) persons 18 years of age or older or emancipated minors; and
- (2) persons who are qualified to perform the tasks needed by the client; and
- (3) whether or not the agency allows the hiring of relatives to serve as the client's in-home aide. If the agency allows a relative to be the client's in-home aide, the policy must also address the following requirements:
  - (a) that relatives of the client, for this purpose are either:
    - (i) a parent,
    - (ii) spouse,
    - (iii) child,
    - (iv) or sibling of the client including step relations of the client for any of those; and
  - (b) that the relative must have given up employment or the opportunity for employment in order to perform the tasks needed by the client; and
- (4) any other hiring guidelines established by the agency.

*Statutory Authority G.S. 143B-181.1(c); 143B-181.9A.*

**SUBCHAPTER 22R - HOME AND  
COMMUNITY CARE BLOCK GRANT  
FOR OLDER ADULTS**

**SECTION .0200 - BASIS FOR GRANTING  
BLOCK GRANT FUNDS TO COUNTIES**

**.0201 DEFINITIONS**

(a) "County Block Grant Advisory Committee" means a committee, appointed annually by the Board of County Commissioners, that represents a broad range of aging interest in the county. The committee serves to build local consensus for the County Funding Plan and to function as a resource for the County Lead Agency for Planning and Coordination by obtaining input from service provider interests, and older consumers and their families. A representative of the Area Agency on Aging shall be appointed to the committee when the Area Agency on Aging is not designated as the

County Lead Agency for Planning and Coordination, as specified in 10 NCAC 22R .0201(c).

(b) "County Funding Plan" means the format developed by the Division of Aging in which counties identify the County Lead Agency for Planning and Coordination, service providers, services, and budgetary data for the provision of Home and Community Care Block Grant for Older Adults services in the county during the State Fiscal Year.

(c) "County Lead Agency for Planning and Coordination" means a public or private non-private agency or office which is designated annually by the Board of County Commissioners for the purpose of developing the County Funding Plan for the provision of services through the Block Grant. County Funding Plan development responsibilities include directing the work of the County Block Grant Advisory Committee, facilitating a public hearing for the County Funding Plan prior to approval by submission to the Chairman of the Board of Commissioners, and ensuring that the approved County Funding Plan meets all requirements as specified by the Division of Aging prior to submission for approval to the Area Agency on Aging.

Statutory Authority G.S. 143B-181.1(a)(11); 143B-181.1(c).

## .0202 COUNTY FUNDING PLANS

(a) The County Lead Agency for Planning and Coordination shall provide the County Budget Officer with a preliminary County Funding Plan which, at a minimum, specifies Home and Community Care Block Grant for Older Adults services, funding levels, and required local matching amounts by April 30 of each year.

(b) Area Agencies on Aging shall grant Home and Community Care Block Grant for Older Adults funding to Counties on the basis of a the recommended County Funding Plan that has been approved submitted by the Chairman of the Board of Commissioners and submitted to the Area Agency on Aging. Area Agencies on Aging shall receive the County Funding Plan and, upon approval, shall grant funding to the County on the basis of the Plan.

(c) The approved County Funding Plan, as approved by the Area Agency on Aging, shall be wholly a part of the Grant Agreement between the County and the Area Agency on Aging for the provision of aging services through the Home and Community Care Block Grant for Older Adults.

Statutory Authority G.S. 143B-181.1(a)(11); 143B-181.1(c).

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*Notice is hereby given in accordance with G.S. 150B-21.2 that the DHR - Division of Medical Assistance intends to amend rules cited as 10 NCAC 26H .0102 and .0104.*

*The proposed effective date of this action is May 1, 1995.*

*The public hearing will be conducted at 1:30 p.m. on March 17, 1995 at the Division of Medical Assistance, 1985 Umstead Drive, Room 132, Raleigh, N.C.*

*Reason for Proposed Action: To end cost settlement for OSHA Bloodborne costs and to begin payment of non-ambulance medically necessary transportation cost.*

*Comment Procedures: Written comments concerning this amendment must be submitted by March 17, 1995 to: Division of Medical Assistance, 1985 Umstead Drive, Raleigh, N.C., 27603, ATTN: Portia Rochelle, 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 26H - REIMBURSEMENT PLANS

#### SECTION .0100 - REIMBURSEMENT FOR NURSING FACILITY SERVICES

##### .0102 RATE SETTING METHODS

(a) A rate for skilled nursing care and a rate for intermediate nursing care is determined annually for each facility to be effective for dates of service for a twelve month period beginning each October 1. Each patient will be classified in one of the two categories depending on the services needed. Rates are derived from either filed, desk, or field audited cost reports for a base year period to be selected by the state. Rates developed from filed cost reports may be retroactively adjusted if there is found to exist more than a two percent differ-

ence between the filed direct per diem cost and either the desk audited or field audited direct per diem cost for the same reporting period. Cost reports are filed and audited under provisions set forth in 10 NCAC 26H .0104. The minimum requirements of the 1987 OBRA are met by these provisions.

(b) Each prospective rate consists of two components: a direct patient care rate and an indirect rate computed and applied as follows:

- (1) The direct rate is based on the Medicaid cost per day incurred in the following cost centers:

- (A) Nursing,
- (B) Dietary or Food Service,
- (C) Laundry and Linen,
- (D) Housekeeping,
- (E) Patient Activities,
- (F) Social Services,
- (G) Ancillary Services (includes several cost centers).

- (2) To compute each facility's direct rate for skilled care and intermediate care, the direct base year cost per day is increased by adjustment factors for price changes as set forth in Rule .0102(c).

- (A) A facility's direct rates cannot exceed the maximum rates set for skilled nursing or intermediate nursing care. However, the Division of Medical Assistance may negotiate direct rates that exceed the maximum rate for ventilator dependent patients. Payment of such special direct rates shall be made only after specific prior approval of the Division of Medical Assistance.

- (B) A standard per diem amount will be added to each facility's direct rate, including facilities that are limited to the maximum rates, for the projected statewide average per diem costs of the salaries paid to replacement nurse aides for those aides in training and testing status and other costs deemed by HCFA to be facility costs related to nurse aide training and testing. The standard amount is based on the product of multiplying the average hourly wage, benefits, and payroll taxes of replacement nurse aides by the number of statewide hours required for training and testing of all aides divided by the projected total

patient days.

- (3) If a facility did not report any costs for either skilled or intermediate nursing care in the base year, the state average direct rate will be assigned as determined in Rule .0102(d) of this Section for the new type of care.

- (4) The direct maximum rates are developed by ranking base-year per diem costs from the lowest to the highest in two separate arrays, one for skilled care and one for intermediate care. Each array is weighted by total patient days. The per diem cost at the 80th percentile in each array is selected as the base for the maximum rate. The base cost in each array is adjusted for price changes as set forth in Rule .0102(c) of this Section to determine the maximum statewide direct rates for skilled care and intermediate care.

- (5) Effective October 1, 1990, the direct rates will be adjusted as follows:

- (A) A standard per diem amount will be added to each facility's skilled and intermediate rate to account for the combined expected average additional costs for the continuing education of nurses' aides; the residents' assessments, plans of care, and charting of nursing hours for each patient; personal laundry and hygiene items; and other non-nursing staffing requirements. The standard amount is equal to the sum of:

- (i) the state average annual salary, benefits, and payroll taxes for one registered nurse position multiplied by the number of facilities in the state and divided by the state total of patient days;
- (ii) the total costs of personal laundry and hygiene items divided by the total patient days as determined from the FY 1989 cost reports of a sample of nursing facilities multiplied by the annual adjustment factor described in Rule .0102(c)(4)(B) of this Section; and
- (iii) the state average additional pharmacy consultant costs divided by 365 days and then divided by the average number of beds per facility.



- (B) A standard amount will be added to the intermediate rate of facilities that were certified only for intermediate care prior to October 1, 1990. This amount will be added to account for the additional cost of providing eight hours of RN coverage and 24 hours of licensed nursing coverage. The standard amount is equal to the state average hourly wage, benefits and payroll taxes for a registered nurse multiplied by the 16 additional hours of required licensed nursing staff divided by the state average number of beds per nursing facility. A lower amount will be added to a facility only if it can be determined that the facility's intermediate rate prior to October 1, 1990 already includes licensed nursing coverage above eight hours per day. The add-on amount in such cases would be equal to the exact additional amount required to meet the licensed nursing requirements.
- (C) The standard amounts in Subparagraphs (2)(B), (5)(A), and (5)(B) of this Rule, will be retained in the rates of subsequent years until the year that the rates are derived from the actual cost incurred in the cost reporting year ending in 1991 which will reflect each facility's actual cost of complying with all OBRA '87 requirements.
- (6) Upon completion of any cost reporting year any funds received by a facility from the direct patient care rates which have not been spent on direct patient care costs as defined herein are repaid to the State. This will be applied by comparing a facility's total Medicaid direct costs with the combined direct rate payments received for skilled and intermediate care. Costs in excess of a facility's total prospective rate payments are not reimbursable.
- (7) The indirect rate is intended to cover the following costs of an efficiently and economically operated facility:
- (A) Administrative and General,
  - (B) Operation of Plant and Maintenance,
  - (C) Property Ownership and Use,
  - (D) Mortgage Interest.
- (8) Effective for dates of service beginning October 1, 1984 and ending September 30, 1985 the indirect rates are fourteen dollars and sixty cents (\$14.60) for each SNF day of care and thirteen dollars and fifty cents (\$13.50) for each ICF day of care. These rates represent the first step in a two step transition process from the different SNF and ICF indirect rates paid in 1983-84 and the nearly equal indirect rates that will be paid in subsequent years under this plan as provided in this Rule.
- (9) Effective for dates of service beginning October 1, 1985 and annually thereafter per diem indirect rates will be computed as follows:
- (A) The average indirect payment to all facilities in the fiscal year ending September 30, 1983 [which is thirteen dollars and two cents (\$13.02)] will be the base rate.
  - (B) The base rate will be adjusted for estimated price level changes from fiscal year 1983 through the year in which the rates will apply in accordance with the procedure set forth in Rule .0102(c) of this Section to establish the ICF per diem indirect rate.
  - (C) The ICF per diem indirect rate shall be multiplied by a factor of 1.02 to establish the SNF per diem indirect rate. This adjustment is made to recognize the additional administrative expense incurred in the provision of SNF patient care.
- (10) Effective for dates of service beginning October 1, 1989, a standard per diem amount will be added to provide for the additional administrative costs of preparing for and complying with all nursing home reform requirements. The standard amount is based on the average annual salary, benefits and payroll taxes of one clerical position multiplied by the number of facilities in the state divided by the state total of patient days.
- (11) Effective for dates of service beginning October 1, 1990, the indirect rate will be standard for skilled and intermediate care for all facilities and will be determined by applying the 1990-91 indirect cost adjustment factors in Rule .0102(c) of this Section to the indirect

rate paid for SNF during the year beginning October 1, 1989. Thereafter the indirect rate will be adjusted annually by the indirect cost adjustment factors.

(c) Adjustment factors for changes in the price level. The rate bases established in Rule .0102(b), are adjusted annually to reflect increases or decreases in prices that are expected to occur from the base year to the year in which the rate applies. The price level adjustment factors are computed using aggregate base year costs in the following manner:

- (1) Costs will be separated into direct and indirect cost categories.
- (2) Costs in each category will be accumulated into the following groups:
  - (A) labor,
  - (B) other,
  - (C) fixed.
- (3) The relative weight of each cost group is calculated to the second decimal point by dividing the total costs of each group (labor, other, and fixed) by the total costs for each category (direct and indirect).
- (4) Price adjustment factors for each cost group will be established as follows:
  - (A) Labor. The expected annual percentage change in direct labor costs as determined from a survey of nursing facilities to determine the average hourly wages for RNs, LPNs, and aides paid in the current year and projected for the rate year. The percentage change for indirect labor costs is based on the projected average hourly wage of N.C. service workers.
  - (B) Other. The expected annual change in the implicit price deflator for the Gross National Product as provided by the North Carolina Office of State Budget and Management.
  - (C) Fixed. No adjustment will be made for this category, thus making the factor zero.
  - (D) The weights computed in (c)(3) of this Rule shall be multiplied times the percentage change computed in (c)(4)(A),(B) and (C) of this Rule. These products shall be added separately for the direct and indirect categories.
  - (E) The sum computed for each category

in (c)(4)(D) of this Rule shall be the price level adjustment factor for that category of rates (direct or indirect) for the coming fiscal year.

(F) However, for the rate period beginning October 1, 1991 through September 30, 1992 the forecast of the N.C. Service Wages percent applied to the 1991-92 Inpatient Hospital and Intermediate Care Facility for the Mentally Retarded rates is applied to the Labor component weight computed in (c)(4)(A) of this Rule.

(G) For the rate period beginning October 1, 1991 through September 30, 1992 the direct adjustment factor determined under (c)(4) of this Rule will be applied to the direct rate adjustments determined under (b)(2), (b)(5)(A) and (b)(5)(B) of this Rule.

(d) The skilled and intermediate direct patient care rates for new facilities are established at the lower of the projected costs in the provider's Certificate of Need application inflated to the current rate period or the average of industry base year costs and adjusted for price changes as set forth in Rule .0102(c) of this Section. A new facility receives the indirect rate in effect at the time the facility is enrolled in the Medicaid program. In the event of a change of ownership, the new owner receives the same rate of payment assigned to the previous owner.

(e) Each out-of-state provider is reimbursed at the lower of the appropriate North Carolina maximum rate or the provider's payment rate as established by the State in which the provider is located. For patients with special needs who must be placed in specialized out-of-state facilities, a payment rate that exceeds the North Carolina maximum rate may be negotiated.

(f) Specialized Service Rates:

(1) Head Injury Intensive Rehabilitation Services.

(A) A single all-inclusive prospective per diem rate combining both the direct and indirect cost components may be negotiated for nursing facilities that specialize in providing intensive rehabilitation services for head-injured patients. The rate may exceed the maximum rate applicable to other Nursing Facility services. A facility must specialize to the extent of staffing at least 50 percent of its

Nursing Facility licensed beds for intensive head-injury rehabilitation services. The facility must also be accredited by the Commission for the Accreditation of Rehabilitation Facilities (CARF).

- (B) A facility's initial rate is negotiated based on budget projections of revenues, allowable costs, patient days, staffing and wages. A complete description of the facility's medical program must also be provided. Rates in subsequent years are determined by applying the average annual skilled nursing care adjustment factors to the rate in the previous year, unless either the provider or the State requests a renegotiation of the rate within 60 days of the rate notice.
  - (C) Cost reports for this service must be filed in accordance with the rules in 10 NCAC 26H .0104, but there will be no cost settlements for any differences between cost and payments. Since it is appropriate to include all financial considerations in the negotiation of a rate, a provider will not be eligible to receive separate payments for return on equity as defined in 10 NCAC 26H .0105.
- (2) Ventilator Services.
- (A) Ventilator services approved for nursing facilities providing intensive services for ventilator dependent patients shall be reimbursed at higher direct rates as described in Subparagraph (b)(2)(A) of this Rule. Ventilator services shall be paid by combining the enhanced direct rate with the nursing facility indirect rate determined under Subparagraph (b)(11) of this Rule.
  - (B) A facility's initial direct rate shall be negotiated based on budget projections of revenues, allowable costs, patient days, staffing and wages. Rates in subsequent years shall be determined by applying the nursing facility direct adjustment factor to the previous 12 month cost report direct cost.
  - (C) Cost reports and settlements for this service shall be in accordance with 10 NCAC 26H .0104 and return on equity is allowed as defined in 10

NCAC 26H .0105.

- (D) A single all-inclusive prospective per diem rate combining both the direct and indirect cost components may be negotiated for nursing facilities that specialize in providing intensive services for ventilator-dependent patients. The rate may exceed the maximum rate applicable to other Nursing Facility services. For ventilator services, the only facilities that shall be eligible for a combined single rate are small freestanding facilities with less than 21 Nursing Facility Beds and that serve only patients requiring ventilator services. Ventilator services provided in larger facilities shall be reimbursed at higher direct rates as described in Subparagraph (b)(2)(A) of this Rule.

~~(g) In addition to the prospective direct per diem rates developed under this Section, effective July 1, 1992, an interim payment add on will be applied to the total rate to cover the estimated cost required under Title 29, Part 1910, Subpart Z, Section 1910.1030 of the Code of Federal Regulations. The interim rate will be subject to final settlement reconciliation with reasonable cost to meet the requirements of Part 1910. The final settlement reconciliation will be effectuated during the annual cost report settlement process. An interim rate add on to the prospective rate will be allowed, subject to final settlement reconciliation, in subsequent rate periods until adequate cost history is available to include the cost of meeting the requirements of Part 1910 in the prospective rate. Effective October 1, 1994 the bloodborne pathogen cost required under Title 29, Part 1910, Subpart 2, Section 1910.0130 of the Code of Federal Regulations shall be included in the nursing facility's direct cost reimbursement. The initial per diem amount shall be set at the lower of the actual or eightieth percentile of bloodborne pathogen costs incurred in fiscal year 1993.~~

(h) Religious Dietary Considerations.

- (1) A standard amount may be added to a nursing facility's skilled and intermediate care rates, that may exceed the maximum rates determined under Paragraph (b) of this Rule, for special dietary need for religious reasons.
- (2) Facilities must apply to receive this special payment consideration. In applying, facilities must document the reasons for special dietary consideration



for religious reasons and must submit documentation for the increased dietary costs for religious reasons. Facilities must apply for this special benefit each time rates are determined from a new data base. Fifty or more percent of the patients in total licensed beds must require religious dietary consideration in order for the facility to qualify for this special dietary rate add-on.

- (3) The special dietary add-on rate may not exceed more than a 30 percent increase in the average skilled and intermediate care dietary rates calculated for the 80th percentile of facilities determined under Subparagraph (b)(4) of this Rule and adjusted for annual inflation factors. This maximum add-on will be adjusted by the direct rate inflation factor each year until a new data base is used to determine rates.
- (4) This special dietary add-on rate will become part of the facility's direct rates to be reconciled in the annual cost report settlement.

(i) Effective October 1, 1994 nursing facilities are responsible for providing medically necessary transportation for residents, unless ambulance transportation is needed. Reimbursement shall be included in the nursing facility's direct cost. The initial amount shall be based on a per diem fee derived from estimated industry cost for transportation and associated salaries.

(j) This reimbursement limitation shall become effective in accordance with the provisions of G.S. 108A-55(c).

*Authority G.S. 108A-25(b); 108A-54; 108A-55; 29 C.F.R. 1910, Subpart Z; 42 C.F.R. 447, Subpart C.*

#### **.0104 COST REPORTING: AUDITING AND SETTLEMENTS**

(a) Each facility that receives payments from the North Carolina Medicaid Program must prepare and submit a report of its costs and other financial information, such as the working trial balance, related to reimbursement annually. The report must include costs from the fiscal period beginning on October 1 and ending on September 30 and must be submitted to the state on or before the December 31 that immediately follows the September 30 year end. A new provider must submit a report for the period beginning with the date of certification and ending on September 30.

Hospital based nursing facilities with a fiscal year ending other than September 30 and State operated facilities with a June fiscal year ending must file their cost reports within 90 days after their fiscal year ends. Facilities that fail to file their cost reports by the due date are subject to payment suspension until the reports are filed. The Division of Medical Assistance may extend the deadline 30 days for filing the report if, in its view, good cause exists for the delay.

(b) Cost report format. The cost report must be submitted on forms and in a format and medium approved by the Division of Medical Assistance. The account structure for the report is based on the chart of accounts published by the American Healthcare Association in 1979 but amended or modified to the extent necessary to meet the special reimbursement requirements of this plan. The Division of Medical Assistance will make one copy of the cost report format available to each facility (combination facilities receive only one) on or before July 1 of the reporting year for which the report is to be filed.

(c) Cost finding and allocation. Costs must be reported in the cost report in accordance with the following rules and in the order of priority stated.

- (1) Costs must be reported in accordance with the specific provisions of this plan as set forth in this Rule.
- (2) Costs must be reported in conformance with the Medicare Provider Reimbursement Manual, HCFA 15.
- (3) Costs must be reported in conformance with Generally Accepted Accounting Principles.

(d) The specific cost reporting guidelines related to this plan are set forth in the following Paragraphs. The state will publish guidelines, consistent with the provisions of this plan, concerning the proper accounting treatment for items described in this Rule as related operating expenses. The guidelines may be modified prior to the beginning of each cost reporting period. In no case, however, shall any modifications be applied retroactively. A provider should request clarification in writing from the state if there is uncertainty about the proper cost center classification of any particular expense item.

- (1) Nursing Cost Center includes the cost of nursing staff, medical supplies, and related operating expenses needed to provide nursing care to patients, including medical records (including forms), utilization review, the Medical Director and the Pharmacy Consultant.

The amount of nursing time provided to each patient must be recorded in order to allocate nursing cost between skilled and intermediate nursing care.

- (2) Dietary Cost Center includes the cost of staff, raw food, and supplies needed to prepare and deliver food to patients.
- (3) Laundry and Linen Cost Center includes the cost of staff, bed linens (replacement mattresses and related operating expenses needed to launder facility-provided items).
- (4) Housekeeping Cost Center includes the cost of staff and supplies needed to keep the facility clean.
- (5) Patient Activities Cost Center includes the cost of staff, supplies, and related operating expenses needed to provide appropriate diversionary activities for patients.
- (6) Social Services includes the cost of social workers and related operating expenses needed to provide necessary social services to patients.
- (7) Ancillary Cost Center includes the cost of all therapy services covered by the Medicaid program and billable medical supplies. Providers must bill Medicare Part B for those ancillary services covered under the Medicare Part B program. Ancillary cost centers include: Radiology, Laboratory, Physical Therapy, Occupational Therapy, Speech Therapy, Oxygen Therapy, Intravenous Fluids, Billable Medical Supplies, Parenteral/Enteral Therapy and life sustaining equipment, such as oxygen concentrators, respirators, and ventilators and other specifically approved equipment.
  - (A) Effective October 1, 1994, a separate ancillary cost center shall be established to include costs associated with medically related transportation for facility residents. Medically related transportation costs include the costs of vehicles leased or owned by the facility, payroll costs associated with transporting residents and payments to third parties for providing these services.
- (8) Administrative and General Cost Center includes all costs needed to administer the facility including the staff costs for the administrator, assistants, billing and

secretarial personnel, personnel director and pastoral expenses. It includes the costs of copy machines, dues and subscriptions, transportation, income taxes, legal and accounting fees, start-up, and a variety of other administrative costs as set forth in the Chart of Accounts. Interest expense other than that stemming from mortgages or loans to acquire physical plant items shall be reported here.

(9) Property Ownership and Use:

- (A) This cost center includes all allowable costs related to the acquisition and/or use of the physical assets including building, fixed equipment and movable equipment, that are required to deliver patient care, except the special equipment, as specified in .0104(d)(7) of this Rule that may be charged to the life-sustaining equipment cost center. Specifically it includes the following items:
  - (i) all equipment expense regardless of equipment nature,
  - (ii) lease expense for all physical assets,
  - (iii) depreciation of assets utilizing the straight line method,
  - (iv) interest expense of asset related liabilities, (e.g., mortgage expense),
  - (v) property taxes.
- (B) For the purposes of computing allowable lease expense and for balance sheet presentation for Return on Equity computations (see Rule .0105), leases shall not be capitalized.
- (C) In establishing the allowable cost for depreciation and for interest on capital indebtedness, with respect to an asset which has undergone a change of ownership, the valuation of the asset shall be the lesser of allowable acquisition cost less accumulated depreciation to the first owner of record on or after July 18, 1984 or the acquisition cost to the new owner. Depreciation recapture will not be performed at sale. The method for establishing the allowable related capital indebtedness shall be as follows:
  - (i) The allowable asset value shall be divided by the actual acquisition

- cost.
- (ii) The product computed in step 1 shall be multiplied times the value of any related capital indebtedness.
  - (iii) The result shall be the liability amount upon which interest may be recorded at the rate set forth in the debt instrument or such lower rate as the state may prove is reasonable. The allowable asset and liability values established through the process in this Rule shall be those used in balance sheet presentations for return on equity computation (see Rule .0105). These procedures are established to implement the provisions of PL 98-369 Section 2314.
- (10) Operation of Plant and Maintenance Cost Center includes all costs necessary to operate or maintain the functionality and appearance of the plant. These include: maintenance staff, utilities, repairs and maintenance to all equipment.
- (11) Equipment Expense. Equipment is defined as an item with a useful life of more than two years and a value greater than five hundred dollars (\$500.00). Equipment ownership and use costs shall be reported in the Property Ownership and Use Cost Center. Equipment maintenance and repair costs shall be reported in the Operation of Plant and Maintenance Cost Center. Equipment shall not be reported elsewhere.
- (12) Training Expense. Training expense must be identified in the appropriate benefiting cost center. The costs of training nurse aides must be identified separately and may include the cost of purchasing programs and equipment that have been approved by the State for training or testing.
- (13) Home Office Costs. Home office costs are generally charged to the Administrative and General Cost Centers. In some cases, however, certain personnel costs which are direct patient care oriented may be allocated to "direct" patient care cost centers if time records are maintained to document the performance of direct patient care services. No Home office overhead may be so allocated. The basis of this allocation among facilities participating in the North Carolina Medicaid program may be:
- (A) specific time records of work performed at each facility, or
  - (B) patient days in each facility to which the costs apply relative to the total patient days in all the facilities to which the costs apply.
- (14) Management Fees. Management fees are charged to the Administrative and General Cost Center. In some cases, however, a portion of a management fee may be allocated to a direct patient care cost center if time records are maintained to document the performance of direct patient care services. The amount so allocated may be equal only to the salary and fringe benefits of persons who are performing direct patient care services while employed by the management company. Adequate records to support these costs must be made available to staff of the Division of Medical Assistance. The basis of this allocation among facilities participating in the North Carolina Medicaid program may be:
- (A) specific time records of work performed at each facility, or
  - (B) patient days in each facility to which the costs apply relative to the total patient days in all the facilities to which the costs apply.
- (15) Related Organization Costs. It is the nursing facility's responsibility to demonstrate by convincing evidence to the satisfaction of the Division of Medical Assistance that the costs are reasonable. Reasonable costs of related organizations are to be identified in accordance with direct and indirect cost center categories as follows:
- (A) Direct Cost:
    - (i) Compensation of direct care staff such as nursing personnel (aides, orderlies, nurses), food service workers, housekeeping staff and other personnel who would normally be accounted for in a direct cost center.
    - (ii) Supplies and services that would



normally be accounted for in a direct cost center.

- (iii) Capital, rental, maintenance, supplies/repairs and utility costs (gas, water, fuel, electricity) for facilities that are not typically a part of a nursing facility. These facilities might include such items as warehouses, vehicles for delivery and offices which are totally dedicated or clearly exceed the number, size, or complexity required for a normal nursing facility, its home office, or management company.
- (iv) Compensation of all administrative staff who perform no duties which are related to the nursing facility or its home office and who are neither officers nor owners of the nursing facilities or its home office.

(B) Indirect Cost:

- (i) Capital, rental, maintenance, supplies/repairs, and utility costs which are normally or frequently a part of a nursing facility. This would include, for example, kitchen and laundry facilities.
- (ii) Home office costs except for salary and fringe benefits of Personnel, Accounting and Data Processing staff which are allocated by acceptable methods are direct costs when the work performed is specific to the related organization that provides a direct care service or product to the provider.
- (iii) Compensation of all administrative staff who perform any duties for the nursing facility or its home office.
- (iv) All compensation of all officers and owners of the nursing facility or its home office, or parent corporation.

The related organization must file a Medicaid Cost Statement (DMA-4083) identifying their costs, adjustments to costs, allocation of costs, equity capital, adjustments to equity capital, and allocations of equity capital along with the nursing facilities cost report. A home office, or parent company, will be recognized as a related organization. Auditable records to support these costs

must be made available to staff of the Division of Medical Assistance and its designated contract auditors. Undocumented costs will be disallowed. It is the nursing facility's responsibility to demonstrate by convincing evidence to the satisfaction of the Division of Medical Assistance that the criteria in the Provider Reimbursement Manual, Section 1010, has been met in order to be recognized as an exception to the related organization principle. When a related organization is deemed an exception; reasonable charges by the related organization to the nursing facility are recognized as allowable costs; receivable/payables from/to the nursing facility and related organization deemed an exception are not adjusted from the nursing facility's balance sheet in computing equity capital.

(e) Auditing and Settlement. All filed cost reports must be desk audited and interim reimbursement settlements made in accordance with the provision of this plan. This settlement is issued within 180 days of the date the cost report was filed or within 180 days of December 31 of the fiscal year to which the report applies, whichever is later. The state may elect to perform field audits on any filed cost reports within three years of the date of filing and issue a final settlement on a time schedule that conforms to Federal law and regulation. If the state decides not to field audit a facility a final reimbursement notice may be issued based on the desk audited settlement. The state may reopen and field audit any cost report after the final settlement notice to comply with Federal law and regulation or to enforce laws and regulations prohibiting abuse of the Medicaid Program and particularly the provisions of this reimbursement plan.

(f) This reimbursement limitation shall become effective in accordance with the provisions of G.S. 108A-55(c).

Authority G.S. 108A-25(b); 108A-54; 108A-55; 42 C.F.R. 447, Subpart C.

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

### CHAPTER 2 - ENVIRONMENTAL MANAGEMENT COMMISSION

The Environmental Management Commission is extending the public comment period from February 20, 1995 to March 20, 1995 for the proposed rule modifications in Subchapter 2B .0100, 2B .0200 and 2H .0500, governing issuance

of 401 Water Quality Certifications and water quality standards for wetlands. Because of the significant public interest in the proposed rules, the record will remain open until March 20th to allow additional written comments received after February 20th to become part of the official record. The proposed rule changes were published in the *North Carolina Register*, Volume 9, Issue 17, pages 1348-1367 (9:17 NCR 1348-1367). The proposed rules affected are cited as 15A NCAC 2B .0101, .0103, .0109, .0201, .0202, .0220, and 15A NCAC 2H .0501, .0502, .0503, .0504, .0506, and .0507. The Division will accept written comments received through March 20, 1995. For information on the proposed rule changes or the comment period extension, contact Ron Ferrell, North Carolina Division of Environmental Management, P.O. Box 29535, Raleigh, NC 27606-0535, (919-733-0026).

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The Division of Environmental Management is extending the public comment period from January 16, 1995, until March 1, 1995, for the proposed rules defining potential emissions for various types of sources. These rules were published on November 15, 1994 in the *North Carolina Register*, Volume 9, Issue 16, pages 1261-1283 (9:16 NCR 1261-1283). The proposed rules are cited as 15A NCAC 2Q .0801-.0807. All persons interested in these matters are invited to submit written comments. The Division will accept written comments through Wednesday, March 1st for inclusion in the hearing record. Comments should be sent to and additional information concerning the proposals may be obtained by contacting:

Mr. Thomas Allen  
Division of Environmental Management  
P.O. Box 29535  
Raleigh, North Carolina 27626-0535  
(919) 733-1489 (Phone)  
(919) 733-1812 (Fax)

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*Notice is hereby given in accordance with G.S. 150B-21.2 that the N.C. Wildlife Resources Commission intends to amend rules cited as 15A NCAC 10B .0106 and 10F .0354.*

*The proposed effective date of this action is July*

*1, 1995.*

*The public hearing will be conducted at 10:00 a.m. on March 6, 1995 at the Archdale Building Room 332, 512 N. Salisbury Street, Raleigh, NC 27604.*

### ***Reason for Proposed Action:***

**15A NCAC 10B .0106** - *To establish requirements and procedures for wildlife damage control agents To establish requirements and procedures for mounting by taxidermists of wildlife and birds accidentally killed by automobile.*

**15A NCAC 10F .0354** - *To regulate boat speed in congested area.*

**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 February 15, 1995 through March 17, 1995. Such written comments must be delivered or mailed to the N.C. Wildlife Resources Commission, 512 N. Salisbury Street, Raleigh, N.C. 27604-1188.*

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

### **SUBCHAPTER 10B - HUNTING AND TRAPPING**

#### **SECTION .0100 - GENERAL REGULATIONS**

#### **.0106 WILDLIFE TAKEN FOR DEPREDACTIONS OR ACCIDENTALLY**

##### **(a) Depredation Permit:**

- (1) **Endangered or Threatened Species.** No permit shall be issued to take any endangered or threatened species of wildlife listed under 15A NCAC 10I b reason of depredations to property. An individual may take an endangered or threatened species in immediate defense of his own life or of the lives of others without a permit. Any endangered or threatened species which may constitute a demonstrable but non-immediate threat to human safety shall be reported to a federal or state wildlife enforcement officer, who, upon verification of the report, may take or remove the

specimen as provided by 15A NCAC 101 .0002.

- (2) Other Wildlife Species. Except as provided in Subparagraph (1) of this Paragraph, the Executive Director or an agent of the Wildlife Resources Commission may, upon application of a landholder and after such investigation of the circumstances as he may require, issue a permit to such landholder to take any species of wildlife which is or has been damaging or destroying his property provided there is evidence of substantial property damage. No permit may be issued for the taking of any migratory birds and other federally protected animals unless a corresponding valid U.S. Fish and Wildlife Service depredation permit has been issued. The permit shall name the species allowed to be taken and, in the discretion of the Executive Director or an agent, may contain limitations as to age, sex or any other condition within the species so named. The permit may be used only by the landholder or another person named on the permit, ~~except that, upon written request of the landholder and when it is conclusively determined on the basis of information submitted by him that he is incapable of accomplishing the necessary control without help, the names of additional persons may be entered upon the permit by the Executive Director as authorized users.~~
- (3) Wildlife Damage Control Agents: Upon satisfactory completion of a Wildlife Resources Commission approved training and satisfactory demonstration of a knowledge of wildlife laws and safe, humane wildlife handling techniques, an individual may apply to the Wildlife Resources Commission (Commission) to become a Wildlife Damage Control Agent (WDCA). Those persons approved as agents by the Commission may then issue depredation permits to landholders and list themselves as a second party to provide the control service. WDCA's may not issue depredation permits for big game animals, bats, or species listed as endangered, threatened or special concern under Rules 101 .0003, .0004 and

.0005 of this Chapter. WDCA's must report to the Wildlife Resources Commission the number and disposition of animals taken, by county, annually. Records must be available for inspection by a Wildlife Enforcement officer at any time during normal business hours. WDCA status may be revoked at any time by the Executive Director when there is evidence of violations of wildlife laws, failure to report, or inhumane treatment of animals by the WDCA. WDCA's may not charge for the permit, but may charge for their investigations and control services. In order to maintain a knowledge of current laws, rules, and techniques, WDCA's must renew their agent status every three years by showing proof on having attended at least one Wildlife Commission approved training course provided for the purpose of reviewing and updating information on wildlife laws and safe, humane wildlife handling techniques within the previous 12 months.

(b) Term of Permit. Each depredation permit issued by the Executive Director or an agent shall have entered thereon a date or time of expiration after which date or time the same shall become invalid for any purpose, except as evidence of lawful possession of any wildlife that may be retained thereunder.

(c) Manner of Taking:

- (1) Taking Without a Permit. Wildlife taken without a permit while committing depredations to property may, during the open season on the species, be taken by the landholder by any lawful method. During the closed season such depredating wildlife may be taken without a permit only by the use of firearms.
- (2) Taking With a Permit. Wildlife taken under a depredation permit may be taken only by the method or methods specifically authorized by the permit. ~~The only methods that may be authorized in taking game species, other than foxes, is by the use of firearms and live traps. The permit may authorize the taking of foxes, furbearing animals, and nongame animals or birds by the use of firearms or traps, including steel traps. When~~



trapping is authorized, in order to limit the taking to the intended purpose, the permit may specify a reasonable distance from the property sought to be protected, according to the particular circumstances, within which the traps must be set. The Executive Director or agent may also state in a permit authorizing trapping whether or not bait may be used and the type of bait, if any, that is authorized. In addition to any trapping restrictions that may be contained in the permit the method of trapping must be in accordance with the requirements and restrictions imposed by G.S. 113-291.6 and other local laws passed by the General Assembly. No depredation permit shall authorize the use of poisons or pesticides in taking wildlife except in accordance with the provisions of the North Carolina Pesticide Law of 1971, the Structural Pest Control Act of 1955, and Article 22A of Chapter 113 of the General Statutes of North Carolina. No depredation permit shall authorize the taking of wildlife by any method by any landholder upon the lands of another.

- (3) Intentional Wounding. It is unlawful for any landholder, with or without a depredation permit, intentionally to wound a wild animal in a manner so as not to cause its immediate death as suddenly and humanely as the circumstances permit.

(d) Disposition of Wildlife Taken:

- (1) Generally. Except as provided by the succeeding Subparagraphs of this Paragraph, any wildlife killed accidentally, or without a permit while committing depredations, or under a depredation permit, shall be buried or otherwise disposed of in a safe and sanitary manner on the property. ~~where the depredations took place. of the landholder in whose name the permit is issued or who kills such wildlife while committing depredations.~~ Wildlife killed under a depredation permit may be transported to an alternate disposal site if desired. Anyone in possession of carcasses of animals being transported under a depredation permit must have the depredation permit in their possession. Except as provided by the

succeeding Subparagraphs of (d)(2) through (6) of this Rule, all wildlife killed under a depredation permit must be buried or otherwise disposed of in a safe and sanitary manner.

- (2) Deer. ~~Any landholder who kills a deer under a currently valid depredation permit for deer must report such kill. The edible portions of up to five deer may be retained by the landholder for consumption but must not be transported from the property where the depredations took place without a valid depredation permit. An enforcement officer, within 24 hours and before the deer is butchered for consumption to a wildlife enforcement officer, who upon determining that the kill was lawfully made within the scope of the permit and if so requested by the permittee, shall provide the permittee a written authorization for his own private use or the use by a charitable organization of the edible portions of the carcass. The nonedible portions of the carcass, including head, hide, feet, and antlers, shall be disposed of as specified in Subparagraph (1) of this Paragraph or turned over to a wildlife enforcement officer for disposition. When a deer is accidentally killed on a road or highway by reason of collision with a motor vehicle, the law enforcement officer who investigates the accident shall, upon request of the operator of the vehicle, provide such operator a written permit authorizing him to possess and transport the carcass of such deer for his personal and lawful use, including delivery of such carcass to a second person for his private use or the use by a charitable organization upon endorsement of such permit to such person or organization by name and when no money or other consideration of value is received for such delivery or endorsement.~~

- (3) Fox. Any fox killed accidentally by a dog or dogs, motor vehicle, or otherwise shall be disposed of as provided by Subparagraph (1) of this Paragraph. Any fox killed under a depredation permit may be disposed of in the same manner or, upon compliance with the fur tagging



requirements of 15A NCAC 10B .0400, the carcass or pelt thereof may be sold to a licensed fur dealer. Any live fox taken under a depredation permit may be sold to a licensed controlled hunting preserve for fox in accordance with G.S. 113-273(g).

- (4) Furbearing Animals. The carcass or pelt of any furbearing animal killed during the open season for taking such furbearing animal either accidentally or for control of depredations to property, whether with or without a permit, may be sold to a licensed fur dealer provided that the person offering such carcass or pelt for sale has a valid hunting or trapping license, provided further that, bobcats and otters may only be sold upon compliance with any required fur tagging requirement set forth in 15A NCAC 10B .0400.
- (5) Animals Taken Alive. Wild animals in the order Carnivora and beaver shall be humanely euthanized either at the site of capture or at an appropriate facility designed to humanely handle the euthanasia or released on the property where captured. Animals transported or held for euthanasia must be euthanized within 12 hours of capture. Anyone in possession of live animals being transported for relocation or euthanasia under a depredation permit must have the depredation permit in their possession.
- ~~(5) Nongame Animals and Birds. Nongame animals or birds killed accidentally or for control of depredations may be disposed of as provided by Subparagraph (1) of this Paragraph or in any other safe and sanitary manner.~~
- (6) A person killing a wild bird or wild animal accidentally with a motor vehicle or finding a dead wild bird or wild animal which was killed accidentally may possess that wild bird or wild animal for a period not to exceed 10 days for the purpose of delivering it to a licensed taxidermist for preparation. The licensed taxidermist may accept the wild bird or wild animal after satisfying himself that the animal was killed accidentally. The taxidermist shall certify and record the

circumstances of acquisition as determined by his injury. Licensed taxidermists shall keep accurate records of each wildlife specimen received pursuant to the Rule as required by Rule 10H .1003 of this Chapter. Upon delivery of the finished taxidermy product to the person presenting the animal, the taxidermist shall give the person a receipt in the form required by the Wildlife Resources Commission indicating the species, date of delivery, circumstances of initial acquisition and any other information that may be required on the form. A copy of this receipt shall be filed with the Wildlife Resources Commission within 10 days of the date of delivery of the mounted specimen. The receipt shall serve as the non-transferable permit for continued possession of the mounted specimen and shall be retained by the person for as long as the mounted specimen is kept. Mounted specimens possessed pursuant to this Rule may not be sold and, if such specimens are transferred by gift or inheritance, the new owner must apply for a new permit and must submit the written receipt originally obtained from the taxidermist to document the legality of possession. This provision does not allow possession of accidentally killed raptors; migratory birds; species listed as endangered, threatened, or of special concern under Rules 10I .0003, .0004, and .0005 of this Chapter; bear or wild turkey.

(e) Reporting Requirements. Any landholder who kills a deer, bear or wild turkey under a currently valid depredation permit shall report such kill on the form provided with the permit and mail the form immediately upon the expiration date to the Wildlife Resources Commission. The killing and method of disposition of every game animal and game bird, every furbearing animal, and every nongame animal or nongame bird for which there is no open season, when killed for committing depredations to property, either with or without a permit, shall be reported to the Wildlife Resources Commission within 24 hours following the time of such killing, except that when the carcass or pelt of a fox, killed under a depredation permit, or of a furbearing animal, killed with or without a permit, is lawfully sold to a licensed fur dealer in

~~this State the fur dealer is required to report the source of acquisition and no report is required of the seller.~~

Statutory Authority G.S. 113-134; 113-273; 113-274; 113-291.4; 113-291.6; 113-300.1; 113-300.2; 113-307; 113-331; 113-333; 113-334(a); 113-337.

## SUBCHAPTER 10F - MOTORBOATS AND WATER SAFETY

### SECTION .0300 - LOCAL WATER SAFETY REGULATIONS

#### .0354 PITT COUNTY

(a) Regulated Areas. This Rule applies to the waters described in this Paragraph:

- (1) The entire inlet of Hardee Creek from the Tar River in Pitt County.
- (2) ~~That portion of the Tar River beginning at the curve approaching Seine Beach to the East side of the Grimesland Bridge as marked at each end by appropriate markers. The Seine Beach area of the Tar River beginning at Chicod Creek and extending to the east side of the Grimesland Bridge as marked by appropriate markers.~~

(b) Speed Limit. No person shall operate a motorboat or vessel at greater than no-wake speed within the regulated areas described in Paragraph (a) of this Rule.

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

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

## TITLE 18 - SECRETARY OF STATE

*Notice is hereby given in accordance with G.S. 150B-21.2 that the N.C. Department of the Secretary of State intends to amend rules cited as 18 NCAC 6 .1201 and .1210.*

*The proposed effective date of this action is May 1, 1995.*

*The public hearing will be conducted at 10:00 a.m. on March 2, 1995 at the Legislative Office*

*Building, 300 N. Salisbury St., Suite 100, Conference Room, Raleigh, NC 27603.*

**Reason for Proposed Action:** *To facilitate greater investment opportunities for North Carolina investors.*

**Comment Procedures:** *Interested persons may present oral or written statements at the public hearing, or in writing prior to the hearing by mail addressed to Mr. Gene Cella, Administrator, Securities Division, N.C. Dept. of the Secretary of State, 300 N. Salisbury St., Raleigh, NC 27603. For copies of any information relating to the hearing call (919) 733-3924, or write to the aforementioned address. The comment period will end on March 17, 1995.*

## CHAPTER 6 - SECURITIES DIVISION

### SECTION .1200 - EXEMPTIONS

#### .1201 DESIGNATED SECURITIES EXCHANGES

The national securities exchanges designated by the administrator for the purposes of G.S. 78A-16(8) shall be:

- (1) New York Stock Exchange,
- (2) American Stock Exchange,
- (3) Midwest Stock Exchange,
- (4) Pacific Stock Exchange,
- (5) Philadelphia Stock Exchange.

Statutory Authority G.S. 78A-16(8).

#### .1210 SECURITIES EXCHGS/AUTO QUOTATION SYS APPROVED/ ADMINISTRATOR

For purposes of G.S. 78A-16(15), the following securities exchanges and automated quotation systems are approved provided such exchanges or systems comply with the provisions of Paragraphs (1) through (4) of the Memorandum of Understanding regarding a Model Uniform Marketplace Exemption From State Securities Registration Requirements [SEC Release 33-6810 (December 16, 1988), CCH NASAA Reports, par. 11,120] or the Memorandum of Understanding between The North American Securities Administrators Association, Inc. and The Philadelphia Stock Exchange, Inc., incorporated herein by reference. The incorporated material may be obtained, free of charge, from the North Carolina Secretary of State, Securities Division.



00 North Salisbury Street, Suite 100, Raleigh, North Carolina 27603-5909:

- (1) New York Stock Exchange,
- (2) American Stock Exchange,
- (3) Pacific Stock Exchange,
- (4) Midwest Stock Exchange,
- (5) NASDAQ National Market System, and
- (6) Chicago Board Options Exchange, and
- (7) Philadelphia Stock Exchange.

Statutory Authority G.S. 78A-16(15); 150B-21.6.

## TITLE 21 - OCCUPATIONAL LICENSING BOARD

### CHAPTER 2 - BOARD OF ARCHITECTURE

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Board of Architecture intends to amend rules cited as 21 NCAC 2 .0101, .0108, .0201 - .0202, .0204 - .0206, .0208 - .0210, .0212, .0215 - .0216, .0302 - .0303, .0402, .0405, .0603; adopt 21 NCAC 2 .0218 - .0219; repeal 21 NCAC 2 .0103 - .0105, .0207 and .0602.

The proposed effective date of this action is June 1, 1995.

The public hearing will be conducted at 9:00 a.m. on March 22, 1995 at the Methodist Building, 1307 Glenwood Avenue, Raleigh, NC 27605.

#### Reason for Proposed Action:

- 21 NCAC 2 .0101 - Need to relocate office.
- 21 NCAC 2 .0103 - Rule is duplicative of statute. (G.S. 83A-2)
- 21 NCAC 2 .0104 - Rule is duplicative of statute. (G.S. 83A-5)
- 21 NCAC 2 .0105 - Rule is duplicative of statute. (G.S. 83A-14)
- 21 NCAC 2 .0108 - Sets out current applicable fees for Board services.
- 21 NCAC 2 .0201 - Sets out requirements for written notice of firm or address changes.
- 21 NCAC 2 .0202 - Requires licensees to affirm they have read current architectural laws and rules.
- 21 NCAC 2 .0204 - Provides for inclusion of limited liability companies and partnerships in allowable forms of practice.
- 21 NCAC 2 .0205 - Provides language to include

limited liability companies and partnerships.

21 NCAC 2 .0206 - Clarifies the requirements and guidelines for use of the architectural seal.

21 NCAC 2 .0207 - Rule is duplicative of statute. (G.S. 83A-15)

21 NCAC 2 .0208 - Defines dishonest conduct.

21 NCAC 2 .0209 - Defines unprofessional conduct.

21 NCAC 2 .0210 - Defines incompetent conduct.

21 NCAC 2 .0212 - Defines certain types of conflicts of interest.

21 NCAC 2 .0215 - Prohibits foreign corporations from evading registration requirements by practicing through an individual license.

21 NCAC 2 .0216 - Requires a limited liability partnership to annually submit a list of partners.

21 NCAC 2 .0218 - Establishes the requirements necessary to practice as a limited liability company.

21 NCAC 2 .0219 - Establishes the requirements necessary to practice as a limited liability partnership.

21 NCAC 2 .0302 - Clarifies and extends the opportunity for exam applicants qualified under prior rules to sit for the exam.

21 NCAC 2 .0303 - Provides for alternative means of obtaining reciprocal registration.

21 NCAC 2 .0402 - Change Statutory reference within Rule.

21 NCAC 2 .0405 - Removes language stating a requirement already covered by statute.

21 NCAC 2 .0602 - Rule is duplicative of statute.

21 NCAC 2 .0603 - Clarifies who may request a hearing.

**Comment Procedures:** Any person interested in these rules may present oral comments relevant to the action proposed at the public rule-making hearing or deliver written comments to the Board office not later than Wednesday, March 22, 1995. Anyone planning to attend the hearing should notify the Board office by noon Friday, March 17, 1995 whether they wish to speak on the proposals. Speakers will be limited to 5 minutes.

### SECTION .0100 - GENERAL PROVISIONS

#### .0101 AUTHORITY: NAME AND LOCATION OF BOARD

The "North Carolina Board of Architecture," subsequently herein referred to as the "Board," is established and authorized by Chapter 83A of the General Statutes of North Carolina. Unless otherwise directed, all communications should be



addressed to the Board at 501 North Blount Street, Raleigh, North Carolina 27604-127 West Hargett Street, Suite 304, Raleigh, North Carolina 27601.

Statutory Authority G.S. 83A-2; 83A-6.

### .0103 DUTIES OF OFFICERS

(a) President. The president shall, when present, preside at all meetings, appoint all committees, sign all certificates issued and perform all other duties pertaining to his office.

(b) Vice President. The vice president, in the absence of the president, shall perform all of the duties of the president.

(c) Secretary. The secretary, with the assistance of an executive director, shall:

- (1) conduct and care for all the correspondence of the Board, keep the minutes of all the meetings, keep all books and records, and shall also sign all certificates issued;
- (2) have charge, care and custody of the official documents by order of the Board;
- (3) provide due notice of the time and place of all meetings of the Board to each member of the Board;
- (4) keep a record of the proceedings of the Board and registration for all applicants for registration and admission to practice architecture, giving the name and location of the institution or place of training where the applicant was prepared for the practice of architecture, and such other information as the Board may deem proper and useful. This registration shall be prima facie evidence of all matters recorded therein;
- (5) mail a copy of "Chapter 83A Architects" of the North Carolina General Statutes and the rules of the Board to each architect licensed with the Board.

(d) Treasurer. With the assistance of an executive director, the treasurer shall:

- (1) receive all monies from architects for annual renewal or other fees and deposit them in an authorized depository of the Board;
- (2) give bond in such sums as the Board shall determine, with such security as shall be approved by the Board, said bond to be conditioned on the faithful performance of the duties of the office, and on the faithful accounting of all monies and other property.

Statutory Authority G.S. 83A-2; 83A-3; 83A-5; 83A-6.

### .0104 PROCEDURE

(a) Order of Business. The President shall determine the general order of business to be followed at each meeting of the Board and shall generally follow the Rules of Parliamentary Procedure.

(b) Books and Records. The following records shall be kept in the Board office under the responsible charge of the executive director and constitute the official records of the Board:

- (1) Minutes and Reports. There will be a book containing all minutes and official reports in proper order;
- (2) Other Documents. Other documents will be filed and arranged so as to properly care for applicants' papers, bills and receipts, general correspondence, material concerning the laws and procedure of other states and all other papers which are to be temporarily or permanently preserved.

Statutory Authority G.S. 83A-5; 83A-6.

### .0105 DISCIPLINARY ACTION AND PROCEDURE

The procedure to be followed in conducting disciplinary actions shall be in accord with G.S. 83A-14 and Chapter 150B of the North Carolina General Statutes.

Statutory Authority G.S. 83A-6; 83-14.

### .0108 FEES

Fees required by the Board, are payable in advance and are set forth below:

#### Initial Registration Application

Individual	
Residents	\$ 50.00
Nonresidents	\$ 50.00
Corporate	\$ 75.00
Examination	At Cost (See Rule .0301)
Initial Exam Application	\$50.00
Re-examination	\$ 25.00
Annual license renewal	
Individual	\$ 50.00
Corporate	\$100.00
Late renewal Penalty	\$ 50.00
Reciprocal registration	\$150.00

Individual Reinstatement (prior year's renewal and late fees plus current

renewal fee)

\$250.00

Copies of the roster and other publications and services provided by the Board are available at cost from the Board office.

*Statutory Authority G.S. 83A-4.*

## **SECTION .0200 - PRACTICE OF ARCHITECTURE**

### **.0201 BOARD LISTING OF INDIVIDUAL AND FIRM NAMES**

Every individual licensee, partnership, firm or corporation has the continuing responsibility of keeping the Board currently advised of his or its proper and current mailing address and the name or names under which he or it is practicing. Each licensee or firm shall immediately notify the Board in writing of any and all changes of association or address. Upon the dissolution of a professional relationship, the architect member or members thereof shall promptly notify the Board in writing concerning such dissolution, and of the succeeding status and addresses of the individual or firm. This requirement is in addition to registration, listing and renewal requirements set out elsewhere in these Rules.

*Statutory Authority G.S. 83A-5; 83A-6.*

### **.0202 APPLICABILITY OF BOARD RULES**

The Executive Director shall mail a copy of Chapter 83A of the North Carolina General Statutes and the rules of the Board adopted hereunder to each licensed architect in and out of the state to whom a new license has been issued, by virtue of having successfully completed the prescribed examination and having otherwise met the Board's requirements for registration. Rules adopted and published by the Board under the provisions of Chapter 83A and Chapter 150B shall be binding upon every individual holding a license from the Board, and upon all professional corporations legally authorized to offer or to perform architectural services in this state. All licensees of the Board are charged with having knowledge of the existence of the Board rules and shall be deemed to be familiar with their several provisions and to understand them. Each licensed person and entity shall affirm in their renewals that they have read the current architectural laws and rules.

*Statutory Authority G.S. 83A-6.*

### **.0204 FORMS OF PRACTICE**

The practice of architecture may be carried on by sole practitioners, partnerships, professional limited liability companies, registered limited liability partnerships or registered architectural corporations, provided all those who practice are duly licensed, and the firm is properly described and identified by its name or title. Whenever the practice of architecture is carried on by a partnership, all partners must be duly licensed in North Carolina.

*Statutory Authority G.S. 83A-4; 83A-6; 83A-8; 57C-2-01; 59-84.2; 59-84.3.*

### **.0205 NAME OF FIRM**

(a) A licensee shall not engage in the practice of architecture under a professional or firm name which is misleading or deceptive in any way as to the legal form of the firm or the persons who are partners, officers, members, or shareholders in the firm. Examples of misleading or deceptive firm names include but are not limited to the following:

- (1) Use of the plural in any form when the number of architects in a firm does not warrant such use or,
- (2) Use of the name of an employee unless that employee is a partner, member or shareholder or,
- (3) Use of the name of deceased architect in order to benefit from his reputation, when that architect was not a former partner, officer, member or shareholder in the present firm, or
- (4) Use of a name which is deceptively similar to that of existing firm name.

(b) Names of all architectural firms, whether sole proprietorships, partnerships, professional limited liability companies, registered limited liability partnerships or professional corporations, shall be approved in writing by the Board before adopted or used by such firm. Provided, however, that this Rule shall not be construed to require any firm to seek approval of, or to change, any name duly adopted in conformity with Board rules in effect at the date of such adoption other than a change that results in a violation of Subparagraph (a) (1) of this Rule.

*Statutory Authority G.S. 83A-6; 83A-9; 83A-12; 55B-5.*

### **.0206 REQUIREMENT FOR AND USE OF PROFESSIONAL SEAL**



(a) As more fully set out in this Rule, an architect must seal his work whether or not the work is for an exempt project. An architect shall not sign nor seal drawings, specifications, reports or other professional work which were not prepared by the architect or under his direct supervision; provided, however, that in the case of the portions of such professional work prepared under the direct supervision of persons employed by the architect or the architect's firm and who are registered in this state, the architect may sign and seal those portions of the professional work if the architect has reviewed such portions and has coordinated their preparation. "Direct supervision" shall be that degree of supervision by a person overseeing the work of another whereby the supervisor has control over and detailed knowledge of the work prepared under his supervision.

(1)(a) Individual Seal Design. Every licensed architect shall have an individual seal which shall be composed of two concentric circles with outer and inner circle diameters of approximately 1½ inches and 1 inch respectively. The architect's name and place of business shall be between the inner and outer circles. The words "Registered Architect, North Carolina" shall be along the inside perimeter of the inner circle. The architect's North Carolina registration number shall be in the center of the inner circle.

(2)(b) Corporate Seal Design. Every corporation which shall have obtained from the Board a certificate for corporate practice shall have a corporate seal, which shall be composed of two concentric circles with outer and inner circle diameters of approximately 1½ inches and 1 inch respectively. The Architectural Corporation's approved North Carolina name and place of business shall be between the inner and outer circles. The words "Registered Architectural Corporation, North Carolina" shall be along the inside perimeter of the inner circle. The corporation's North Carolina registration number shall be in the center of the inner circle.

(3)(e) Seal Types. The seal required for use on opaque original contract documents not intended for duplication shall be of a type which will produce an impression facsimile of the seal, or a rubber stamp which will produce an ink fac-

simile of the seal. The seal required for use on transparent original contract documents intended for duplication shall be of a type which will produce an ink facsimile of the seal such as a rubber stamp, ~~decal~~, or computer generated type. The use of pre-printed documents bearing a pre-printed facsimile of the seal is prohibited.

(4)(d) Individual Seal, Signature and Date Required. Architects shall affix their seal, actual signature, and date of affixation to all ~~original contract documents, including index sheets identifying all drawings covered specification cover and index pages identifying all specification pages covered and supplemental drawings which are developed and issued under the direct supervision or authorship of the architect as contract documents.~~ architectural documents to be filed for public record. Documents shall be signed personally and sealed by the responsible architect. Final official record documents (such as tracings) shall be so signed. The signing and sealing of the index sheet or sheets (if it identifies all parts) of drawings and specifications shall be considered adequate. Without such index, all sheets and pages shall be so signed and sealed.

(5)(e) Presentation Documents. Presentation documents (renderings, drawings used to communicate conceptual information only) are not required to be sealed or signed.

(6)(f) Incomplete Documents. Documents considered incomplete by the architect may be released for interim review without the architect's seal or signature affixed, but shall be dated, bear the architect's name and be conspicuously marked to clearly indicate the documents are for interim review and not intended for bidding, permit, or construction purposes.

(7)(g) Sheets or Pages Prepared By Licensed Professional Consultants. Those sheets or pages prepared by licensed professional consultants (such as, for example, structural, mechanical or electrical engineers) retained by the architect shall bear the seal and registration number of the consultant responsible therefore.



- (8)(f) Original Signature. The use of signature reproductions such as rubber stamps or computer generated or other facsimiles shall not be permitted in lieu of actual signatures.
- (9)(j) Security of Seal. Authorized use of the prescribed seal is an individual act whereby the architect must personally sign over the imprint of the seal. The architect is responsible for security of the seal when not in use.
- 10)(k) Use of Corporate Seal. The use of the corporate seal does not replace the statutory requirement for an architect's individual seal as required in Subparagraph (d)(a)(4). The corporate seal must be affixed in addition to the individual seal on the cover sheet and each page of the table of contents of specifications and drawings.

(b) Standard Design Documents. Standard design documents prepared by architects who are registered in this state or in their state of origin may be sealed by a succeeding licensed architect registered in North Carolina provided:

- (1) the seal of the original architect appears on the documents to authenticate authorship;
- (2) the words "standard design document" appear on each sheet of the documents prepared by the original architect;
- (3) the succeeding North Carolina architect clearly identifies all modifications to the standard design documents;
- (4) the succeeding North Carolina architect assumes responsibility for the adequacy of the design for the specific application in North Carolina and for the design conforming with applicable building codes; and
- (5) the succeeding North Carolina architect affixes his seal to the standard design documents and a statement substantially as follows: "These documents have been properly examined by the undersigned. I have determined that they comply with existing local North Carolina codes, and I assume responsibility for the adequacy of the design for the specific application in North Carolina."

(c)(h) Direct Supervision. No architect shall affix his seal and signature to contract documents developed by others not under his direct supervision. Direct supervision includes:

- (1) Dissemination of programmatic re-

- quirements,
- (2) Ongoing coordination and correlation of ~~consultant's work~~ services with other aspects of the total design of the project,
- (3) Verification with consultant that owner's requirements are being met,
- (4) Authority over the ~~work~~ services of those who assisted in the preparation of the documents,
- (5) Assumption of responsibility for the ~~consultant's work, services, and~~
- (6) Incorporation of ~~consultant's work~~ services into design documents to be issued for permitting purposes.

*Statutory Authority G.S. 83A-6; 83A-10; 83A-12.*

#### .0207 DENIAL: SUSPENSION OR REVOCATION OF LICENSE

~~(a) Denial. The Board may refuse to grant an examination, or after examination refuse to grant a license for the practice of architecture, to any person convicted of a felony, or who, in the opinion of the Board, has been guilty of dishonest or unprofessional conduct, or lacks good moral character as defined in G.S. 83A-1(5).~~

~~(b) Discipline Affecting License. The Board may levy a civil penalty, reprimand, suspend for a period of time, or revoke any corporate certificate of registration or discipline a licensee pursuant to G.S. 83A-15.~~

*Statutory Authority G.S. 83A-1; 83A-6; 83A-7; 83A-15.*

#### .0208 DISHONEST CONDUCT

~~In addition to those grounds as stated in G.S. 83A-15(1) the following acts or omissions, among others, may be deemed to be "dishonest conduct" and to be cause for the levy of a civil penalty or for a denial, suspension, or revocation of a license or certificate of registration to practice architecture:~~

- (1) ~~Deceitful Statements. It shall be deemed dishonest conduct to make untrue or deceitful statements in an application for examination, any other application to the Board or in any statements or representations to the Board or a committee of the Board.~~

(a) Deception. An architect shall not deliberately make a materially false statement or fail deliberately to disclose a material fact requested in connection with his application for

registration renewal.

(b) Contributions. An architect shall neither offer nor make any gifts, other than gifts of nominal value (including, for example, reasonable entertainment and hospitality), with the intent of influencing the judgement of an existing or prospective client in connection with a project in which the architect is interested.

(c) Registration of Others. An architect shall not assist the application for registration of a person known by the architect to be unqualified with respect to education, training, experience, or character.

(d) Knowledge of Violation. An architect possessing knowledge of a violation of these Rules by another architect shall report such knowledge to the Board.

(2) ~~Misrepresentation.~~ It shall be deemed dishonest conduct for an architect to permit the use of his professional seal by others, or otherwise represent himself as the author of drawings or specifications which are not personally prepared by him or under his direct supervision. However, "standard design documents" prepared by architects who are registered in this state or in their state of origin may be sealed by a succeeding licensed architect registered in North Carolina provided:

- (a) ~~the seal of the original architect appears on the documents to authenticate authorship;~~
- (b) ~~the words "standard design document" appear on each sheet of the documents prepared by the original architect;~~
- (c) ~~the succeeding North Carolina architect clearly identifies all modifications to the standard design documents;~~
- (d) ~~the succeeding North Carolina architect assumes responsibility for the adequacy of the design for the specific application in North Carolina and for the design conforming with applicable building codes; and~~
- (e) ~~the succeeding North Carolina architect affixes his seal to the standard design documents and a statement substantially as follows: "These documents have been properly examined by the undersigned. I have determined that they comply with existing local North Carolina codes, and I assume responsibility for the adequacy of the design for the specific application in~~

North Carolina."

(3) ~~Contributions.~~ It shall be deemed dishonest conduct for an architect to make or promise to make contributions of money or service, with the intent to bribe, for the purpose of securing a commission or influencing the engagement or employment of an architect for a project.

Statutory Authority G.S. 83A-6; 83A-15.

## .0209 UNPROFESSIONAL CONDUCT

In addition to those grounds as stated in G.S. 83A-15(3) the following acts or omissions, among others, may be deemed to be "unprofessional conduct", and to be cause for the levy of a civil penalty or for denial, suspension, or revocation of a license or certificate of registration to practice architecture:

- (1) Compliance With Laws. It shall be deemed unprofessional conduct for an architect, in the conduct of his or her professional practice, to knowingly violate any state or federal criminal law. A criminal conviction shall be deemed prima facie evidence of knowingly violating the law.
- (2) Compliance With Foreign Registration. It shall be deemed unprofessional conduct for an architect to knowingly violate the laws governing the practice of architecture or the rules promulgated by any other architectural licensing board in any United States jurisdiction. A finding by a foreign architectural registration board that an architect has violated a law or rule governing the practice of architecture shall be deemed prima facie evidence of knowingly violating the law or rule.
- (3) Product Specification. It shall be deemed unprofessional conduct for an architect to solicit or accept financial or other valuable consideration from material or equipment suppliers for specifying their products.
- (4) Advertising. It shall be deemed unprofessional conduct for an architect to engage in any false, deceptive, fraudulent, or misleading advertising.
- (5) False Statements. It shall be deemed unprofessional conduct for an architect to knowingly make false statements about the professional work or to maliciously



injure the prospects, practice, or employment position of others active in the design and construction of the physical environment.

(6) Evasion.

(a) It shall be deemed unprofessional conduct for an architect, through employment by building contractors, or by another not holding an individual or corporate certificate from the Board, to enable the employer to offer or perform architectural services, except as provided in G.S. 83A-13. In design/build arrangements, the architect shall not be an employee of a person or firm not registered or licensed to practice architecture in North Carolina.

(b) It shall be deemed unprofessional conduct for an architect to furnish limited services in such manner as to enable owners, draftsmen, or others to evade the public health and safety requirements of Chapter 83A ~~or the building permit requirements of Chapter 160A of the North Carolina General Statutes.~~ G.S. 133-2, G.S. 153A-26 or G.S. 160A-417.

(c) When building plans are begun or contracted for by persons not properly licensed and qualified, it shall be deemed unprofessional conduct for an architect to take over, review, revise, or sign or seal such drawings or revisions thereof for such persons, or do any act to enable either such persons or the project owners, directly or indirectly, to evade the requirements of Chapter 83A or G.S. 160A-417.

(7) Branch Office. ~~It shall be deemed unprofessional conduct for an architect to maintain or represent by sign, listing, or other manner that he maintains an architectural office or branch office unless such office is continuously staffed with a registered architect in charge. Provided, however, that this Rule does not apply to on-site project offices during construction.~~ Each office maintained for the preparation of drawings, specifications, reports, or other professional work shall have an architect resident and regularly employed in that office having direct knowledge and supervisory control of such work.

(8) Misrepresentation Regarding Prior Expe-

~~rience. Because of the reliance the public places on architects' qualifications, the following requirements are provided regarding the representation of past professional experience. An architect shall accurately represent to a prospective or existing client or employer his qualifications and the scope of his responsibility in connection with work for which he is claiming credit.~~

(a) It shall be the responsibility of each registered architect to clearly and appropriately state prior professional experience of the architect and/or the firm the architect is representing in presenting qualifications to prospective clients, both public and private. If an architect uses visual representations of prior projects or experience, all architects-of-record must be clearly identified. Architect-of-record means persons or entities whose seals appear on plans, specifications and/or contract documents.

(b) An architect who has been an employee of another architectural practice may not claim unconditional credit for projects contracted for in the name of the previous employer. The architect shall indicate, next to the listing for each project, that individual experience gained in connection with the project was acquired as an employee, and identify the previous architectural firm. The architect shall also describe the nature and extent of his/her participation in the project.

(c) An architect who was formerly a principal in a firm may legitimately make additional claims provided he/she discloses the nature of ownership in the previous architectural firm (e.g. stockholder or junior partner) and identifies with specificity his/her responsibilities for that project.

(d) An architect who presents a project that has received awards recognition must comply with the requirements in Subparagraph (8) of this Rule with regard to project presentation to the public and prospective clients.

(e) Projects which remain unconstructed and which are listed as credits should be listed as "unbuilt" or a similar designation.



- (9) Influencing Government Officials. An architect shall neither offer nor make any payment or gift to a government official (whether elected or appointed) with the intent of influencing the official's judgment in connection with a prospective or existing project in which the architect is interested.
- (10) Fee Bidding on Public Projects. An architect shall not knowingly cooperate in a violation of any provisions of G.S. 143-64.31.
- (11) Cooperation with Board. An architect shall fully cooperate with the Board in connection with any inquiry it shall make. Full cooperation includes responding in a timely manner to all inquiries of the Board or representative of the Board and claiming Board correspondence from the U.S. Postal Service.

Statutory Authority G.S. 83A-6; 83A-15.

#### .0210 INCOMPETENCE

~~Any architect who has suffered impairment of skill and care in rendering professional services due to a mental or physical disability or addiction to alcohol or drugs so as to potentially endanger the health, safety and welfare of the public may voluntarily surrender his license to the Board at any time prior to a filing of a Notice of Hearing in a contested case. The Board, in its discretion, may accept the surrender, or reject the surrender and proceed to a Notice of Hearing under the provisions of Chapter 150B.~~

(a) In practicing architecture, an architect shall act with reasonable care and competence and shall apply the technical knowledge and skill which is ordinarily applied by architects of good standing, practicing in the same locality.

(b) In designing a project, an architect shall take into account all applicable state and municipal building laws and regulations. While an architect may rely on the advice of other professionals (e.g., attorneys, engineers and other qualified persons) as to the intent and meaning of such regulations, once having obtained such advice, an architect shall not knowingly design a project in violation of such laws and regulations.

(c) An architect shall undertake to perform professional services only when he, together with those whom the architect may engage as consultants, are qualified by education, training and experience in the specific technical areas involved.

(d) No person shall be permitted to practice architecture, if, in the board's judgment, such person's professional competence is substantially impaired by physical or mental disabilities.

Statutory Authority G.S. 83A-6; 83A-15.

#### .0212 INDEPENDENT JUDGMENT AND DISCLOSURE

~~Upon receipt of information or complaint, the Board, in its discretion, may investigate an incidence of the alleged prohibited practice of architecture in North Carolina by individual firms or corporations not duly licensed or registered by the Board. Following such investigation, the Board shall determine whether or not to take legal action by way of criminal prosecution or injunction or such other action as it deems necessary to prevent the unlicensed practice of architecture.~~

(a) When acting as the interpreter of building contract documents and the judge of contract performance, an architect shall render decision impartially, favoring neither party to the contract.

(b) If, in the course of his work on a project, an architect becomes aware of a decision taken by his employer or client, against the architect's advice which violates applicable state or municipal building laws and regulations and which will, in the architect's judgment, materially affect adversely the safety to the public of the finished project, the architect shall:

- (1) report the decision to the local building inspector or other public official charged with the enforcement of the applicable state or municipal building laws and regulations;
- (2) refuse to consent to the decision;
- (3) in circumstances where the architect reasonably believes that other such decisions will be taken notwithstanding his objection, terminate his service with reference to the project; and
- (4) in the case of termination in accordance with clause in Subparagraph (b)(3) of this Rule, the architect shall have no liability to his client or employer on account of such termination.

(c) If an architect has any business association or direct or indirect financial interest which is substantial enough to influence his judgment in connection with the performance of professional services, the architect shall fully disclose it in writing to his client or employer the nature of the business association or financial interest, and if the

lient or employer objects to such association or financial interest, the architect will either terminate such association or interest or offer to give up the commission or employment.

(d) An architect making public statements on architectural questions shall disclose when he is being compensated for making such statements.

*Statutory Authority G.S. 83A-6; 83A-15.*

## **.0215 FOREIGN CORPORATIONS**

(a) Incorporation in Other States. Architectural corporations of other states may be granted corporate certificates for practice in this State on the receipt by the Board of a completed application, the submission of a certified copy of their corporate charter, amended as may be necessary to insure full compliance with all requirements of Chapter 55B, the Professional Corporation Act of the State of North Carolina, and the payment of the corporate application fee. In addition to the other requirements as set out in G.S. 83A-8, foreign corporations must, prior to registration, receive from the Secretary of State of North Carolina a certificate of authority to do business within the state. The registration requirements for foreign corporations cannot be avoided by practice in North Carolina through an individual licensee.

(b) Designated Individuals. Foreign corporations shall be permitted to practice architecture within the State of North Carolina provided that at least two-thirds of the issued and outstanding shares of the foreign corporations are owned by licensed architects or engineers who are licensed to practice their profession in a jurisdiction of the United States. However, the corporation must designate at least one architect who is licensed in the State of North Carolina to be in responsible charge for the corporate practice of architecture within the State of North Carolina.

*Statutory Authority G.S. 55B-6; 83A-6; 83A-8.*

## **.0216 ANNUAL LISTING OF PARTNERSHIP**

(a) By December 31 of each year, each partnership or registered limited liability partnership engaged in the practice of architecture in North Carolina shall submit a list of all resident and non-resident partners of the partnership.

(b) One annual listing by a representative of the partnership shall satisfy the requirements of Paragraph (a) of this Rule for all partners of the firm; however, each partner shall remain

responsible for compliance with the rules.

(c) Changes in the information required by Paragraph (a) of this Rule shall be filed with the Board office within 30 days after the change occurs.

*Statutory Authority G.S. 83A-6; 83A-9.*

## **.0218 LIMITED LIABILITY COMPANIES**

Architects may practice in this state through duly authorized limited liability companies only as provided under G.S. 57C-2-01(c). Any limited liability company that offers to practice or practices architecture in this state must comply with the same requirements applicable to professional corporations under Rules .0201, .0202, .0204, .0205, .0214, and .0215 of this Chapter.

*Statutory Authority G.S. 57C-2-01; 83A-6.*

## **.0219 REGISTERED LIMITED LIABILITY PARTNERSHIPS**

Architects may practice in this state through duly registered limited liability partnerships only as provided under G.S. 59-84.2 and G.S. 59-84.3. Any registered limited liability partnership that offers to practice or practices architecture in this state must comply with the same requirements applicable to partnerships under Rules .0201, .0202, .0204, .0205, and .0216 of this Chapter.

*Statutory Authority G.S. 83A-6; 59-84.2; 59-84.3.*

## **SECTION .0300 - EXAMINATION PROCEDURES**

### **.0302 WRITTEN EXAMINATION**

(a) Licensure Examination. All applicants for architectural registration in North Carolina by written examination must pass the Architectural Registration Examination (ARE), administered in North Carolina, prepared by the National Council of Architectural Registration Boards (NCARB). Provided, applicants who have never been registered in any state or territory may transfer credits for portions of the examination previously passed in another state if at the time of taking the exam elsewhere they otherwise qualified for taking the exam in North Carolina.

(1) Description. The nature of the examination is to place the candidate in areas relating to actual architectural situations whereby his abilities to exercise competent value judgements



will be tested and evaluated.

- (2) Qualifications. The prequalifications necessary for an applicant's admission to the Architectural Registration examination (ARE) are as follows:

- (A) be of good moral character as defined in North Carolina General Statute 83A-1(5);
- (B) be at least 18 years of age;
- (C) hold a degree in architecture from a college or university where the degree program has been approved by the Board, or professional education equivalents as outlined and defined in the North Carolina Board of Architecture's Table of Equivalents for Education and Experience, Appendix A. Beginning July 1, 1991, the professional education qualification shall be a NAAB (National Architectural Accrediting Board) accredited professional degree in architecture; provided that an applicant whose education equivalents otherwise qualified under the Board's rules in effect prior to 1989 may apply for admission to the Architectural Registration Examination. However, an applicant who does not hold a NAAB accredited professional degree may not accumulate more than three and one half years of education credits in the aggregate from all degree programs in which he was enrolled. Further provided, the applicant must file with the Board by December 31, 1991, a notice of intent to sit for the examination on or before June 30, 1995;

- (D) notwithstanding the forgoing provisions of Part (a)(2)(C) of this Rule, the Board, in its discretion, may admit to the ARE an applicant whose educational equivalents otherwise qualified under the Board's rules in effect prior to 1989 and who has demonstrated a continuing intention to seek licensure in North Carolina by:

- (i) obtaining, prior to 1989, a four-year degree in architecture from a NAAB-accredited university in North Carolina;
- (ii) obtaining the practical training or experience required by Part

(a)(2)(E) of this Rule in the office of registered architects in North Carolina; and

- (iii) prior to March 1, 1996, applying for admission to sit for the ARE in North Carolina no later than June, 1996, following completion by the applicant of the required practical training or experience;

- (E) ~~(D)~~ have three years' practical training or experience in the offices of registered architects or its equivalent as outlined and defined in the North Carolina Board of Architecture's Table of Equivalents for Education and Experience, Appendix A. All applicants who apply for architectural registration subsequent to July 1, 1987 shall be required to follow the Intern Development Program (IDP) through the National Council of Architectural Registration Boards or an equivalent program approved by the North Carolina Board of Architecture in order to satisfy the requirements of this Section. In the case of any applicant certifying to the Board that he or she had accrued sufficient training credits under the requirements of the current Appendix A prior to July 1, 1987, so that 12 or fewer months of training remained to be acquired, then the current Appendix A shall continue in effect for such applicant.

(b) Retention of Credit. Transfer credits for parts of the examination passed prior to the 1987 Architectural Registration Examination (ARE) shall be as established by the Board. Information as to transfer credits will be provided, where appropriate, to candidates as an inclusion with the application forms.

(c) Practical Training. Practical training means practical experience and diversified training as defined in the North Carolina Board of Architecture's Table of Equivalents for Education and Experience, Appendix A. However, the Board reserves the right to judge each case on its own merits.

(d) Personal Audience. The candidate may be required to appear personally before the examining board or a designated representative of the Board and afford the Board an opportunity to judge his natural endowments for the practice of architecture, his ethical standards, and his



questions gain further knowledge of his fitness for the practice of architecture. The time for this audience will be set by the examining body.

(e) Grading. The ARE shall be graded in accordance with the methods and procedures recommended by the NCARB.

(1) To achieve a passing grade on the ARE, an applicant must receive a passing grade of 75 in each division. Grades from the individual divisions may not be averaged. Applicants will have unlimited opportunities to retake divisions which they fail, but all divisions, previously failed, must be retaken at one time at a subsequent examination.

(2) In order to insure fairness in grading and to preserve anonymity until after the examinations have been graded, each candidate will receive a number that will be unique for each candidate. This number shall be placed by the candidate on all papers and exhibits.

(f) Time and place. Beginning in 1983, the Board will administer the ARE over a four day period to all applicants eligible, in accordance with the requirements of this Rule. The place and exact dates will be announced in advance of the examination.

*Statutory Authority G.S. 83A-1; 83A-6; 83A-7.*

### **.0303 REGISTRATION BY RECIPROCITY WITHOUT WRITTEN EXAMINATION**

(a) Registration by "Blue Cover." Other than as provided by Paragraph (b) of this Rule, the only means of individual reciprocity recognized by the Board is for an individual to hold a current license in good standing from another state and a Council Certificate (also known as "Blue Cover") issued by the National Council of Architectural Registration Boards (NCARB). Upon receipt of a verified application from NCARB and the payment of the individual license application fee, the Board, in its discretion, may issue a license to an applicant without written examination as provided in G.S. 83A-7(b). Revocation of the "Blue Cover" certificate by NCARB shall automatically terminate the architect's license to practice in North Carolina until such time as the "Blue Cover" is reinstated by NCARB.

(b) Registration other than "Blue Cover." The Board may grant a reciprocal certificate to an individual who demonstrates by submission of an NCARB "Buff Cover" that he meets all of North

Carolina's pre-1991 registration requirements but who does not hold a "Blue Cover" if:

- (1) the applicant is and has been continuously registered in good standing for at least ten years in the states or state where the applicant has resided;
- (2) the applicant's architectural license has never been suspended or revoked by any registration board and he has no charges pending before any board;
- (3) the applicant submits to the Board affidavits from three licensed architects certifying the applicant's good moral character, general experience and competence;
- (4) the applicant has been a principal or owner of an architectural firm for the five years preceding the application;
- (5) the applicant agrees to an interview with the Board, if requested.

*Statutory Authority G.S. 83A-6; 83A-7.*

### **SECTION .0400 - RULES: PETITIONS: HEARINGS**

#### **.0402 NOTICE OF RULE-MAKING HEARINGS**

Upon a determination to hold a rule-making proceeding, either in response to a petition or otherwise, the Board shall give notice to all interested persons pursuant to the procedure established in Article 3 3A of Chapter 150B of the North Carolina General Statutes.

*Statutory Authority G.S. 83A-6; 150B-12.*

#### **.0405 PRESIDING OFFICER: POWERS AND DUTIES**

The presiding officer at a rule-making hearing shall have complete control of the proceedings, including recognition of the speakers, time allotments for presentations, the right to question speakers, direction of the discussion and management of the hearing. The presiding officer, at all times, will take care that each person participating in the hearing is given a fair opportunity to present views, data and comments. ~~The presiding officer shall conduct the rule making hearing pursuant to the procedure established in Article 3 of Chapter 150B of the North Carolina General Statutes.~~

*Statutory Authority G.S. 83A-6; 150B-12.*

### **SECTION .0600 - ADMINISTRATIVE**

## HEARINGS: PROCEDURES

### .0602 RIGHT TO HEARING

~~When the Board acts or proposes to act, other than in rule making or declaratory ruling proceedings, in a manner which will affect the rights, duties, or privileges of a specific, identifiable person, such person has the right to an administrative hearing. When the Board proposes to act in such manner, it shall give to all such affected persons notice of their right to a hearing by mailing by certified mail to them at their last known address a notice of the proposed action and a notice of a right to a hearing.~~

*Statutory Authority G.S. 83A-6; 150B-11; 150B-38.*

### .0603 REQUEST FOR HEARING

(a) ~~Any time an individual believes that individual's rights, duties, or privileges have been affected~~ believes he is a person aggrieved by the Board's administrative action, but has not received notice of a right to an administrative hearing, that individual may file a formal request for a hearing.

(b) Before an individual may file a request, that individual is encouraged to exhaust all reasonable efforts to resolve the issue informally with the Board.

(c) Subsequent to such informal action, if still dissatisfied, the individual must submit a request to the Board's office, with the request bearing the notation: REQUEST FOR ADMINISTRATIVE HEARING. The request must contain the following information:

- (1) name and address of the petitioner;
- (2) a concise statement of the action taken by the Board which is challenged;
- (3) a concise statement of the way in which the petitioner has been aggrieved; and
- (4) a clear and specific statement of request for a hearing.

(d) The request will be acknowledged promptly and, if deemed appropriate by the Board in accordance with Rule .0604 of this Section, a hearing will be scheduled.

*Statutory Authority G.S. 83A-6; 150B-11; 150B-38.*

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

**Key:**

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

## NORTH CAROLINA ADMINISTRATIVE CODE

## JANUARY 95

TITLE	DEPARTMENT	TITLE	DEPARTMENT
2	Agriculture	18	Secretary of State
4	Commerce	19A	Transportation
5	Correction	21	Occupational Licensing Boards
10	Human Resources		6 - Barber Examiners
11	Insurance		17 - Dietetics/Nutrition
12	Justice		18 - Electrical Contractors
13	Labor		32 - Medical Examiners
15A	Environment, Health, and Natural Resources		34 - Mortuary Science
16	Education	25	36 - Nursing
17	Revenue		State Personnel

	Citation	AD	AM	RP	With Chgs	Corr	Eff. Date	Temp. Expires
2	NCAC 48E .0302		✓		✓		02/01/95	
4	NCAC 3 TOC					✓		
	3G .0104			✓			02/01/95	
	.0201 - .0203			✓			02/01/95	
	.0301 - .0303			✓			02/01/95	
	.0401 - .0403			✓			02/01/95	
	.0501 - .0504			✓			02/01/95	
	.0601			✓			02/01/95	
	3K .0201					✓		
	.0203					✓		



**LIST OF RULES CODIFIED**

Citation				AD	AM	RP	With Chgs	Corr	Eff. Date	Temp. Expires
4	NCAC	3K	.0402 - .0405					✓		
			.0501					✓		
			.0601					✓		
			.0702 - .0703					✓		
5	NCAC	2B	.0101			✓			02/01/95	
			.0106			✓			02/01/95	
			.0108			✓			02/01/95	
			.0109 - .0113	✓			✓		02/01/95	
			.0114	✓					02/01/95	
10	NCAC	3H	.0221		✓		✓		03/01/95	
			3O .0104		✓				01/01/95	180 DAYS
			.0105			✓			01/01/95	180 DAYS
			.0305 - .0306		✓				01/01/95	180 DAYS
			.0307			✓			01/01/95	180 DAYS
			.0308		✓				01/01/95	180 DAYS
			.0309 - .0310			✓			01/01/95	180 DAYS
			.0403 - .0404			✓			01/01/95	180 DAYS
			.0405		✓				01/01/95	180 DAYS
			.0503 - .0506		✓				01/01/95	180 DAYS
			.0507			✓			01/01/95	180 DAYS
			.0605 - .0606			✓			01/01/95	180 DAYS
			.0607 - .0608		✓				01/01/95	180 DAYS
			.0609 - .0610			✓			01/01/95	180 DAYS
			.0705		✓				01/01/95	180 DAYS
		3R	.3001		✓				01/01/95	180 DAYS
			.3020		✓				01/01/95	180 DAYS
			.3030		✓				01/01/95	180 DAYS
			.3032		✓				01/01/95	180 DAYS
			.3040		✓				01/01/95	180 DAYS
			.3050		✓				01/01/95	180 DAYS
		3T	.0102		✓		✓		02/01/95	
			.0402		✓		✓		02/01/95	
			.0901		✓				02/01/95	

**LIST OF RULES CODIFIED**

Citation				AD	AM	RP	With Chgs	Corr	Eff. Date	Temp. Expires
10	NCAC	3T	.1102		✓				02/01/95	
			.1109		✓		✓		02/01/95	
	26B		.0119			✓			02/01/95	
			.0201 - .0209			✓			02/01/95	
			.0210	✓					02/01/95	
			.0212	✓			✓		02/01/95	
			.0213 - .0214	✓					02/01/95	
			.0215 - .0216	✓			✓		02/01/95	
			.0217	✓					02/01/95	
			.0218	✓			✓		02/01/95	
			.0219	✓					02/01/95	
			.0220 - .0222	✓			✓		02/01/95	
	41I		.0305 - .0306		✓				02/01/95	
	42A		.0602		✓				03/01/95	
	42C		.3601		✓				03/01/95	
	50B		.0400					✓		
			.0403(e)(k)					✓		
11	NCAC	6A	.0801 - .0806		✓		✓		02/01/95	
		12	.1503 - .1504		✓				02/01/95	
		16	.0701	✓			✓		02/01/95	
			.0702	✓					02/01/95	
			.0703 - .0705	✓			✓		02/01/95	
12	NCAC	7D	.0112	✓					02/01/95	
			.0202		✓		✓		02/01/95	
			.0205		✓		✓		02/01/95	
13	NCAC	7F	.0101(a)(3)					✓		
			.0101		✓				02/01/95	
			.0201		✓		✓		02/01/95	
			.0201		✓				02/01/95	
			.0501		✓				02/01/95	
	13		.0101(24)					✓		
			.0202(a)(b)					✓		
			.0213(d)(e)(f)					✓		

**LIST OF RULES CODIFIED**

Citation				AD	AM	RP	With Chgs	Corr	Eff. Date	Temp. Expires
13	NCAC	13	.0304(b)(c)					✓		
			.0405(f)(h)					✓		
			.0411(e)(g)					✓		
17			.0101 - .0102	✓			✓		02/27/95	
			.0103 - .0104	✓					02/27/95	
			.0105 - .0107	✓			✓		02/27/95	
			.0108 - .0111	✓					02/27/95	
15A	NCAC	2D	.0501		✓		✓		02/01/95	
			.0516		✓				02/01/95	
			.0530		✓				02/01/95	
2Q			.0112	✓			✓		02/01/95	
			.0312	✓			✓		02/01/95	
			.0507		✓				02/01/95	
			.0518		✓				02/01/95	
			.0525	✓					02/01/95	
			.0607	✓					02/01/95	
3I			.0001		✓		✓		03/01/95	
			.0015	✓			✓		03/01/95	
			.0016	✓					03/01/95	
			.0017	✓			✓		02/01/95	
3J			.0401		✓				03/01/95	
3M			.0504		✓				03/01/95	
			.0513	✓					03/01/95	
3O			.0110	✓			✓		03/01/95	
			.0201		✓		✓		03/01/95	
			.0205		✓		✓		03/01/95	
			.0208		✓				03/01/95	
			.0301 - .0304	✓			✓		02/01/95	
			.0305	✓					02/01/95	
			.0306 - .0307	✓			✓		02/01/95	
			.0308 - .0310	✓					02/01/95	
10F			.0103		✓				02/01/95	
			.0319		✓		✓		02/01/95	



**LIST OF RULES CODIFIED**

Citation				AD	AM	RP	With Chgs	Corr	Eff. Date	Temp. Expires
15A	NCAC	10F	.0332		✓		✓		02/01/95	
		10G	.0206	✓			✓		02/01/95	
		13A	.0000					✓		
		16A	.0413 - .0427							EXPIRED
		18A	.2803 - .2804		✓		✓		02/01/95	
			.2806 - .2808		✓		✓		02/01/95	
			.2809		✓				02/01/95	
			.2812		✓		✓		02/01/95	
			.2813 - .2814		✓				02/01/95	
			.2815 - .2817		✓		✓		02/01/95	
			.2818		✓				02/01/95	
			.2819 - .2821		✓		✓		02/01/95	
			.2822		✓				02/01/95	
			.2823		✓		✓		02/01/95	
			.2824		✓				02/01/95	
			.2826		✓				02/01/95	
			.2827 - .2828		✓		✓		02/01/95	
			.2829 - .2830		✓				02/01/95	
			.2833		✓				02/01/95	
			.2834		✓		✓		02/01/95	
		24A	.0404		✓		✓		02/01/95	
16	NCAC	6C	.0310		✓		✓		02/01/95	
		6E	.0202					✓		
17	NCAC	4D	.0506		✓				03/01/95	
			.0508		✓				03/01/95	
			.0509			✓			03/01/95	
			.0901		✓				03/01/95	
			.0907 - .0908		✓				03/01/95	
			.1001		✓				03/01/95	
			.1003	✓					03/01/95	
18	NCAC	7	.0303					✓		
19A	NCAC	2D	.0825		✓		✓		02/01/95	
21	NCAC	6L	.0003					✓		

**LIST OF RULES CODIFIED**

Citation				AD	AM	RP	With Chgs	Corr	Eff. Date	Temp. Expires
21	NCAC	6L	.0006					✓		
recodified to		17	.0001 - .0016						02/01/95	
		17	.0101 - .0116							
			.0107		✓		✓		02/01/95	
			.0109		✓		✓		02/01/95	
			.0113		✓		✓		02/01/95	
			.0201 - .0203	✓			✓		02/01/95	
	18B		.0105		✓				02/01/95	
			.0401		✓				02/01/95	
			.0703		✓				02/01/95	
			.0705			✓			02/01/95	
			.0801		✓				02/01/95	
			.1001		✓				02/01/95	
	32B		.0305(a)		✓				02/01/95	
			.0305(c)		✓				02/01/95	
			.0315		✓				02/01/95	
	32O		.0001		✓		✓		02/01/95	
			.0010		✓				02/01/95	
			.0011		✓		✓		02/01/95	
			.0012		✓				02/01/95	
	34C		.0301(a)(3)					✓		
	36		.0217		✓		✓		02/01/95	
25	NCAC	1E	.0901		✓				02/01/95	
			.0903 - .0904		✓				02/01/95	
			.0905		✓		✓		02/01/95	
			.0906			✓			02/01/95	
			.0908		✓		✓		02/01/95	

*The Rules Review Commission (RRC) objected to the following rules in accordance with G.S. 150B-21.9(a). State agencies are required to respond to RRC as provided in G.S. 150B-21.12(a).*

**COMMERCE**

**Banking Commission**

4 NCAC 3K .0201 - Application for Authorization//Reverse Mortgage Lender	RRC Objection	12/15/94
Agency Revised Rule	Obj. Removed	12/15/94
4 NCAC 3K .0205 - Certificate of Authorization	RRC Objection	12/15/94
Agency Revised Rule	Obj. Removed	12/15/94
4 NCAC 3K .0206 - Nontransferability of Certificate of Authorization	RRC Objection	12/15/94
Agency Revised Rule	Obj. Removed	12/15/94
4 NCAC 3K .0601 - Counseling	RRC Objection	12/15/94
Agency Revised Rule	Obj. Removed	12/15/94

**CORRECTION**

**Division of Prisons**

5 NCAC 2B .0111 - Good Time	RRC Objection	01/19/95
Agency Revised Rule	Obj. Removed	01/19/95
5 NCAC 2B .0112 - Gain Time	RRC Objection	01/19/95
Agency Revised Rule	Obj. Removed	01/19/95
5 NCAC 2B .0113 - Earned Time	RRC Objection	01/19/95
Agency Revised Rule	Obj. Removed	01/19/95

**ENVIRONMENT, HEALTH, AND NATURAL RESOURCES**

**Environmental Health**

15A NCAC 18A .2801 - Definitions	RRC Objection	01/19/95
15A NCAC 18A .2810 - Specifications for Kitchens, Based on Number/Children	RRC Objection	01/19/95

**Environmental Management**

15A NCAC 2Q .0112 - Applications Requiring Professional Engineer Seal	RRC Objection	11/17/94
No Response from Agency	Obj. Cont'd	12/15/94
Rule Returned to Agency	Obj. Cont'd	01/19/95
Agency Filed Rule for Codification Over RRC Objection	Eff.	02/01/95

**General Procedures for Public Health Programs**

15A NCAC 24A .0404 - Reimbursement for Services Not Covered by Medicaid	RRC Objection	12/15/94
RRC Approved Motion to Reconsider	Obj. Cont'd	12/15/94
Rule Returned to Agency	Obj. Cont'd	01/19/95
Agency Filed Rule for Codification Over RRC Objection	Eff.	02/01/95

**Marine Fisheries**

15A NCAC 3I .0017 - Fishery Resource Grant Program	RRC Objection	01/19/95
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<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>01/19/95</i>
<i>15A NCAC 30 .0304 - Consideration of Appeal Petitions</i>	<i>RRC Objection</i>	<i>01/19/95</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>01/19/95</i>

**Wildlife Resources and Water Safety**

<i>15A NCAC 10B .0106 - Wildlife Taken for Depredations or Accidentally</i>	<i>RRC Objection</i>	<i>11/17/94</i>
<i>Agency Revised Rule</i>	<i>Obj. Cont'd</i>	<i>11/17/94</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>12/15/94</i>
<i>15A NCAC 10G .0206 - Authority of Boat Registration Agents</i>	<i>RRC Objection</i>	<i>01/19/95</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>01/19/95</i>

**HUMAN RESOURCES**

**Facility Services**

<i>10 NCAC 3H .0221 - Administrative Penalty Determination Process</i>	<i>RRC Objection</i>	<i>01/19/95</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>01/19/95</i>
<i>10 NCAC 3T .0102 - Definitions</i>	<i>RRC Objection</i>	<i>01/19/95</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>01/19/95</i>
<i>10 NCAC 3T .1109 - Resident Care Areas</i>	<i>RRC Objection</i>	<i>01/19/95</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>01/19/95</i>

**Individual and Family Support**

<i>10 NCAC 42C .3601 - Administrative Penalty Determination Process</i>	<i>RRC Objection</i>	<i>01/19/95</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>01/19/95</i>

**Medical Assistance**

<i>10 NCAC 26H .0211 - DRG Rate Setting Methodology</i>	<i>RRC Objection</i>	<i>01/19/95</i>
<i>10 NCAC 26H .0212 - Exceptions to DRG Reimbursement</i>	<i>RRC Objection</i>	<i>01/19/95</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>01/19/95</i>
<i>10 NCAC 26H .0216 - Cost Reporting and Audits</i>	<i>RRC Objection</i>	<i>01/19/95</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>01/19/95</i>
<i>10 NCAC 50B .0402 - Financial Responsibility and Deeming</i>	<i>RRC Objection</i>	<i>12/15/94</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>12/15/94</i>

**INSURANCE**

**Actuarial Services Division**

<i>11 NCAC 16 .0705 - Claim Reserve Methodology and Actuarial Certification</i>	<i>RRC Objection</i>	<i>01/19/95</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>01/19/95</i>

**Agent Services Division**

<i>11 NCAC 6A .0801 - Definitions</i>	<i>RRC Objection</i>	<i>01/19/95</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>01/19/95</i>
<i>11 NCAC 6A .0805 - Calculation of ICECs</i>	<i>RRC Objection</i>	<i>01/19/95</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>01/19/95</i>
<i>11 NCAC 6A .0808 - Instructor Qualification</i>		
<i>Rule Withdrawn by Agency</i>		<i>01/19/95</i>
<i>11 NCAC 6A .0809 - Approval of Courses</i>		
<i>Rule Withdrawn by Agency</i>		<i>01/19/95</i>

11 NCAC 6A .0811 - Sanctions for Noncompliance  
*Rule Withdrawn by Agency*

01/19/95

**LABOR**

**Boiler and Pressure Vessel**

13 NCAC 13 .0202 - Inspector Qualification	RRC Objection	12/15/94
<i>Agency Revised Rule</i>	Obj. Removed	12/15/94
13 NCAC 13 .0204 - Conflict of Interest	RRC Objection	12/15/94
<i>Agency Revised Rule</i>	Obj. Removed	12/15/94
13 NCAC 13 .0205 - Owner-User Inspection Agency	RRC Objection	12/15/94
<i>Agency Revised Rule</i>	Obj. Removed	12/15/94
13 NCAC 13 .0211 - Certificate Inspections	RRC Objection	12/15/94
<i>Agency Revised Rule</i>	Obj. Removed	12/15/94
13 NCAC 13 .0212 - Preparation for Inspection	RRC Objection	12/15/94
<i>Agency Revised Rule</i>	Obj. Removed	12/15/94
13 NCAC 13 .0213 - Fees	RRC Objection	12/15/94
<i>Agency Revised Rule</i>	Obj. Removed	12/15/94
13 NCAC 13 .0304 - Appeals	RRC Objection	12/15/94
<i>Agency Revised Rule</i>	Obj. Removed	12/15/94
13 NCAC 13 .0402 - North Carolina Stamping and Registration	RRC Objection	12/15/94
<i>Agency Revised Rule</i>	Obj. Removed	12/15/94
13 NCAC 13 .0405 - Safety Valves	RRC Objection	12/15/94
<i>Agency Revised Rule</i>	Obj. Removed	12/15/94
13 NCAC 13 .0411 - Valves, Drains, and Bottom Blowoffs	RRC Objection	12/15/94
<i>Agency Revised Rule</i>	Obj. Removed	12/15/94

**Private Personnel Services**

13 NCAC 17 .0102 - Licensing Procedures	RRC Objection	01/19/95
<i>Agency Revised Rule</i>	Obj. Removed	01/19/95
13 NCAC 17 .0105 - Fee Reimbursement		
<i>Rule Withdrawn by Agency</i>		01/19/95

**LICENSING BOARDS AND COMMISSIONS**

**Commission for Auctioneers**

21 NCAC 4B .0501 - Application for Course Approval		
<i>Rule Withdrawn by Agency</i>		12/15/94
21 NCAC 4B .0502 - Requirements for Approval/Minimum Standards		
<i>Rule Withdrawn by Agency</i>		12/15/94

**Board of Dietetics/Nutrition**

21 NCAC 17 .0113 - Fees	RRC Objection	01/19/95
<i>Agency Revised Rule</i>	Obj. Removed	01/19/95
21 NCAC 17 .0201 - Definitions	RRC Objection	01/19/95
<i>Agency Revised Rule</i>	Obj. Removed	01/19/95
21 NCAC 17 .0202 - Requirement for Review	RRC Objection	01/19/95
<i>Agency Revised Rule</i>	Obj. Removed	01/19/95
21 NCAC 17 .0203 - Review and Board Action	RRC Objection	01/19/95
<i>Agency Revised Rule</i>	Obj. Removed	01/19/95

**Board of Examiners of Electrical Contractors**

<i>21 NCAC 18B .0901 - Applicants Convicted of Crimes</i>	<i>RRC Objection</i>	<i>01/19/95</i>
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**Board of Opticians**

<i>21 NCAC 40 .0314 - Apprenticeship and Internship Requirements; Registration</i>	<i>RRC Objection</i>	<i>11/17/94</i>
<i>Agency Revised Rule</i>	<i>Obj. Cont'd</i>	<i>11/17/94</i>
<i>No Response from Agency</i>	<i>Obj. Cont'd</i>	<i>12/15/94</i>
<i>Agency Responded</i>	<i>Obj. Cont'd</i>	<i>01/19/95</i>

**Board of Professional Engineers and Land Surveyors**

<i>21 NCAC 56 .0502 - Application Procedure: Individual</i>	<i>RRC Objection</i>	<i>11/17/94</i>
<i>Rule Returned to Agency</i>	<i>Obj. Cont'd</i>	<i>12/15/94</i>
<i>Agency Filed Rule for Codification Over RRC Objection</i>	<i>Eff.</i>	<i>01/01/95</i>

**PUBLIC EDUCATION**

**Elementary and Secondary Education**

<i>16 NCAC 6E .0202 - Interscholastic Athletics</i>	<i>RRC Objection</i>	<i>12/15/94</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>12/15/94</i>

**SECRETARY OF STATE**

**Notary Public Division**

<i>18 NCAC 7 .0103 - Notaries Public Deputy</i>	<i>RRC Objection</i>	<i>12/15/94</i>
<i>Agency Repealed Rule</i>	<i>Obj. Removed</i>	<i>12/15/94</i>
<i>18 NCAC 7 .0301 - Approved Course of Study</i>	<i>RRC Objection</i>	<i>12/15/94</i>
<i>No Response from Agency</i>	<i>Obj. Cont'd</i>	<i>01/19/95</i>
<i>18 NCAC 7 .0302 - Instructors</i>	<i>RRC Objection</i>	<i>12/15/94</i>
<i>No Response from Agency</i>	<i>Obj. Cont'd</i>	<i>01/19/95</i>

**TRANSPORTATION**

**Division of Highways**

<i>19A NCAC 2B .0603 - Driveway Permits for Special Commercial Property</i>	<i>RRC Objection</i>	<i>12/15/94</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>12/15/94</i>
<i>19A NCAC 2D .0825 - Confidentiality of Cost Estimates and Plan Holder Lists</i>	<i>RRC Objection</i>	<i>01/19/95</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>01/19/95</i>



*This Section contains the full text of some of the more significant Administrative Law Judge decisions along with an index to all recent contested cases decisions which are filed under North Carolina's Administrative Procedure Act. Copies of the decisions listed in the index and not published are available upon request for a minimal charge by contacting the Office of Administrative Hearings, (919) 733-2698.*

<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>ALJ</u>	<u>DATE OF DECISION</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
<b>ADMINISTRATION</b>				
<i>North Carolina Council for Women</i>				
Family Violence Prevention Services v. N.C. Council for Women	94 DOA 0242	West	04/13/94	
<i>Division of Purchase and Contract</i>				
Carolina Tel. & Telegraph Co. v. Admin., Div of Purchase & Contract	94 DOA 0516	Morrison	01/21/95	9:22 NCR 1943
<b>ALCOHOLIC BEVERAGE CONTROL COMMISSION</b>				
Jerry Lee McGowan v. Alcoholic Beverage Control Comm.	93 ABC 0363	Morrison	08/23/94	
Alcoholic Beverage Control Comm. v. Entertainment Group, Inc.	93 ABC 0719	Gray	03/02/94	
Alcoholic Beverage Control Comm. v. Daehae Chang	93 ABC 0775	Morrison	09/21/94	
Rayvon Stewart v. Alcoholic Beverage Control Commission	93 ABC 0793	Nesnow	04/11/94	
Alcoholic Beverage Control Comm. v. Branchland, Inc.	93 ABC 0892	Morgan	06/03/94	
Alcoholic Beverage Control Comm. v. Peggy Sutton Walters	93 ABC 0906	Mann	03/18/94	
Russell Bernard Speller d/b/a Cat's Disco v. Alcoholic Bev Ctl Comm.	93 ABC 0937	Morrison	03/07/94	
Alcoholic Beverage Control Comm. v. Branchland, Inc.	93 ABC 0993	Morgan	06/03/94	
Edward Ogunjobi, Club Piccadilli v. Alcoholic Beverage Control Comm.	93 ABC 1024	West	03/03/94	
Robert Kovalaske, Nick Pikoulas, Joseph Marshburn, Evangelos Pikoulas, d/b/a Our Mom's BBQ v. Alcoholic Beverage Control Commission	93 ABC 1029	Gray	03/04/94	
Christine George Williams v. Alcoholic Beverage Control Comm.	93 ABC 1057	Becton	04/21/94	
Lynn Ann Garfagna v. Alcoholic Beverage Control Commission	93 ABC 1481	Gray	07/19/94	
Alcoholic Beverage Control Comm. v. Raleigh Limits, Inc.	93 ABC 1485	Mann	03/11/94	
Alcoholic Beverage Control Comm. v. COLAP Enterprises, Inc.	94 ABC 0060	Nesnow	06/07/94	
Alcoholic Beverage Control Comm. v. Mitch's Tavern, Inc.	94 ABC 0064	Gray	07/26/94	
Alcoholic Beverage Control Comm. v. Ms. Lucy Jarrell Powell	94 ABC 0070	Morgan	06/06/94	
Alcoholic Beverage Control Comm. v. Richard Wayne Barrow	94 ABC 0079	Gray	10/14/94	
Alcoholic Beverage Control Comm. v. Subhashbai C. Patel	94 ABC 0083	West	11/01/94	
Alcoholic Beverage Control Comm. v. Daphne Ann Harrell	94 ABC 0115	Nesnow	07/18/94	
Mr. & Mrs. Josh Bullock Jr. v. Alcoholic Beverage Control Comm.	94 ABC 0124	Morgan	06/06/94	
Jerome Crawford v. Alcoholic Beverage Control Commission	94 ABC 0125	Morgan	06/06/94	
Lawrence Mungin v. Alcoholic Beverage Control Commission	94 ABC 0149	Chess	08/08/94	
Willie Poolc Jr. v. Alcoholic Beverage Control Commission	94 ABC 0232	Chess	09/02/94	
Alonza Mitchell v. Alcoholic Beverage Control Commission	94 ABC 0257	Morrison	07/28/94	9:11 NCR 870
Roy Dale Cagle v. Alcoholic Beverage Control Commission	94 ABC 0260	West	07/13/94	
Aytes Investments, Inc. v. ABC Comm. and Ripley Hotch, et. al.	94 ABC 0291	West	01/25/95	
Christopher C. Gause, James A Jinwright v. Alcoholic Bev. Ctl. Comm.	94 ABC 0532	Gray	09/27/94	
Rajaddin Abdelaziz v. Alcoholic Beverage Control Commission	94 ABC 0600	Chess	09/22/94	
Alcoholic Beverage Control Comm. v. Sherrie Rena Quick	94 ABC 0717	Gray	12/16/94	
Carol Hewitt v. Alcoholic Beverage Control Commission	94 ABC 0804	Gray	01/04/95	
Alcoholic Bev. Ctl. Comm. v. Partnership, T/A Price Downs Food Mart	94 ABC 0856	West	11/22/94	
Alcoholic Beverage Control Comm. v. Sheila Charlesine Hildebrand	94 ABC 0909	Becton	01/10/95	
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**COMMERCE**

*Savings Institutions Division*

James E. Byers, et al v. Savings Institutions	93 COM 1622	Chess	03/01/94
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<i>Division of Prisons</i>				
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<i>Crime Victims Compensation Commission</i>				
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James Hugh Baynes v. Crime Victims Compensation Commission	93 CPS 0801	West	03/28/94	9:2 NCR 114
Ross T. Bond v. Victims Compensation Commission	93 CPS 1104	West	04/21/94	
James A. Canady v. Crime Victims Compensation Commission	93 CPS 1108	Gray	03/28/94	
Virginia Roof v. Department of Crime Control & Public Safety	93 CPS 1347	Nesnow	03/24/94	
Karen C. Tilghman v. Crime Victims Compensation Commission	93 CPS 1608	Reilly	05/17/94	9:6 NCR 407
Rosemary Taylor v. Crime Victims Compensation Commission	93 CPS 1626	Nesnow	05/25/94	
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James Benton v. Crime Victims Compensation Commission	94 CPS 0034	Chess	06/14/94	
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Lawrence L. Tyson v. Crime Victims Compensation Commission	94 CPS 0368	Gray	04/26/94	
Ada Battle v. Crime Victims Compensation Commission	94 CPS 0414	Reilly	08/23/94	
Lyman L. Chapman v. Crime Victims Compensation Commission	94 CPS 0415	Chess	06/02/94	
Douglas and Virginia Wilson v. Crime Victims Compensation Comm.	94 CPS 0417	Reilly	06/07/94	
Blanche J. Taylor v. William Hooks Jr., Crime Victims Comp. Comm.	94 CPS 0464	Mann	10/28/94	
Michelle L. Wilcox v. Crime Victims Compensation Commission	94 CPS 0467	Reilly	06/07/94	
Charlie E. McDonald v. Crime Victims Compensation Commission	94 CPS 0468	Gray	09/02/94	9:13 NCR 1056
Lillie Alford/behalf/estate/Venise Alford v. Crime Victims Comp. Comm.	94 CPS 0488	West	11/10/94	
Michael G. Low v. Crime Victims Compensation Commission	94 CPS 0524	Morrison	06/13/94	
Torbit Smith v. Victims Compensation Commission	94 CPS 0535	Becton	10/26/94	
Maureen P. Wilson v. Crime Victims Compensation Commission	94 CPS 0567	Gray	09/23/94	
Kay Thompson Chambers v. Crime Victims Compensation Commission	94 CPS 0581	Morrison	09/28/94	
James R. Gray v. Crime Victims Compensation Commission	94 CPS 0603	Reilly	08/19/94	
Hazel Jarvis v. Victims Compensation Commission	94 CPS 0664	Chess	07/29/94	
Pattie Hale v. Victims Compensation Fund	94 CPS 0734	West	09/06/94	
Dana Harris v. Crime Victims Compensation Commission	94 CPS 0832	Nesnow	09/26/94	
Dorian Walter St. Patrick Scott v. Victims Compensation Comm.	94 CPS 0883	Nesnow	10/04/94	
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Donna C. Garrison v. Crime Victims Compensation Commission	94 CPS 1690	Reilly	01/18/95	
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<b>ENVIRONMENT, HEALTH, AND NATURAL RESOURCES</b>				
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James M. Lyles v. Brunswick County Office of Permits	92 EHR 0333	Chess	09/22/94	
Erby Lamar Grainger v. Environment, Health, & Natural Resources	93 EHR 0071	Reilly	11/22/94	

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William P. Shaver, R. McKinnon Morrison III, Jill Ray, Dr. Wesley C. Ray, Douglas W. Furr, Catherine H. Furr & Caldwell Creek Farm, Inc. v. EHNR-State of North Carolina	93 EHR 0452	Morgan	08/11/94	
Ron D. Graham, Suzanne C. Graham v. Robert Cobb, Mecklenburg Cty	93 EHR 1017	Becton	05/31/94	
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Carnel D. Pearson Jr. v. Craven Co. Division of Health & DEHNR	93 EHR 1759	Mann	09/06/94	
Patricia D. Solomon v. Macon County Health Department	93 EHR 1777	West	05/23/94	
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Sam's Club #8219 v. Mecklenburg County Health Department	94 EHR 0329	Nesnow	06/15/94	9:7 NCR 496
Everhart & Associates., Inc. and Hettie Tolson Johnson v. Environment, Health, and Natural Resources and Zelig Robinson	94 EHR 0392	Reilly	10/18/94	9:15 NCR 1231
Richard A. Jenkins v. NC Water Pollution Ctl. Sys. Op. Cert. Comm.	94 EHR 0424	West	10/11/94	
Eugene Crawford & Nancy P. Crawford v. Macon County Health Dept.	94 EHR 0500	Gray	06/10/94	
Joseph B. Leggett v. Environment, Health, & Natural Resources	94 EHR 0560	West	09/21/94	
Tri-Circuits, Inc. v. Environment, Health, & Natural Resources	94 EHR 0601	Morrison	06/30/94	
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Irene, Will, Eric Litaker v. Montgomery County Health Department	94 EHR 0776	Gray	09/06/94	
James Loder v. New Hanover Inspection Svcs., Local CAMA Permit Off.	94 EHR 0821	Chess	11/21/94	
H. W. Golding v. Environment, Health, & Natural Resources	94 EHR 0913	Reilly	01/23/95	
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<b>Craven County Health Department</b>				
Cox Transport Equipment, Harvey A Cox v. County of Craven, EHNR	94 EHR 0487	West	11/01/94	
<b>Environmental Health</b>				
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Richard F. Ebersold v. Jackson County Health Department & EHNR	93 EHR 1391	Chess	06/24/94	
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Raleigh-Durham Airport Authority v. EHNR, Div of Env. Management	93 EHR 0684* <sup>11</sup>	West	01/31/95	
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Jack Griffin v. Dept. of Environment, Health, and Natural Resources	93 EHR 1030	Becton	03/21/94	
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John G. Owens & J.B.S. Mechanical Svcs, Inc. v. EHNR, Env. Mgmt.	94 EHR 0024	Mann	09/07/94	
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Town of Kernersville (LQS 93-053) v. Environment, Health, & Nat. Res.	93 EHR 1781	Chess	06/29/94	9:8 NCR 581
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David W. Oglesby v. Division of Marine Fisheries	93 EHR 0930 <sup>#</sup>	West	07/25/94	9:10 NCR 758
David E. Oglesby v. Division of Marine Fisheries	93 EHR 0931 <sup>#</sup>	West	07/25/94	9:10 NCR 758
James Goodman v. EHNR, Division of Marine Fisheries	94 EHR 0035	Nesnow	07/18/94	9:9 NCR 660
Billy Ervin Burton v. Division of Marine Fisheries	94 EHR 0504	Nesnow	09/01/94	
<i>Maternal and Child Health</i>				
<i>WIC Section</i>				
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<i>Solid Waste Management</i>				
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Bertie Citizens Action Coalition, Inc.; Willard J. Oliver, Reginald Early, Herbert Jenkins, Jr., Lindwood Earl Tripp, Willie Warren Tripp, Mary Alice Cherry, and Kathy Burden v. EHNR, Solid Waste Management Division, and East Carolina Environmental, Inc., Addington Environmental, Inc., et al.	93 EHR 1045	Morrison	04/06/94	9:3 NCR 214
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<i>Distribution Child Support</i>				
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Lauren Holt, ID#26-0-00037 v. DHR, Div. of Child Development	93 DHR 1549	Becton	07/13/94	
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Miriam C. Kircher v. Human Resources, Div. of Child Development	94 DHR 0615	Morrison	11/17/94	
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<i>Facility Services</i>				
Laura Harvey Williams v. DHR, Division of Facility Services	93 DHR 0391	Morgan	08/11/94	
Presbyterian-Orthopaedic Hospital v. Department of Human Resources	93 DHR 0805	Reilly	03/11/94	
Judy Hoben Wallace v. Department of Human Resources	93 DHR 0935	Gray	05/23/94	
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Willie J. McCombs v. Human Resources, Div. of Facility Services	94 DHR 0430	Gray	09/29/94	
Mr. & Mrs. Alvin Wilson v. DHR, Division of Facility Services	94 DHR 0559	Chess	08/25/94	
Steve Alan Russell v. DHR, Div. of Facility Svcs, Emergency Med. Svcs	94 DHR 0830	Gray	11/28/94	
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Charles E. Hunter, Jr., M.D. & Coastal Perfusion Svcs, Inc. v. Department of Human Resources, and Wilmington Perfusion Corp. and Howard F. Marks, Jr., M.D.	93 DHR 0746	Morgan	04/11/94	
Cape Fear Memorial Hospital v. Department of Human Resources	93 DHR 1552	Reilly	08/15/94	
Angel Community Hospital, Inc. v. DHR, Div. of Facility Svcs., Cert./ Need Section, and Brithaven, Inc., d/b/a Brithaven of Franklin	94 DHR 0146	West	10/21/94	
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Highland House of Fayetteville, Inc. & Richard R. Allen Sr. v. DHR The Carrolton of Fayetteville, Inc. v. Department of Human Resources and	94 DHR 0198 <sup>*5</sup>	Morgan	08/11/94	
Highland House of Fayetteville, Inc. & Richard R. Allen Sr. v. DHR ABC Home Health Services, Inc. v. Human Resources, Div. of Facility Services, Certificate of Need Section v. Mecklenburg Home Health, Inc., d/b/a Home Health Professionals of Guilford	94 DHR 0254	Morrison	11/17/94	
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Duplin Home Care & Hospice, Inc.; Hometown Hospice, Inc.; Craven County Health Dept. Home Health-Hospice Agency; Hospice of Pamlico County, Inc.; Hospice of Carteret County; and Comprehensive Home Health Care I, Inc.				
<i>Licensure Section</i>				
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<i>Division of Medical Assistance</i>				
J.R., by and through her agent & Personal Rep., Hank Neal v. DHR	93 DHR 0528	Gray	04/27/94	
N.R. by & through her agt & personal rep E.C.J. v. DHR, Medical Assis.	93 DHR 0538	Chess	07/01/94	
David Yott v. Department of Human Resources	93 DHR 1113	Gray	04/05/94	
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Betty Snipes v. Person County Department of Social Services	94 DHR 1061	Gray	12/16/94	
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Dalton Felton Sr. v. Department of Human Resources	92 CSE 0532	Morgan	07/13/94	
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Gary Eugene Honeycutt v. Department of Human Resources	92 CSE 1207	Morgan	08/10/94	
Vicki C. Conn v. Department of Human Resources	92 CSE 1268	Morgan	08/10/94	
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Thomas Sadler v. Department of Human Resources	92 CSE 1739	Becton	10/18/94	
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Frederick C. Burdick Jr. v. Department of Human Resources	93 CSE 0227	Mann	11/09/94	
Darryl D. Leedy v. Department of Human Resources	93 CSE 0591	Morgan	08/11/94	
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Willie David Moore v. Criminal Justice Ed. & Training Stds. Comm.	93 DOJ 1071	Nesnow	04/11/94	9:3 NCR 218
Glenn Travis Stout v. Criminal Justice Ed. & Training Stds. Comm.	93 DOJ 1409	Gray	03/03/94	
Steven W. Wray v. Sheriffs' Education & Training Standards Comm.	93 DOJ 1803	Chess	06/29/94	
J. Stevan North v. Sheriffs' Education & Training Standards Comm.	94 DOJ 0040	Chess	06/16/94	
Gregory Blake Manning v. Criminal Justice Ed. & Training Stds. Comm.	94 DOJ 0048	Gray	03/29/94	
Russell Pinkelton Jr. v. Sheriffs' Education & Training Stds. Comm.	94 DOJ 0118	Gray	08/10/94	
William Franklin Sheetz v. Sheriffs' Education & Training Stds. Comm.	94 DOJ 0196	Chess	06/16/94	
James M. Buie v. Criminal Justice Ed. & Training Stds. Comm.	94 DOJ 0401	Nesnow	08/26/94	
Burns E. Anderson v. Criminal Justice Ed. & Training Stds. Comm.	94 DOJ 0574	Becton	10/04/94	9:15 NCR 1234
Nelson Falcon v. Sheriffs' Education & Training Stds. Comm.	94 DOJ 0611	Mann	08/12/94	
Ralph E. Dent v. Criminal Justice Ed. & Training Stds. Comm.	94 DOJ 0902	Mann	01/05/95	

## LABOR

Ken Harmon v. Labor, Elevator and Amusement Device Division	93 DOL 1747	Collier	12/27/94	
Ronald D. Rumble v. Dept. of Labor, Wage & Hour Division	94 DOL 0956	Reilly	11/01/94	

# CONTESTED CASE DECISIONS

<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>ALJ</u>	<u>DATE OF DECISION</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
<b>MORTUARY SCIENCE</b>				
Mortuary Science v. Perry J. Brown, & Brown's Funeral Directors	93 BMS 0532	Chess	03/28/94	
<b>PUBLIC EDUCATION</b>				
Donna M. Yedowitz v. Charlotte-Mecklenburg Bd. of Education	92 EDC 1432*12	Nesnow	01/31/95	
Christopher Murch as Guardian Ad Litem for Angela D. Murch, a Minor v. Barbara Richardson, Admin. Except. Child. Prog.; Craven Cty School Sys.; Bradford L. Sneed, Superintendent	93 EDC 0161	Mann	11/28/94	
Nancy Watson v. Board of Education	93 EDC 0234	Chess	02/28/94	9:2 NCR 108
Janet L. Wilcox v. Carteret County Board of Education	93 EDC 0451	Mann	02/21/94	
Annice Granville, Phillip J. Granville v. Onslow County Bd. of Education	93 EDC 0742	Mann	08/01/94	9:11 NCR 863
Donna M. Yedowitz v. Charlotte-Mecklenburg Bd. of Education	93 EDC 1038*12	Nesnow	01/31/95	
Milt Sherman & Rose Marie Sherman v. Pitt County Board of Education	93 EDC 1617	West	11/29/94	
Mary Ann Sciullo & Frank Sciullo on behalf of their minor child, Samuel W. Sciullo v. State Board of Education	94 EDC 0044	Gray	07/22/94	
George W. Stallings & Suzanne H. Stallings v. Charlotte-Mecklenburg Board of Education	94 EDC 0326	Mann	01/05/95	
Wayne Hogwood v. Department of Public Instruction	94 EDC 0653	West	10/20/94	9:16 NCR 1326
Norman Charles Creange v. State Bd. of Ed., Dept. of Public Instruction	94 EDC 0737	Morrison	11/04/94	
Donald L. Brickhouse v. Bertie County Schools	94 EDC 1176	Gray	01/25/95	
Charlotte-Mecklenburg Board of Education v. Lemuel and Patricial Gray, as Parents of Tanya and Daniel Gray	94 EDC 1629	Mann	01/17/95	
<b>STATE HEALTH BENEFITS OFFICE</b>				
Linda C. Campbell v. Teachers & St Emp Major Medical Plan	93 INS 0410	Becton	04/22/94	
Timothy L. Coggins v. Teachers' & St Emp Comp Major Med Plan	93 INS 0929	Morrison	03/04/94	
Sandra Tatum v. Teachers & State Employees Comp Major Medical Plan	94 INS 0028	Gray	10/25/94	9:16 NCR 1331
P.H.B. v. Teachers & State Employees Comp Major Medical Plan	94 INS 0345	Gray	08/23/94	9:12 NCR 945
<b>STATE PERSONNEL</b>				
Michael L. K. Benson v. Office of State Personnel	93 OSP 1690	Nesnow	08/23/94	
<i>Department of Administration</i>				
Delores Y. Bryant v. Department of Administration	94 OSP 0988	Gray	01/26/95	
Delores Y. Bryant v. Department of Administration	94 OSP 0989	Gray	01/26/95	
Delores Y. Bryant v. Department of Administration	94 OSP 0990	Gray	01/26/95	
<i>Agricultural and Technical State University</i>				
Linda D. Williams v. Agricultural and Technical State University	93 OSP 0089	Chess	03/23/94	
Juanita D. Murphy v. Agricultural and Technical State University	93 OSP 0708	Morrison	03/16/94	
Thomas M. Simpson v. Agricultural and Technical State University	93 OSP 1393	Gray	03/24/94	
Peggy L. Cantrell v. A&T State University	93 OSP 1694	Reilly	01/06/95	9:21 NCR 1875
Pricella M. Curtis v. A&T State University Curriculum & Instruction	94 OSP 0748	Gray	08/17/94	
<i>Department of Agriculture</i>				
Donald H. Crawford v. Department of Agriculture	94 OSP 0108	Reilly	05/23/94	
Delores Y. Bryant v. Department of Agriculture	94 OSP 0987	Gray	01/25/95	
<i>NC School of the Arts</i>				
Rick McCullough v. Search Comm School/Dance, NC School of the Arts	94 OSP 0511	West	10/14/94	
<i>Butner Adolescent Treatment Center</i>				
Alvin Lamonte Breeden v. Butner Adolescent Treatment Center	94 OSP 0899	Nesnow	10/12/94	
<i>Catawba County</i>				
Sandra J. Cunningham v. Catawba County	93 OSP 1097	Reilly	04/29/94	9:4 NCR 292

# CONTESTED CASE DECISIONS

<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>ALJ</u>	<u>DATE OF DECISION</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
<i>North Carolina Central University</i>				
Dianna Blackley v. North Carolina Central University	89 OSP 0494	Nesnow	09/14/94	
Ha-Yilyah Ha-She'B v. NCCU	93 OSP 0875	Becton	04/13/94	9:3 NCR 211
<i>Chapel Hill &amp; Carrboro City School</i>				
Brenda J. Parker v. Stella Nickerson, Chapel Hill & Carrboro City School	94 OSP 0568	West	10/06/94	
<i>Cherry Hospital</i>				
Charles F. Fields v. Cherry Hospital	94 OSP 0498	Morrison	06/15/94	
Gail Marie Rodgers Lincoln v. Cherry Hospital, Goldsboro, NC 27530	94 OSP 0578	West	10/07/94	
<i>Department of Commerce</i>				
Ruth Daniel-Perry v. Department of Commerce	93 OSP 0725	Chess	03/04/94	9:1 NCR 63
Delores Y. Bryant v. Department of Commerce	94 OSP 0983	Gray	02/01/95	
<i>Department of Correction</i>				
Leland K. Williams v. Department of Correction	91 OSP 1287	Chess	02/22/94	
Elroy Lewis v. North Central Area - Dept of Correction, Robert Lewis	92 OSP 1770	Becton	05/24/94	9:6 NCR 395
Steven R. Kellison v. Department of Correction	93 OSP 0283	Chess	06/15/94	
Bert Esworthy v. Department of Correction	93 OSP 0711	Chess	04/21/94	
James J. Lewis v. Department of Correction	93 OSP 1121	West	08/31/94	
Merron Burrus v. Department of Correction	93 OSP 1145	West	09/30/94	
Lewis Alsbrook v. Department of Correction, Morrison Youth Institution	93 OSP 1739	West	07/20/94	
Junius C. Page v. Dept. of Correction, Secy. Franklin Freeman	93 OSP 1794	Mann	07/08/94	
Grady Butler, Jr. v. Correction, Div./Prisons, Sampson Cty Ctl Laundry	93 OSP 1804	West	11/30/94	
Richard Hopkins v. Department of Correction	94 OSP 0041	Chess	06/16/94	
Alfred B. Hunt v. Department of Correction	94 OSP 0243	Reilly	04/20/94	
Charles Horne v. Equal Emp. Opportunity Officer & Dept. of Correction	94 OSP 0244	Nesnow	06/16/94	
Adrian E. Graham v. Intensive Probation/Parole	94 OSP 0261	Morrison	04/26/94	
E. Wayne Irvin, D.D.S. v. Div. of Prisons, Department of Correction	94 OSP 0334	Chess	10/03/94	
Thomas W. Creswell, Lisa K. Bradley v. Department of Correction	94 OSP 0407*	Chess	09/28/94	
Thomas W. Creswell, Lisa K. Bradley v. Department of Correction	94 OSP 0408*	Chess	09/28/94	
Barry Lee Clark v. Department of Correction	94 OSP 0437	Chess	09/12/94	
Clyde M. Walker v. Department of Correction, Div. of Prisons	94 OSP 0476	West	12/30/94	
Marietta A. Stancil v. Department of Correction	94 OSP 0652	West	11/22/94	
Edward E. Hodge v. Department of Correction	94 OSP 0829	Nesnow	09/15/94	
Phyllis K. Cameron v. Department of Correction	94 OSP 0896	Nesnow	10/27/94	
Brenda Yvonne Ewell v. Department of Correction	94 OSP 0959	Gray	12/12/94	
Debra D. McKay v. Department of Correction	94 OSP 0960	Gray	12/12/94	
Richard L. Pittman v. Department of Correction	94 OSP 1021	West	01/27/95	
<i>Eastern Correctional Institution</i>				
Roy A. Keel & Zebedee Taylor v. Eastern Correctional Institution	94 OSP 0160*	Nesnow	07/20/94	
Roy A. Keel & Zebedee Taylor v. Eastern Correctional Institution	94 OSP 0256*	Nesnow	07/20/94	
<i>Guilford Correctional Center</i>				
Ann R. Williams v. Guilford Correctional Center #4440	94 OSP 0428	West	06/22/94	
<i>McDowell Correctional Center</i>				
Michael Junior Logan v. Kenneth L. Setzer, McDowell Corr. Ctr.	94 OSP 0546	Gray	09/01/94	
<i>Polk Youth Institution</i>				
Joseph Mark Lewanowicz v. Department of Correction, Polk Youth Inst.	94 OSP 0926	Nesnow	11/07/94	
<i>Cosmetic Art Examiners</i>				
Mary Quaintance v. N.C. State Board of Cosmetic Art Examiners	94 OSP 0372	Chess	06/14/94	



<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>ALJ</u>	<u>DATE OF DECISION</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
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***Department of Crime Control and Public Safety***

Don R. Massenburg v. Department of Crime Control & Public Safety	90 OSP 0239	Chess	04/28/94	
Fred L. Kearney v. Department of Crime Control & Public Safety	91 OSP 0401	West	03/18/94	
J.D. Booth v. Department of Crime Control & Public Safety	92 OSP 0953	Morrison	10/18/94	
Sylvia Nance v. Department of Crime Control & Public Safety	92 OSP 1463	Reilly	03/21/94	
Jerry Lewis v. Dept. of Crime Control & Public Safety, Highway Patrol	93 OSP 1058	West	12/30/94	
Anthony R. Butler v. Highway Patrol	93 OSP 1079	West	08/30/94	
Ruth P. Belcher v. Crime Control & Public Safety, State Highway Patrol	94 OSP 0190	Gray	09/06/94	
Lewis G. Baker v. Crime Control & Public Safety, Office Adj. General	94 OSP 0572	Mann	07/12/94	
William Smith v. State Highway Patrol	94 OSP 0816	Morrison	09/09/94	
Delores Y. Bryant v. Crime Control & Public Safety	94 OSP 0986	Gray	12/14/94	

***Dorothea Dix Hospital***

Bettie Louise Boykin v. Dorothea Dix Hospital	94 OSP 0831	Nesnow	09/28/94	
Ernest Akpaka v. Scott Stephens, Dorothea Dix Hospital	94 OSP 0962	Gray	11/01/94	

***Durham County Health Department***

Lylla Denell Stockton v. Durham County Health Department	93 OSP 1780	Gray	05/25/94	
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***East Carolina School of Medicine***

Gloria Dianne Burroughs v. ECU School of Medicine	93 OSP 0909	Becton	10/26/94	
Lillie Mercer Atkinson v. ECU, Dept of Comp. Med., Dr. William H. Pryor Jr., Sheila Church	94 OSP 0162	Gray	10/06/94	
William Lee Perkins v. ECU Sch of Med. Comp. Med. L. Blankenship, Tammy Barnes, Wm Pyroe	94 OSP 0741	West	09/30/94	

***East Carolina University***

Lois Toler Wilson v. East Carolina University	94 OSP 0143	Gray	12/06/94	9:19 NCR 1591
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***Elizabeth City State University***

John Franklin Simpson & Wayne Tyrone Barclift v. Eliz. City St. U.	93 OSP 0356 <sup>#13</sup>	Mann	01/30/95	
John Franklin Simpson & Wayne Tyrone Barclift v. Eliz. City St. U.	93 OSP 0358 <sup>#13</sup>	Mann	01/30/95	
James Charles Knox v. Elizabeth City State University	94 OSP 0207	Gray	06/17/94	

***Employment Security Commission of North Carolina***

Dan G. Smith v. Employment Security Commission of N.C.	93 OSP 0865	Becton	11/23/94	
Rejeanne B. LeFrancois v. Employment Security Commission of N.C.	93 OSP 1069	West	04/08/94	

***Department of Environment, Health, and Natural Resources***

Steven P. Karasinski v. Environment, Health, and Natural Resources	93 OSP 0940	West	09/02/94	
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***Division of Marine Fisheries***

William D. Nicely v. Environment, Health, & Natural Resources	92 OSP 1454	Becton	05/04/94	9:5 NCR 333
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***Fayetteville State University***

Bessie Carpenter Locus v. Fayetteville State University	86 OSP 0202	Morrison	11/18/94	9:18 NCR 1500
Roscoe L. Williams v. Fayetteville State University	93 OSP 0487	West	06/22/94	

***Department of Human Resources***

Inez Latta v. Department of Human Resources	93 OSP 0830	Becton	03/28/94	
Charla S. Davis v. Department of Human Resources	93 OSP 1762	Gray	03/03/94	
Rose Mary Taylor v. Department of Human Resources, Murdoch Center	93 OSP 0047	Gray	05/06/94	
David R. Rodgers v. Jimmy Summerville, Stonewall Jackson School	94 OSP 0087	Chess	03/16/94	
Dr. Patricia Sokol v. James B. Hunt, Governor and Human Resources	94 OSP 0357	Chess	08/22/94	
Bruce B. Blackmon, M.D. v. DHR, Disability Determination Services	94 OSP 0410	Nesnow	09/14/94	

# CONTESTED CASE DECISIONS

<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>ALJ</u>	<u>DATE OF DECISION</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
<i>Craven County Department of Social Services</i>				
Shirley A. Holland v. Craven Cty. Dept./Social Services & Craven Cty.	93 OSP 1606	Gray	07/01/94	
Nettie Jane Godwin (Lawhorn) v. Craven Cty. DSS & Craven Cty.	93 OSP 1607	Gray	07/18/94	9:9 NCR 655
Violet P. Kelly v. Craven Cty. Dept. of Social Services & Craven Cty.	93 OSP 1805	Reilly	07/05/94	
June Carol Jenkins v. Craven County Department of Social Services	94 OSP 0758	Nesnow	01/11/95	
<i>Durham County Department of Social Services</i>				
Belinda F. Jones v. Daniel Hudgins, Durham Cty Dept of Social Svcs	93 OSP 0728	Chess	04/11/94	
Ralph A. Williams v. Durham County Department of Social Services	94 OSP 0167	Reilly	09/13/94	
<i>Haywood County Department of Social Services</i>				
Dorothy Morrow v. Haywood County Department of Social Services	94 OSP 0186	West	06/17/94	
<i>Pamlico County Department of Social Services</i>				
Mrs. Dietrs C. Jones v. Pamlico Department of Social Services	94 OSP 0251	Chess	08/09/94	
<i>Lee County Health Department</i>				
James Shackleton v. Lee County Health Department	94 OSP 0344	Gray	08/17/94	
<i>Lenoir County Health Department</i>				
Nino A. Coley v. Lenoir County Health Department	94 OSP 0503	West	01/13/95	
<i>Medical Assistance</i>				
Delores Y. Bryant v. DHR, Division of Medical Assistance	94 OSP 0991	Gray	10/27/94	
Delores Y. Bryant v. DHR, Division of Medical Assistance	94 OSP 0992	Gray	10/27/94	
<i>Mental Health/Mental Retardation</i>				
Yvonne G. Johnson v. Blue Ridge Mental Health	93 OSP 1604	Becton	03/18/94	
<i>Sandhills Center for Mental Health, Developmental Disabilities, and Substance Abuse Services</i>				
Steve LeGrand Avant v. Sandhills Ctr. for MH/DD/SAS	94 OSP 0655	Chess	12/30/94	9:22 NCR 1949
<i>Services for the Blind</i>				
Donna L. Williams v. DHR, Division of Services for the Blind	93 OSP 1610	Morrison	10/25/94	
<i>Wake County Mental Health, Developmental Disabilities, and Substance Abuse Services</i>				
Julia Morgan Brannon v. Wake County MH/DD/SAS	94 OSP 0214	Reilly	04/14/94	
<i>Wayne County Department of Social Services</i>				
Brently Jean Carr, Nancy Carol Carter v. Wayne County/Wayne County Department of Social Services	94 OSP 0539*	Mann	11/07/94	
Brently Jean Carr, Nancy Carol Carter v. Wayne County/Wayne County Department of Social Services	94 OSP 0540*	Mann	11/07/94	
<i>Youth Services</i>				
David R. Rodgers v. DHR, Div./Youth Services, Stonewall Jackson Sch.	94 OSP 0306	Chess	10/24/94	
<i>Justice</i>				
Delores Y. Bryant v. Department of Justice	94 OSP 0984	Gray	10/27/94	

<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>ALJ</u>	<u>DATE OF DECISION</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
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**Public Instruction**

Elaine M. Sills v. Department of Public Instruction	94 OSP 0781	Gray	10/06/94	
Delores Y. Bryant v. Department of Public Instruction	94 OSP 0981	Gray	11/28/94	
Delores Y. Bryant v. Department of Public Instruction	94 OSP 0982	Gray	11/28/94	

**Real Estate Appraisal Board**

Earl Hansford Grubbs v. Appraisal Board	94 OSP 0753	Nesnow	08/24/94	
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**Smoky Mountain Center**

Betty C. Bradley v. Smoky Mountain Center	93 OSP 1505	Becton	09/26/94	9:14 NCR 1141
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**N.C. State University**

Laura K. Reynolds v. N.C. State University - Dept. of Public Safety	92 OSP 0828	Morgan	05/26/94	
Ashraf G. Khalil v. N.C.S.U.	93 OSP 1666	Nesnow	09/19/94	
Robin Lazenby Boyd v. NC State University Human Res./Seafood Lab	94 OSP 0779	Nesnow	12/01/94	

**Department of Transportation**

Phyllis W. Newnam v. Department of Transportation	92 OSP 1799	Morgan	08/11/94	
Glenn I. Hodge Jr. v. Samuel Hunt, Sec'y. Dept. of Transportation	93 OSP 0297 <sup>#1</sup>	Morrison	03/10/94	9:1 NCR 60
Glenn I. Hodge Jr. v. Samuel Hunt, Sec'y. Dept. of Transportation	93 OSP 0500 <sup>#1</sup>	Morrison	03/10/94	9:1 NCR 60
Betsy Johnston Powell v. Department of Transportation	93 OSP 0550	Morrison	03/28/94	
Arnold Craig v. Samuel Hunt, Secretary Department of Transportation	93 OSP 0586	Nesnow	07/11/94	
Susan H. Cole v. Department of Transportation, Div. of Motor Vehicles	93 OSP 0908	Morrison	07/15/94	
Susan H. Cole v. Department of Transportation, Div. of Motor Vehicles	93 OSP 0908	Morrison	10/07/94	
Clyde Lem Hairston v. Department of Transportation	93 OSP 0944	Chess	02/28/94	
Angela Trublood Westmoreland v. Department of Transportation	93 OSP 1001	Morrison	09/30/94	9:14 NCR 1136
Bobby R. Mayo v. Department of Transportation	93 OSP 1004	Nesnow	09/01/94	
Tony Lee Curtis v. Department of Transportation	93 OSP 1037	Reilly	08/26/94	
Darrell H. Wise v. Department of Transportation	93 OSP 1353	Gray	07/26/94	
Henry C. Puegh v. Department of Transportation	93 OSP 1710	Nesnow	05/24/94	
Kenneth Ray Harvey v. Department of Transportation	94 OSP 0423	Morrison	08/17/94	
Bobby R. Mayo v. Transportation, Ferry Div. Jerry W. Gaskill, Director	94 OSP 0479	Nesnow	01/24/95	
Jean Williams v. Department of Transportation	94 OSP 0502	Morrison	11/22/94	9:18 NCR 1504
R. Stanley Morgan v. Department of Transportation	94 OSP 0586 <sup>#2</sup>	Reilly	12/13/94	
Bobby R. Mayo v. Department of Transportation	94 OSP 0632	Gray	08/23/94	
A. Dean Bridges v. Department of Transportation	94 OSP 0654 <sup>#2</sup>	Reilly	12/13/94	
Michael Bryant v. Department of Transportation	94 OSP 0728	Chess	08/15/94	
Pearlie M. Simuel-Johnson v. Department of Transportation	94 OSP 0844	Gray	11/14/94	
Freddie R. Lewis, Jr. v. Department of Transportation	94 OSP 1023	Reilly	01/04/95	

**University of North Carolina at Chapel Hill**

William Paul Fearington v. University of North Carolina at Chapel Hill	91 OSP 0905	Reilly	10/19/94	
Paulette M. McKoy v. University of North Carolina at Chapel Hill	92 OSP 0380 <sup>#7</sup>	Becton	10/24/94	
Paulette M. McKoy v. University of North Carolina at Chapel Hill	92 OSP 0792 <sup>#7</sup>	Becton	10/24/94	
Eric W. Browning v. UNC-Chapel Hill	93 OSP 0925	Morrison	05/03/94	9:5 NCR 342
Beth Anne Miller, R.N.-C v. UNC James A. Taylor Std Health Svc.	94 OSP 0800	Nesnow	09/26/94	

**University of North Carolina at Greensboro**

James S. Wilkinson v. UNCG Police Agency	93 OSP 0850	Chess	08/22/94	
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**UNC Hospitals**

Barry Alonzo Nichols v. UNC Hospitals Central Dist. Sect.	94 OSP 0509	Morrison	06/15/94	
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**Wake County School System**

Lula Mae Freeman v. Wake County School System	94 OSP 0576	Morrison	06/28/94	
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**The Whitaker School**

Dwayne R. Cooke v. The Whitaker School	94 OSP 0328	Chess	06/02/94	
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# CONTESTED CASE DECISIONS

<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>ALJ</u>	<u>DATE OF DECISION</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
<i>Winston-Salem State University</i>				
David Phillip Davis v. Winston-Salem State University	93 OSP 0947	Reilly	09/28/94	
Tonny M. Jarrett v. Winston-Salem State University Campus Police	93 OSP 0953	Reilly	09/12/94	
<b>STATE TREASURER</b>				
<i>Retirement Systems Division</i>				
Molly Wiebenson v. Bd./Trustees/Teachers' & State Employees' Ret. Sys.	92 DST 0015	Morgan	05/26/94	9:6 NCR 403
Judith A. Dorman v. Bd./Trustees/Teachers' & State Employees' Ret. Sys.	92 DST 0223	Morgan	08/11/94	
Nathan Fields v. Bd./Trustees/Teachers' & State Employees' Ret. Sys.	93 DST 0161	Morrison	05/18/94	
John C. Russell v. Bd./Trustees/Teachers' & State Employees' Ret. Sys.	93 DST 0164	West	03/07/94	
Marion Franklin Howell v. Teachers' & State Employees' Retirement Sys.	93 DST 0475	Nesnow	08/04/94	9:12 NCR 941
Robert A. Slade v. Bd./Trustees/N.C. Local Govtl. Emp. Ret. System	93 DST 0785	Becton	03/18/94	9:1 NCR 68
Connie B. Grant v. Bd./Trustees/Teachers' & State Employees' Ret. Sys.	93 DST 0883	Chess	06/15/94	
James E. Walker, Ind. & Admin for the Estate of Sarah S. Walker v. Bd./Trustees/N.C. Local Govt. Emp. Ret. System	93 DST 1054	Becton	05/31/94	9:7 NCR 490
Elizabeth M. Dudley v. Bd./Trustees/Teachers' & State Emps' Ret. Sys.	93 DST 1474	Nesnow	03/28/94	
Kenneth A. Glenn v. Bd./Trustees/Teachers' & St Employees' Ret. Sys.	93 DST 1612	Morrison	05/18/94	
Joseph Fulton v. Bd./Trustees/Teachers' & State Employees' Ret. Sys.	93 DST 1731	Becton	05/25/94	
Deborah W. Stewart v. Bd./Trustees/Teachers' & State Employees' Ret. Sys. and Anthony L. Hope & Derrick L. Hope	94 DST 0045	Nesnow	07/25/94	9:10 NCR 768
<b>TRANSPORTATION</b>				
Taylor & Murphy Construction Co., Inc. v. Department of Transportation	93 DOT 1404	Chess	08/24/94	
<b>U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION</b>				
Robert Tolbert v. U.S. Equal Employment Opportunity Commission	94 USE 1410	Gray	12/14/94	
<b>UNIVERSITY OF NORTH CAROLINA</b>				
Heather Anne Porter v. State Residence Committee	92 UNC 0799	Nesnow	08/23/94	
Nixon Omolodun v. UNC Physicians and Associates	94 UNC 0295	Chess	06/27/94	

**STATE OF NORTH CAROLINA**

**IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS  
94 DOA 0516**

**COUNTY OF WAKE**

**CAROLINA TELEPHONE AND TELEGRAPH  
COMPANY**

**Petitioner,**

**v.**

**NORTH CAROLINA DEPARTMENT OF  
ADMINISTRATION, DIVISION OF  
PURCHASE AND CONTRACT**

**Respondent.**

**RECOMMENDED DECISION**

This matter was heard by Fred Gilbert Morrison Jr., Senior Administrative Law Judge, Office of Administrative Hearings, on September 26, 27, and 28, 1994, in Raleigh, North Carolina. Following the hearing, the parties submitted proposed findings of fact and conclusions of law. The record closed on December 15, 1994.

**APPEARANCES**

For the Petitioner:                Robert Carl Voigt  
   Senior Attorney  
   Carolina Telephone & Telegraph Co.  
   14111 Capital Boulevard  
   Wake Forest, NC 27587-5900

For the Respondent:                Teresa L. White & T. Buie Costen  
   Attorney General's Office  
   N.C. Department of Justice  
   P.O. Box 629  
   Raleigh, NC 27602-0629

**ISSUE**

Whether Respondent Department of Administrative erred or acted arbitrarily and capriciously in not approving Petitioner's proposal for a "Site or Room Integrator for Two-Way Interactive Video Tele-Classrooms that will be Interconnected to the N.C.I.H.".

**OPINION OF THE ADMINISTRATIVE LAW JUDGE**

Based on competent evidence admitted at the hearing and matters officially noted, the Administrative Law Judge makes the following:

**STIPULATED FACTS**

1. Petitioner, Carolina Telephone and Telegraph Company, is a North Carolina corporation with its Administrative Headquarters located at 14111 Capital Boulevard, Wake Forest, North Carolina 27587-5900. Carolina Telephone and Telegraph Company is a wholly-owned subsidiary of Sprint Corporation, a nationally and internationally known telecommunications company.

2. Petitioner provides regulated telephone service in all or portions of 50 counties in North Carolina. In addition to providing regulated telephone service, Petitioner markets various types of telecommunications equipment throughout much of the State of North Carolina.
3. In 1993, the North Carolina Department of Administration (DOA) issued Request for Proposal (RFP) No. 306008 entitled "Site or Room Integrator for Two-Way Interactive Video Tele-Classrooms that will be Interconnected to the N.C.I.H." requesting proposals for the public schools and community colleges throughout the State of North Carolina.
4. Request for Proposal No. 306008 included the following language:

The final list of equipment and a basic classroom configuration is included with this RFP. This list does not specify any manufacturers or recommendations and vendors should not mistake the list as the only way the tele-classrooms can be configured. The intent is only to be sure the classrooms and conference rooms have the basic equipment needed to interconnect and utilize the N.C.I.H.
5. Request for Proposal No. 306008 also included the following language:

Factors other than cost will be considered in evaluating the proposals and awarding this contract. Job requirements, efficiency in which equipment offered operates, hard wearing capabilities, overall compatibility with existing and on-order equipment, and overall performance during demonstration will be major considerations in determining the award of this contract.
6. In response to RFP No. 306008, Petitioner submitted a timely Proposal dated January 14, 1994. (Because Petitioner is a subsidiary of Sprint Corporation, the Proposal was submitted under the name "Sprint/Carolina Telephone.") Petitioner's Proposal was submitted in two parts -- a Cost Proposal and a Technical Proposal. The total price per room as per Petitioner's Proposal dated January 14, 1994, was \$46,530.00 per room.
7. Petitioner's Proposal dated January 14, 1994, included a designated Model No. and descriptive literature on a 32" Sony Color TV monitor at a price of \$888.00 per unit and also stated that, "In support of complete technical compliance, a conventional 35" display may be included as an optional substitution." However, Petitioner's Proposal did not designate a Model No. or include descriptive literature on a 35" color monitor.
8. On February 17, 1994, Respondent issued a "Technical Evaluation/Final Report" designating six vendors which had been determined technically qualified to perform RFP No. 306008. Petitioner was among the six technically qualified vendors listed on the Technical Evaluation/Final Report dated February 17, 1994.
9. Persons who participated in evaluating the various Proposals received by Respondent on RFP No. 306008 included the following:

Linda DeGrand  
Joe Alley  
Joe Gray  
Kevin McDevitt  
Mickey Munns

None of the foregoing persons (or any other representative of Respondent) contacted Petitioner at any stage of the evaluation process to question or clarify any aspect of Petitioner's Proposal. However, members of the evaluation team did contact GTE, Telemetrics, AT&T, Telex (Pierce-Phelps), and



Sigcom to clarify aspects of their respective Proposals.

10. On February 24, 1994, Respondent issued a "Canvass of Bids for Award" listing three approved vendors for the Video Tele-Classrooms project, and prices associated with each of the three approved vendors. Petitioner was not among the three approved vendors listed on the Canvass of Bids for Award dated February 24, 1994.
11. A memo dated February 22, 1994, from Linda DeGrand to Mickey Munns cites the following specific reason for Petitioner being excluded from the approved vendors:

Upon review of the cost proposal of Sprint Carolina Telephone it was necessary to disqualify their proposal for failure to quote a price on required RFP item 5 -- 35" color monitor.

A letter dated March 9, 1994, from Mickey Munns to J.M. Martin, Jr. restates the same specific reason for Petitioner being excluded:

Based upon the above we continue to support the February 22, 1994 statement of Linda K. DeGrand, Chair - NCIH Committee to Mickey Munns of State Purchase and Contract: "Upon review of the Cost Proposal of Sprint/Carolina Telephone, it was necessary to disqualify their proposal for failure to quote a price as required, RFP Item 5 - 35" color monitor."

12. The prices for the three approved vendors as per the "Canvass of Bids for Award" dated February 24, 1994, were as follows:

Long Communications Group	\$39,875.00/RM. APPROX.
Pierce-Phelps, Inc.	\$44,753.00/RM. APPROX.
KCH & Associates	\$46,854.00/RM. APPROX.

However, the prices quoted for Pierce-Phelps, Inc. and KCH & Associates in the letter dated March 9, 1994, from Mickey Munns to J.M. Martin, Jr. are as follows:

Pierce-Phelps, Inc.*	\$55,065.00/RM. APPROX.
KCH & Associates**	\$57,267.00/RM. APPROX.

\* We were not able to identify the source of the \$963.00 difference between your stated calculation of \$56,028 for Pierce-Phelps and that stated above.

\*\* There is a discrepancy of \$5,100.00 between the KCH price quoted above and your calculation of \$62,367.00. This apparently results from your inclusion of KCH's maintenance quote, which all vendors were requested to quote for the period following warranty. This quote, however, was not used in the calculation of the base price for any vendor. Further, it apparently was not a price included in your calculations for Telemetrics or GTE quoted \$4,500.00 per year per site and \$7,750.00 per room per year respectively for this item.

13. In its Proposal dated January 14, 1994, Petitioner specifically requested a "side by side" comparison of 35" and 32" monitors. Also, Petitioner's letter dated February 28, 1994, from J.M. Martin, Jr. to Ed Little included the following statement:

We gave the option to the State to look at a 32" monitor or substitute a 35" monitor, presumably following a demonstration of monitors from the various vendors as required per page 4 of the State's RFP under Award Criteria.

14. Petitioner has specifically objected in writing on at least three occasions to Respondent's conclusion

that, "Upon review of the cost proposal of Sprint/Carolina Telephone, it was necessary to disqualify their proposal for failure to quote a price as required, RFP Item 5 - 35" color monitor." Those three written objections were the following:

February 28, 1994	Letter from Joe Martin to Ed Little
March 15, 1994	Formal Notice of Protest to DOA
April 29, 1994	Petition for Contested Case Hearing

In each instance, Petitioner cited and documented its reasons for the objection.

15. Subsequent to the "Canvass of Bids for Award" dated February 24, 1994, and the public announcement of approved vendors on February 25, 1994, Petitioner has offered 35" color TV monitors at a price of \$888.00 per unit on three separate occasions. Those three occasions were the following:

March 15, 1994	Formal Notice of Protest to DOA (RCA Model No. and Literature Provided)
April 29, 1994	Petition for Contested Case Hearing (RCA Model No. and Literature Provided)
August 3, 1994	Response to Request for Production of Documents (Toshiba Model No. and Literature Provided; RCA Model Discontinued)

#### ADJUDICATED FACTS

16. A booklet (entitled "Doing Business with the State of North Carolina: A Guide for Vendors") distributed by Respondent to businesses competing for State contracts includes the following language in describing a "Request for Proposal":

Request for Proposal (RFP): A Request for Proposal may be used in establishing contracts which seek creativity or different ways of accomplishing a task.

17. Item 12 of Respondent's General Contract Terms provides that:

Any deviation from specifications indicated herein must be clearly pointed out; otherwise, it will be considered that items offered are in strict compliance with these specifications, and successful bidder will be held responsible therefor. Deviations must be explained in detail on an attached sheet(s).

18. Petitioner's technical response to the specification concerning a 35" color monitor was as follows:

The Sony KV32S10 monitor is a 34 inch CRT yielding a viewable diagonal dimension of 32 inches. This is the only large screen monitor to provide the unique benefits of the Trinitron design. Conservatively rated at 500 lines of resolution, the CRT is perfectly flat in the vertical plane and very slightly cylindrical across the front viewing area. This shape allows the use of an aperture grille rather than a conventional shadow mask. The benefits of this

design are minimum glare, superior corner focus, and virtual immunity to "doming". "Doming" is caused by the uneven tension inherent in the design of conventional "shadow mask" CRTs and is of particular concern in distance education environments. This phenomenon is characterized by blotches of blue or yellow which appear on conventional monitors when a white image, such as typical graphics image is left statically on a display for several minutes. ALL non-Trinitron large screen monitors suffer from this problem. SCT encourages a side by side comparison to demonstrate the technical superiority of the proposed 32" monitor in the demanding environment of tele-learning. In support of complete technical compliance, a conventional, 35" display may be included as an optional substitution.

19. In its cost proposal, Petitioner listed a price of \$888 per monitor for this item, again indicating the Sony 32". The evaluation team flagged this item, but did not further investigate it, request a demonstration, or contact Petitioner as to whether the same price would apply for a 35" monitor pursuant to the technical response explanation and request.

20. Respondent's rule concerning errors in bids provides that:

When a bid appears to contain an obvious error or otherwise where an error is suspected, the circumstances may be investigated and then may be considered and acted upon under the procedure for canvassing bids and awarding contracts; any action taken, however, shall not prejudice the rights of the public or other bidders. Where bids are submitted substantially in accordance with the invitation but are not entirely clear as to intent or to some particular fact or where there are other ambiguities, clarification may be sought and accepted provided that, in doing so, no change is permitted which would improve the competitive position of the bid and alter the award of the contract.

21. Respondent also has a rule which provides as follows:

In determining the award of contracts, bona fide proposals will be considered and evaluated as provided by statute and applicable rules and regulations. . . . Vendor participation may be sought where some clarification of a proposal is necessary for proper evaluation; and in doing so, no improvement in the bidder's competitive position is permissible.

22. Seeking clarification from Petitioner on this item would not have prejudiced the rights of the public or other bidders, nor allowed any improvement in Petitioner's competitive position, as its bid was set at \$46,530 per room. Petitioner could not have lowered its price of \$888 for the 35", and any proposed increase would have damaged its competitive position.

23. Petitioner's response to the RFP was very acceptable to Respondent in all areas except the 35" monitor. The 32" monitor is substantially equal to a 35" monitor and could be superior according to Petitioner.

24. Respondent did not give fair and careful consideration to Petitioner's response concerning the 35" monitor.

25. Adding Petitioner to the list of approved vendors would be advantageous to the State.

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



CONCLUSIONS OF LAW

1. The parties are properly before the Office of Administrative Hearings, and the Office has jurisdiction to hear this matter and issue a recommended decision to the Secretary of Administration.
2. Respondent acted arbitrarily and capriciously by not giving fair and careful consideration to the proposal of Petitioner which clearly provided for a 35" or 32" color TV monitor, with the Petitioner contending the 32" monitor was superior. See White v. North Carolina Dept. of Env't, Health, and Natural Resources, \_\_\_ N.C. App. \_\_\_, \_\_\_ S.E.2d \_\_\_ (1995), filed January 3, 1995.
3. Petitioner's proposal substantially complied with Respondent's Request for Proposals.
4. Respondent erred in excluding Petitioner from the approved vendors under RFP No. 306008.

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

RECOMMENDED DECISION

1. That Respondent add the name of Petitioner, Carolina Telephone and Telegraph Company, d/b/a Sprint/Carolina Telephone, to the list of approved vendors at a price per room of \$46,530.00 (which includes 35" color TV monitors).
2. That Respondent promptly issue and distribute to all potential purchasers a revised/corrected list of approved vendors under RFP No. 306008.

ORDER

It is hereby ordered that the agency serve a copy of the final decision on the Office of Administrative Hearings, P.O. Drawer 27447, Raleigh, N.C. 27611-7447, in accordance with North Carolina General Statute 150B-36(b).

NOTICE

The agency making the final decision in this contested case is required to give each party an opportunity to file exceptions to this recommended decision and to present written arguments to those in the agency who will make the final decision. G.S. 150B-36(a).

The agency is required by G.S. 150B-36(b) to serve a copy of the final decision on all parties and to furnish a copy to the parties' attorney of record and to the Office of Administrative Hearings.

The agency that will make the final decision in this contested case is the North Carolina Department of Administration.

This the 21st day of January, 1995.

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Fred G. Morrison Jr.  
Senior Administrative Law Judge

**STATE OF NORTH CAROLINA**  
**COUNTY OF RICHMOND**

IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS  
94 OSP 0655

**V.**

**SANDHILLS CENTER FOR MENTAL  
HEALTH, DEVELOPMENTAL  
DISABILITIES & SUBSTANCE  
ABUSE SERVICES,  
Respondent.**

## RECOMMENDED DECISION

## ISSUE

## APPEARANCES

## **FINDINGS OF FACT**

1. All parties are properly before the undersigned, and the Office of Administrative Hearings has jurisdiction over the parties and the subject matter.
2. Petitioner filed his Petition for a Contested Case Hearing on June 6, 1994, to appeal the May 23, 1994, decision of an Appeals Committee.
3. The Petitioner has been a permanent Habilitation Relief Assistant with Sandhills Center since July 14, 1992. He was a probationary Habilitation Relief Assistant from December 4, 1991, until he was

elevated to permanent status. Petitioner also has a full-time job with the North Carolina Department of Corrections and is a former police officer with the Rockingham County Police Department.

4. At all times at issue, the Petitioner worked part-time at the Sandhills Center's Mallard Lane group home for adults with various physical, mental and emotional disabilities.

5. On August 19, 1993, Petitioner attended a "Protective Intervention Course" (herein "PIC") conducted by one of the Respondent's staff employees, Pat McDonald. The PIC course was intended to provide staff members with instructions for handling the Mallard Lane clients in a variety of situations. During that course, Petitioner was provided a "Practicum Handout" that outlined the instructions, but Petitioner was also instructed that the handout was not intended to be all-inclusive. Staff members were regularly advised that while the PIC handout was intended to provide an outline of the primary procedures for handling clients in the described situations, circumstances might arise that are not necessarily controlled by PIC; and in those circumstances, the staff members were instructed that they should use their common sense and to "do the best they can."

6. On or about November 17, 1993, Petitioner received a copy of the "Staff Rules" that provided, in part, "Unless it is during designated sleep time, staff are not to sleep in the home, rest on the couch, etc. close eyes for rest period or give any appearance of 'sleep like' behavior."

7. Before February 13, 1994, Respondent had not distributed any memoranda or other documents that defined "sleep-like behavior" or what constituted "giv[ing] any appearance of 'sleep-like' behavior;" nor had staff persons, including Petitioner, been given any oral instructions about what constituted "sleep-like behavior" or "giv[ing] any appearance of 'sleep-like' behavior."

8. Before February 13, 1994, the Respondent had not distributed any memoranda or other written or printed documents that prohibited staff persons from placing chairs or other obstacles between the kitchen and the hallway that leads to the Mallard Lane office area during night hours; nor had staff persons, including Petitioner, been given any oral instructions against placing chairs or obstacles between the kitchen and that hallway during night hours.

9. There is no fire exit in the Mallard Lane office area. The only exit in that office is a locked door that leads from the office to the outside; and it is not a designated fire exit. Moreover, the door from the office to the kitchen hallway remains locked at night.

10. Before February 13, 1994, clients at Mallard Lane occasionally wandered around the home during the night; and the office area beyond the kitchen in an area where they are told not to go without a staff person. Employees like Petitioner have not been instructed by Respondent that Mallard Lane clients should not wander in that area during the night.

11. The Mallard Lane client designated as "L" is a 43-year old female with a history of behavior problems that have included: impulsivity, wandering off, inappropriate language (cursing), yelling/screaming, aggression, property destruction, threatening others, soiling self, harassing others, and accusing staff of mistreatment and taking her possessions. She is presently functioning in the Mild Range of Mental Retardation intellectually. She is approximately (5) five feet, six (6) inches tall and weighs approximately one hundred fifty-six (156) pounds. "L" also suffers from left-side hemiparesis.

12. At some time before February 13, 1994, Sharon Rickman, the Respondent's Mallard Lane supervisor, began calling other Mallard Lane employees and asking them if Petitioner had mistreated or abused "L" to suffer carpet burns; and those employees advised Rickman that Petitioner had not mistreated or abused "L" or caused "L" to suffer carpet burns, but that "L's" carpet burns were probably self-inflicted by "L" during one of her many violent episodes.

13. There is no evidence that Rickman asked any of the employees identified in the immediately preceding paragraph whether any other employees had mistreated or abused "L"; and there is no evidence that



Rickman had any reasonable cause to believe that Petitioner had caused "L's" carpet burns or had otherwise mistreated or abused "L" or caused her mental anguish.

14. Before February 13, 1994, Respondent's personnel manager (Sharon Patterson) knew of Rickman's telephone calls to Respondent's employees in relation to Petitioner.

15. On or about February 13, 1994, Rickman reported to Patterson that she had looked through the front window of Mallard Lane and saw Petitioner sleeping, when he was in fact only watching television while he was reclined on the couch. Both Petitioner and the other employee present at the time in question denied that either Petitioner or the other employee were sleeping and confirmed that each had been watching television.

16. On February 28, 1994, after consulting with Michael Watson, the Area Director for Sandhills Center, Rickman and Patterson caused an Oral Warning to be made against Petitioner for giving the appearance of "sleep-like behavior" and placing a chair "against the [unspecified] door in such a fashion that it would fall when the door was opened." Upon issuing the Oral Warning, Respondent immediately suspended Petitioner for one (1) week.

17. Respondent has not offered any evidence in support of its Oral Warning at any stage of Petitioner's appeal.

18. At no time at issue herein did Respondent have any written guidelines describing which actions, inactions or policy violations would result in what disciplinary action. Respondent has not given its employees any prior notice, either in writing or orally, of which sanctions would be assessed for which policy infraction.

19. Respondent knew, or should have known, of female employees who slept during their shifts at Mallard Lane, or who talked on the Mallard Lane business phone in violation of Respondent's policy; but it failed to cause any disciplinary action to be taken against them. Respondent did not sanction any employee for Mallard Lane, other than Petitioner, for engaging in "sleep-like behavior" for more than a year before it sanctioned Petitioner.

20. The expression "sleep-like behavior" is void for vagueness unless it means anything besides sleeping, which is how Petitioner reasonably interpreted it. Because Respondent's policy only prohibited employees from reclining while resting, and Petitioner was watching TV while in a reclined position, Petitioner did not violate Respondent's policy regarding giving the appearance of engaging in "sleep-like behavior" or reclining while resting.

21. The Respondent suspended Petitioner and issued an Oral Warning before Petitioner had an opportunity to request that Respondent allow him to pursue his rights to informal problem-solving under Respondent's Policy and Procedures.

22. The Respondent suspended Petitioner and issued the Oral Warning without allowing Petitioner a hearing or an appeal to any person independent of the Respondent's Personnel Manager (Patterson) and Rickman.

23. Respondent's suspension of and issuance of an Oral Warning to Petitioner on February 28, 1994, was arbitrary and capricious, because Respondent had not adequately defined what constitutes "giving the appearance of sleep-like behavior"; Respondent had not notified its employees of a policy against placing a chair in the doorway between the kitchen and the office area; Respondent had failed to specify which sanctions or disciplinary actions were to be imposed for policy or procedures violations; Respondent failed to provide Petitioner with a fair opportunity to be heard in connection with the allegations in the Oral Warning; and Respondent's staff persons who made the allegations against Petitioner that resulted in the Oral Warning had failed to apply the same interpretations of the staff rules to female employees that they applied to the two (2) male employees (including Petitioner) in connection with the incident on February 13, 1994.

24. On April 10, 1994, Petitioner, upon hearing noise from "L's" bedroom, undertook to assist another employee (Jimmy McIntyre) who was attempting to wake up "L" so that she could shower. When Petitioner entered "L's" bedroom, she was engaged in a fit of anger - kicking, yelling and waiving her arms. Petitioner followed the appropriate procedures for graduated voice guidance, but "L's" rage increased; and she grabbed her pocketbook and began to swing it wildly and to kick. In doing so, she fell onto the floor, where she continued to swing both arms and kick her legs. Initially, when Petitioner began to walk towards "L," McIntyre stepped forward, but he quickly backed off and moved to the corner of "L's" bedroom when "L" began to swing her pocketbook, kick, and swing her arms. McIntyre appeared to Petitioner to be frightened and concerned about his own safety, and he seemed to resist any participation in assisting Petitioner with "L."

25. Since "L" was placed at Mallard Lane, Respondent has prepared a number of special plans (called "Objective Plans") for "L." From at least 1990 through 1992, the plans recommended a standard therapeutic hold described in the PIC handout for handling "L" when she engages in aggressive behavior. At some time, Respondent amended "L's" plan to recommend a "modified" therapeutic hold for "L," to account for her left arm hemiparesis. However, before April 10, 1994, Respondent failed to advise all of its employees of the modified hold or the change in "L's" plan. Moreover, the modified therapeutic hold for "L" may not always be applicable when "L's" behavior is severe. On occasions prior to April 10, 1994, "L" has broken light bulbs and glass in her bedroom and created conditions potentially injurious to herself and others. Respondent's administrators have advised staff persons that in such circumstances they should "do the best they can" and to use their common sense to minimize the risk of injury to "L" (or other clients) and the staff members.

26. There is credible evidence that McIntyre is physically slight and effeminate. As of April 10, 1994, he had only worked at Mallard Lane for eight (8) months. He had expressed to Petitioner fears of being injured by Mallard Lane's clients and had shied from interacting with the clients when their behavior was physical.

27. Because of McIntyre's appearance, actions and previous statements, Petitioner reasonably believed that McIntyre feared injury by "L" and would not provide assistance in transporting "L," even if asked. As a result, Petitioner reasonably did not ask for McIntyre's assistance.

28. Neither the PIC rules nor "L's" objective plans require that an employee request assistance when attempting to apply a hold on "L" or when attempting to transport "L." Respondent's staff persons have not advised its employees that they are required to ask for assistance when attempting to remove "L" in an exigent situation or when attempting to apply a hold on "L."

29. Because of "L's" actions, Petitioner reasonably believed that her violent actions might result in injury to herself or others, including McIntyre, if she were not removed from her bedroom.

30. Accordingly, on April 10, 1994, when "L" began to swing her arms, in one of which she held her pocketbook, and to kick, Petitioner reasonably attempted to lift "L" and assist her to the bathroom without requesting McIntyre's assistance. On a number of occasions that Petitioner lifted "L," she fell limp to the floor; and at that time, she again began to swing her arms and pocketbook and to kick. After Petitioner had carried "L" in this manner to the area between the bathroom and her bedroom, where she could not injure McIntyre or herself, Petitioner left her so that she could enter the bathroom on her own.

31. On the evening of April 11, 1994, more than twenty-four (24) hours after that incident, McIntyre reported to Rickman that Petitioner had grabbed "L" by the feet, yanked her off the bed, then dragged her to the bathroom, where she sobbed as she sat on the stool. Rickman immediately examined "L" and found no physical injuries of any kind. At no time within the more than twenty-four (24) hours of any such incident had "L" complained of an incident with Petitioner; nor had she claimed that she had been hurt or was experiencing any pain or mental anguish; and in the past, "L" has never shown any hesitation to report injuries or express pain, real or imagined. Nor had "L" in the intervening twenty-four (24) hours or more since the incident exhibited any behavior consistent with any such injuries or pain or mental anguish. McIntyre did not give Rickman a reasonable explanation for having delayed so long in reporting the alleged incident.

Despite the absence of any corroboration, and the highly questionable validity of the allegation by McIntyre, Rickman and Patterson cause Petitioner to be immediately suspended; and they reported to the Richmond County Department of Social Services ("DSS") that an allegation of abuse of "L" had been made against Petitioner, thus prompting an investigation of the incident of April 10, 1994.

32. The investigation of allegations of abuse of "L" on or about April 10, 1994, resulted in a determination that there was no substantiation that Petitioner willfully abused "L."

33. Respondent's Policy and Procedure provides that rapid intervention by staff persons may be indicated when unexpected and several forms of inappropriate behavior causes imminent danger of the client causing injury to herself or others or substantial property damage is occurring.

34. Respondent's Policy and Procedure provides that staff persons may, in order to repel or secure a violent or aggressive client, use the degree of force that is necessary, depending upon the individual characteristics of the client and the degree of aggressiveness displayed by "L" on the occasion at issue.

35. The Petitioner complied with Respondent's Policy and Procedure for rapidly intervening and applying a reasonable amount of force in order to prevent "L" from injuring herself or others, in light of her past behavior, physical characteristics and the degree of aggressiveness displayed by "L" on the occasion at issue.

36. Other employees have observed Petitioner in his relations with Mallard Lane's clients, including "L," and they have not seen him mistreat or abuse them or violate PIC rules.

37. Petitioner's evaluations have been good, and Respondent had no reasonable cause to believe that Petitioner mistreated or abused "L" or any other Mallard Lane clients, either on April 10, 1994, or otherwise.

38. Respondent had no written or other policy that it followed consistently in connection with allegations of abuse of "L." At one time, its written policy, contained in her Objective Plan, was to ignore "L's" own allegations of abuse by staff persons.

39. Petitioner was earning approximately \$6.93 per hour when he was suspended February 13, 1994, for one (1) week. At that time, he was working about twenty-four (24) hours per week.

40. Petitioner was earning approximately \$7.13 per hour when he was suspended April 12, 1994, for two (2) weeks. He was working approximately twenty-four (24) hours per week.

41. During the investigations of the allegations of abusing "L," and before Petitioner was suspended, Patterson and Rickman spoke with Petitioner, who described the April 10, 1994, incident with "L." He explained why he attempted to transport "L" without McIntyre's assistance and why he attempted to lift "L" in the manner that he did. Patterson and Rickman told Petitioner that they thought that he had acted in the manner that he did because of his background in law enforcement.

42. After the investigations cleared Petitioner of any allegations of abuse of "L," on or about April 27, 1994, the Respondent issued a Written Warning to Petitioner for (a) failing to ask McIntyre for assistance, and (b) failing to use the special modified therapeutic hold for "L."

43. Respondent's suspension of and issuance of a Written Warning to Petitioner in connection with the incident on April 10, 1994, was arbitrary and capricious, because Petitioner complied with the procedures for handling and transporting "L" of which he had been advised; his handling and transporting "L" on this occasion were consistent with the Respondent's written Policy and Procedures and the oral instructions by Respondent's staff persons to employees at Mallard Lane, especially for exigent circumstances.

44. That Respondent failed to consider Petitioner's reasonable belief that McIntyre would not



provide assistance (even if asked) and Petitioner was not required to perform an unnecessary act of asking McIntyre for assistance when McIntyre plainly would have refused.

45. Before Respondent suspended Petitioner and issued the Written Warning against him in connection with the April 10, 1994, incident, Petitioner was not given the opportunity to request informal problem-solving procedures, in violation of Respondent's own written Policy and Procedures.

46. On or about April 28, 1994, Petitioner gave notice of appeal of the Written Warning through a letter by Petitioner's counsel that also demanded a retraction of and apology for the statements in both the Oral Warning and Written Warning. That letter also stated that otherwise, the Petitioner would have to protect his rights in whatever ways are available to him. Respondent's employees and board of directors understood that the other ways by which Petitioner might protect his rights included litigation.

47. Upon receipt of that letter, Patterson consulted in person and by telephone on several occasions with Respondent's usual attorney, Millicent Gibson Diehl, who as counsel for Sandhills Center wrote Petitioner's counsel on May 4, 1994, in order to defend the Respondent's actions and describe the appeals procedures.

48. On May 11, 1994, Diehl, Patterson and Watson met with Respondent's Board of Directors and with the 5-person Appeals Committee, which committee is formed from Respondent's board of directors. At that meeting, Diehl discussed Petitioner's appeal, the threat of Petitioner's litigation against Respondent, and the underlying incidents that led to both the Oral Warning and Written Warning.

49. On May 12, 1994, as counsel for the Appeals Committee, and pursuant to the instructions of that committee, Diehl advised Petitioner's counsel that the Appeals Committee would, on May 18, 1994, conduct a hearing in connection with Petitioner's appeal.

50. Between May 11, 1994, and May 18, 1994, Diehl assisted Patterson and Pat McDonald in preparation for the Appeals Committee hearing. That assistance included the review of their affidavits for the Appeals Committee hearing on May 18, 1994.

51. At the May 18, 1994, Appeals Committee hearing, Patterson presented the evidence that Diehl had helped her to prepare. Neither Patterson nor Diehl nor Watson advised Petitioner, Petitioner's counsel, or the Appeals Committee that Diehl had assisted Respondent in preparing for the hearing.

52. At the May 18, 1994, hearing before the Appeals Committee, after Petitioner's counsel and Patterson submitted their presentations, Petitioner, Petitioner's counsel, Patterson and Watson left the hearing room; and Diehl met privately with the Appeals Committee to discuss, in Diehl's words, the "nature and sufficiency" of the parties' evidence. In that private meeting, she interpreted and evaluated the written materials presented to the Committee and advised the Committee that the Committee could consider Petitioner's evidence about the Oral Warning. In addition, Diehl presented and interpreted Respondent's rules, which had not been introduced by either party during the hearing. During that private meeting with the Appeals Committee, Diehl did not advise that she had helped Respondent prepare its presentation; and although she purported to point out weaknesses in Petitioner's contentions, she did not point out the shortcomings in Respondent's case or the strengths of Petitioner's case. Neither Petitioner nor Petitioner's counsel was present at Diehl's private meeting with the Appeals Committee; nor was Petitioner given an opportunity to respond to Diehl's presentation to the Appeals Committee during that private meeting. If the Appeals Committee had questions about either side's presentation or the procedural rules that were available, it could have offered Petitioner or Petitioner's counsel the chance to answer those questions, but it failed and refused to do so; instead, it consulted in private with Diehl.

53. During the May 18, 1994, Appeals Committee hearing, Patterson offered an Objective Plan for "L" dated September 22, 1993, and the Petitioner's Certificates for completing his PIC training (dated August 19, 1993) as evidence that Petitioner knew, or should have known, of the "modified" therapeutic hold; however, it offered no other such plan to the Committee, even though Petitioner demonstrated by the dates of

the documents that he could not possibly have been shown the September 22, 1993, document at his August, 1993, PIC training.

54. Before the events of April 10, 1994, no Sandhills Center employee, agent or representative had instructed Petitioner about the Objective Plan for "L" that is dated September 22, 1993.

55. Between August 19, 1994, and April 10, 1994, Petitioner did not undergo, and was not required to undergo, further PIC training.

56. Rule 5.1(B) of the Rules of Professional Conduct provides, "A lawyer shall not represent a client if the representation of that client may be materially limited by the lawyer's responsibilities to another client or to a third person...unless (1) The lawyer reasonably believes the representation will not be adversely affected; and (2) The client consents after full disclosure...." Diehl's responsibility to her two (2) clients - Sandhills Center and the Appeals Committee - severely infringed on Petitioner's right to a fair and impartial hearing before the Appeals Committee. Diehl continued in her representation of both clients without obtaining their consent after full disclosure of the nature of the conflict and of the implications of the common representation as it affected Petitioner's right to a fair and impartial hearing.

57. Diehl's participation in both the preparation of Respondent's staff persons for the Appeals Committee hearing and the Appeals Committee's private deliberations on May 18, 1994, denied Petitioner of his right to a fair and impartial hearing.

58. Rule 5.10 of the Rules of Professional Conduct states, "A lawyer who represents a corporation or other organization represents and owes his [sic] allegiance to the entity and shall not permit his [sic] professional judgment to be compromised in favor of any other entity or individual." Diehl's representation of the Appeals Committee required that she act to insure that the Appeals Committee's hearing was fair and impartial. She allowed her representation of Respondent to compromise her professional judgment, because she promoted the Respondent's interests during her secret meeting with the Appeals Committee, at the expense of the Appeals Committee's obligation to provide Petitioner with a fair and impartial hearing. Through her active prosecution of Respondent's position during the Appeals Committee's deliberations, under the guise of evaluating the "nature and sufficiency" of the parties' evidence, Diehl tainted the Appeals Committee's deliberations against Petitioner.

59. Canon 9 of the Rules of Professional Conduct provides, "A lawyer should avoid even the appearance of professional impropriety." Even if the Appeals Committee would have reached the same result without Diehl's involvement, her dual representation and her active participation in the Appeals Committee's deliberations strongly give the appearance of an impropriety; and Petitioner was the unfortunate victim of that appearance of impropriety.

60. The impartiality and fairness of the Appeals Committee's deliberations were also tainted by the potential threat of Petitioner's civil litigation against Respondent. The Committee members' personal financial interests were adverse to Petitioner; and the members of the Appeals Committee discussed their personal exposure from Petitioner's claims during the May 11, 1994, meetings with Diehl, Patterson and Watson. As a result, at the May 18, 1994, hearing, the Appeals Committee's deliberations were tainted by the direct financial interest of its members in the outcome. Their personal interests in the outcome of the case insured that the hearing would, at least, have the appearance of a foregone conclusion; and coupled with Diehl's participation in the Committee's deliberations, Petitioner was not accorded a fair and impartial hearing by the Appeals Committee on May 18, 1994.

### **CONCLUSIONS OF LAW**

1. This Court has jurisdiction of both the parties and the subject matter in this action;

2. This hearing was conducted pursuant to G.S. Section 1A-1, *et seq.*, the Rules of Civil Procedure, and G.S. Section 8C-1, the Rules of Evidence, as required by the North Carolina General Statutes.

3. The Respondent did not have just cause to issue the Oral Warning date February 28, 1994, or to suspend Petitioner in connection with the incident on or about February 13, 1994.

4. The Respondent's Oral Warning dated February 28, 1994, and suspension of Petitioner in connection with the incident on February 13, 1994, was arbitrary and capricious, and was not supported by substantial evidence.

5. The Respondent did not have just cause to suspend Petitioner or to issue the Written Warning against him dated April 27, 1994, in connection with the incident on April 10, 1994.

6. The Respondent's suspension of Petitioner in connection with the incident on April 10, 1994, was arbitrary and capricious, and was not supported by substantial evidence.

7. The Respondent's issuance of the Written Warning dated April 27, 1994, was arbitrary and capricious and was not supported by substantial evidence.

8. Petitioner was denied his right to a fair and impartial hearing before the Appeals Committee under the United States Constitution and the North Carolina Constitution, because of the conflict of interest of the attorney Millicent Gibson Diehl in her representation of Sandhills Center by preparing Respondent's staff persons to defend Respondent's actions vis-a-vis Petitioner at the Appeals Committee hearing on May 18, 1994, then participating in a private meeting with the Appeals Committee after its hearing on May 18, 1994, when she purported to act as the Appeals Committee lawyer and evaluate the "nature and sufficiency" of the parties' evidence, one-half of which she had participated in preparing.

9. Because of Respondent's wrongful suspension of Petitioner in connection with the incident on February 13, 1994, Petitioner lost wages of \$166.32.

10. Because of Respondent's wrongful suspension of Petitioner in connection with the incident on April 10, 1994, Petitioner lost wages of \$342.24.

11. Respondent should reimburse Petitioner the sum of \$506.56 for his lost wages from the two (2) above-described suspensions.

12. Respondent should set aside and immediately expunge from its records all mention of the above-described incidents on February 13, 1994, and April 10, 1994, to the extent that they pertain, mention, relate in any way, including (but not limited to) the Oral Warning, the Written Warning, the suspensions related thereto, and the investigations in connections therewith.

13. Respondent should reimburse Petitioner for his court costs and reasonable attorneys' fees for the prosecution of his appeal of the Oral Warning and Written Warning herein.

### **RECOMMENDED DECISION**

Based upon the foregoing Findings of Fact and Conclusions of Law, it is hereby recommended that:

1. Respondent reverse its decision to issue Oral and Written Warnings, and suspend Petitioner regarding the incidents of February 13, 1994, and April 10, 1994.

2. Respondent should expunge from its records all mention of the incidents of February 13, 1994, and April 10, 1994, to the extent that they pertain, mention or relate in any way, including but not limited to, the Oral Warning and Written Warning, and the suspensions related thereto, and the investigations in connection therewith.

3. It is recommended that Petitioner should receive lost wages of \$508.56 for Respondent's wrongful suspension of Petitioner.



4. Reasonable attorneys fees be awarded to Petitioner.

**ORDER**

It is hereby ordered that the agency serve a copy of the final decision on the Office of Administrative Hearings, P.O. Drawer 27447, Raleigh, N.C. 27611-7447, in accordance with North Carolina General Statute 150B-36(b).

**NOTICE**

The agency making the final decision in this contested case is required to give each party an opportunity to file exceptions to this recommended decision and to present written arguments to those in the agency who will make the final decision. G.S. 150B-36(a).

The agency is required by G.S. 150B-36(b) to serve a copy of the final decision on all parties and to furnish a copy to the parties' attorney of record and to the Office of Administrative Hearings.

The agency that will make the final decision in this contested case is the Office of State Personnel.

This the 30th day of December, 1994.

---

Sammie Chess, Jr.  
Administrative Law Judge

*The North Carolina Administrative Code (NCAC) has four major subdivisions of rules. Two of these, titles and chapters, are mandatory. The major subdivision of the NCAC is the title. Each major department in the North Carolina executive branch of government has been assigned a title number. Titles are further broken down into chapters which shall be numerical in order. The other two, subchapters and sections are optional subdivisions to be used by agencies when appropriate.*

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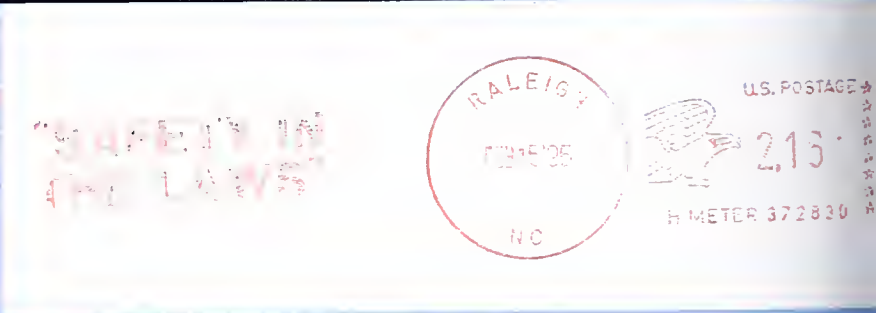
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