

NORTH CAROLINA REGISTER

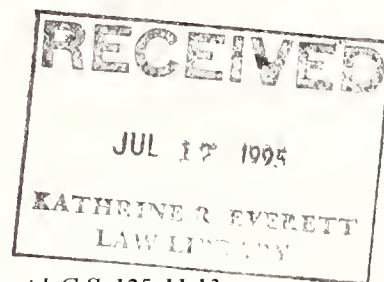
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PUBLISHED BY

***The Office of Administrative Hearings
Rules Division
PO Drawer 27447
Raleigh, NC 27611-7447
Telephone (919) 733-2678
Fax (919) 733-3462***



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 twenty dollars (\$120.00) for 24 issues. Individual issues may be purchased for ten dollars (\$10.00).

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

ADOPTION, AMENDMENT, AND REPEAL OF RULES

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

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

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

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

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

Proposed action on rules may be withdrawn by the promulgating

agency at any time before final action is taken by the agency or before filing with OAH for publication in the NCAC.

TEMPORARY RULES

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

NORTH CAROLINA ADMINISTRATIVE CODE

The North Carolina Administrative Code (NCAC) is a compilation and index of the administrative rules of 25 state agencies and 40 occupational licensing boards. Compilation and publication of the NCAC is mandated by G.S. 150B-21.18.

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

- (1) Single pages may be obtained at a minimum cost of two dollars and 50 cents (\$2.50) for 10 pages or less, plus fifteen cents (\$0.15) per each additional page. Requests for pages of rules or volumes of the NCAC should be directed to the Office of Administrative Hearings.
- (2) The full publication and supplement service is printed and distributed by Barclays Law Publishers. It is available in hardcopy, CD-ROM and diskette format. For subscription information, call 1-800-888-3600.

CITATION TO THE NORTH CAROLINA REGISTER

The *North Carolina Register* is cited by volume, issue, page number and date. 10:01 NCR 1-67, April 3, 1995 refers to Volume 10, Issue 1, pages 1 through 67 of the *North Carolina Register* issued on April 3, 1995.

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Office of Administrative Hearings
Rules Division
424 North Blount Street (27601)
PO Drawer 27447
Raleigh, NC 27611-7447
(919) 733-2678
FAX (919) 733-3462

Julian Mann III, Director
James R. Scarcella Sr., Deputy Director
Molly Masich, Director of APA Services
Ruby Creech, Publications Coordinator
Teresa Kilpatrick, Editorial Assistant
Jean Shirley, Editorial Assistant

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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
9:22	02/15/95	01/25/95	02/01/95	03/02/95	03/17/95	03/20/95	05/01/95
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
10:3	05/01/95	04/07/95	04/17/95	05/16/95	05/31/95	06/20/95	08/01/95
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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10:8	07/14/95	06/22/95	06/29/95	07/31/95	08/14/95	08/21/95	10/01/95
10:9	08/01/95	07/11/95	07/18/95	08/16/95	08/31/95	09/20/95	11/01/95
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10:12	09/15/95	08/24/95	08/31/95	10/02/95	10/16/95	10/20/95	12/01/95

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. 81
CREATION OF THE FAMILY
SUPPORT TRUST FUND**

WHEREAS, it is recognized that the State of North Carolina, for the protection and nurturing of its children, must foster the development and support of its families; and

WHEREAS, it is the responsibility of the State, local governments, non-profit organizations, businesses, and private citizens to work together to promote this development and support; and

WHEREAS, the Department of Human Resources is responsible for encouraging the development of a comprehensive statewide system of family resource services to support family well-being and prevent child abuse and neglect; and

WHEREAS, the State must have the ability to combine public and private resources together in one fund and invest and expend those funds to promote the development of a statewide system of family resource services;

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

Section 1. Establishment.

The North Carolina Family Support Trust Fund is hereby established within the Department of Human Resources. The Trust Fund is established to serve as a pool in which state, federal, and private funds may be combined, invested, and disbursed specifically for the purposes of promoting and developing a broad range of child abuse and neglect prevention activities and family resource programs. The assets of the Trust Fund may be used for purposes that include the following:

- A. Establishing and expanding statewide networks of community-based family resource programs;
- B. Promoting child abuse and neglect prevention activities;
- C. Integrating child and family services funding streams in order to provide flexible funding for the development of community-based family resource programs;
- D. Establishing or expanding community-based collaboration to foster the development of a continuum of preventive services for children and families, which are family-centered and culturally competent;
- E. Encouraging public and private partnerships in the establishment and expansion of family resource programs; and
- F. Increasing and promoting interagency coordination among state and local agencies in the establishment and expansion of family resource programs.

The Trust Fund shall be administered at the direction of an interdisciplinary advisory board as specified in this Order.

Section 2. Interdisciplinary Advisory Board.

The Family Support Trust Fund shall be administered by the Interdisciplinary Advisory Board, which shall include representatives from communities and representatives from existing health, mental health, education, vocational rehabilitation, employment and training, child welfare, and other agencies within the State. The Secretary of the Department of Human Resources is directed to either:

- A. Direct the Advisory Committee on Family Centered Services, under the leadership of the Chairperson chosen under the rules governing the Committee and with the incorporation of additional representatives from existing vocational rehabilitation and employment and training agencies, to serve as the Interdisciplinary Advisory Board for the Family Support Trust Fund; or
- B. Establish a new Interdisciplinary Advisory Board, hereby referred to as the Family Support Trust Fund Interdisciplinary Advisory Board. The new Interdisciplinary Advisory Board shall be established in accord with the following guidelines:
 1. The Board shall be composed of twelve representatives from communities and from existing health, mental health, education, vocational rehabilitation, employment and training, child welfare, state education agency and other agencies within the state and appointed by the Secretary of the North Carolina Department of Human Resources;
 2. The Chairperson of the Board shall be designated by the Secretary of the North Carolina Department of Human Resources for a one-year, renewable term; and
 3. Board members shall serve three year staggered terms.

Section 3. Functions of the Interdisciplinary Advisory Board.

The Interdisciplinary Advisory Board shall meet on an as needed basis at the call of the Chairperson. The responsibilities of the Interdisciplinary Advisory Board shall include those listed below:

- A. Assess issues critical to the prevention of child abuse and neglect and the development of a statewide system of family resource programs.
- B. Receive gifts, bequests, and devise for deposit and investment into the Family Support Trust Fund;
- C. Solicit proposals for programs which shall provide a board range of child abuse and neglect prevention activities and family resource programs;
- D. Establish criteria for the awarding of grants which shall include and emphasize the public-private partnership concept;

- E. Fund programs that effectively provide a broad range of child abuse and neglect prevention activities and family resource programs; and
- F. Present a report to the Governor and the Secretary of the Department of Human Resources at the end of each state fiscal year.

Section 4. Administration.

- A. The Department of Human Resources shall provide staff support as needed to support the activities of the Family Support Trust Fund and the Interdisciplinary Advisory Board.
- B. Subject to the availability of funds, members of the Interdisciplinary Advisory Board may be reimbursed for travel and subsistence expenses as authorized by state statute. State Employees must be reimbursed by state appropriated funds.
- C. All funds administered by the Interdisciplinary Advisory Board shall be subject to audit by the

State Auditor.

Section 5. Implementation and Duration.

- A. This order shall be effective immediately.
- B. The Family Support Trust Fund shall be dissolved at the pleasure of the Governor. In the event of dissolution, the assets remaining in the fund will be turned over to one or more organizations described in Sections 501(c)(3) and 170(c)(2) of the Internal Revenue Code of 1954 or corresponding sections of any prior or future law, or to the federal, state, or local government for expenditure solely for the purposes stated in this Order and at the discretion of the Governor of the State of North Carolina.

Done in Raleigh, this the 27th day of June, 1995.

**TITLE 10 - DEPARTMENT OF HUMAN
RESOURCES**

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Medical Care Commission intends to amend rules cited as 10 NCAC 3D .1401; 3M .0202 - .0205 and .0207.

Proposed Effective Date: November 1, 1995.

A Public Hearing will be conducted at 9:30 a.m. on September 8, 1995 at the UNC-Wilmington, 214 University Union, 601 S. College Road, Wilmington, NC 28403-3291.

Reason for Proposed Action:

10 NCAC 3D .1401 - To correct an incorrect rule cite.

10 NCAC 3M .0202 - .0205, .0207 - To give local medical directors the freedom to decide the types and quantities of medical equipment and supplies to be stored for use on Mobile Intensive Care Units (MICU's).

Comment Procedures: In order to allow the Commission sufficient time to review and evaluate your written comments prior to the hearing, please submit your written comments to Mr. Jackie Sheppard, APA Coordinator, DFS, P.O. Box 29530, Raleigh, NC 27626-0530, telephone (919) 733-2342 by August 18, 1995, but in no case later than the hearing on September 8, 1995.

Fiscal Note: These Rules do not affect the expenditures or revenues of local government or state funds.

CHAPTER 3 - FACILITY SERVICES

**SUBCHAPTER 3D - RULES AND
REGULATIONS GOVERNING
AMBULANCE SERVICE**

SECTION .1400 - ADMINISTRATION

**.1401 PERMIT OR CERTIFICATION
DENIAL, SUSPENSION, OR REVOCATION**

(a) The Office of Emergency Medical Services may deny, suspend, or revoke the permit of an ambulance service or of a specific vehicle for any of the following reasons:

- (1) Failure to comply with the requirements of Section .0900 of this Subchapter;
- (2) Obtaining a permit through fraud or misrepresentation; or
- (3) Failure to provide emergency medical care to the defined ambulance service area in a timely and professional manner.

(b) The Office of Emergency Medical Services may deny, suspend, or revoke the certification of a field technician for any of the following reasons:

- (1) Failure to comply with the applicable performance and certification requirements as found in

- (2) Section .0800 of this Subchapter;
- (2) Obtaining or attempting to obtain certification or recertification through fraud or misrepresentation;
- (3) Aiding a person in obtaining or attempting to obtain certification or recertification through fraud or misrepresentation;
- (4) Failure to competently perform the skills or procedures enumerated in Section .1400 .1200 of this Subchapter;
- (5) Performance of a skill or procedure which is not within the scope and responsibility of the certificate holder;
- (6) Performance of a skill or procedure that is detrimental to the health and safety of a patient;
- (7) Any felony conviction;
- (8) A misdemeanor conviction of the use, possession, or distribution of illegal drugs within the past five years; or
- (9) Conviction of driving while impaired within the past five years.

Statutory Authority G.S. 131E-157(a); 131E-159(b).

**SUBCHAPTER 3M - MINIMUM STANDARDS
FOR MOBILE INTENSIVE CARE UNITS**

SECTION .0200 - EQUIPMENT

**.0202 MOBILE INTENSIVE CARE UNIT
(MICU) I**

(a) In addition to equipment required in Rule .0201 of this Section, an ambulance identified as a Mobile Intensive Care Unit I may, upon approval of the medical director, carry equipment and supplies to perform medical acts authorized by 21 NCAC 32H .0403. The amount of equipment or supplies carried on each MICU I shall be concurrent with the medical protocols approved by the Office of Emergency Medical Services in effect for the advanced Life Support program with this the MICU I is affiliated. ~~shall carry the following equipment and medical supplies, in amounts approved by the medical director:~~

- (1) ~~two way radio capable of continuous voice communications with the sponsor hospital;~~
- (2) ~~angiocath needles;~~
- (3) ~~vacutainers;~~
- (4) ~~I.V. administration sets appropriate to solution containers and needles;~~
- (5) ~~blind insertion airway device;~~
- (6) ~~antishock trousers.~~

(b) A MICU I may also, upon approval of the medical director, carry the intravenous solution(s) and medications(s) authorized by 21 NCAC 32H .0403. The amounts and concentrations shall be concurrent with the medical protocols approved by the Office of Emergency Medical Services in effect for the Advanced Life Support program with which

the MICU I is affiliated. A copy of the current medical protocols may be obtained from the sponsor hospital of the advanced life support program. One copy of 21 NCAC 32H may be obtained at no cost from the Office of Emergency Medical Services, 701 Barbour Drive, P.O. Box 29530, Raleigh, NC 27626-0530.

Statutory Authority G.S. 131E-157(a).

.0203 MOBILE INTENSIVE CARE UNIT III

(a) In addition to equipment required in Rule .0201 of this Section, An an ambulance identified as a Mobile Intensive Care Unit III may, upon approval of the medical director, carry equipment and supplies to perform medical acts authorized by 21 NCAC 32H .0402. The amount of equipment or supplies carried on each MICU III shall be concurrent with the medical protocols approved by the Office of Emergency Medical Services in effect for the advanced Life Support program with this the MICU III is affiliated. shall carry the equipment and supplies required in Rule .0201 of this Section and the following equipment and medical supplies in amounts approved by the medical director:

- (1) ~~two way radio capable of continuous voice communications with the sponsor hospital;~~
- (2) ~~angiocath needles;~~
- (3) ~~vacutainers;~~
- (4) ~~I.V. administration sets appropriate to solution containers and needles;~~
- (5) ~~blind insertion airway devices;~~
- (6) ~~antishock trousers;~~
- (7) ~~sterile syringes;~~
- (8) ~~endotracheal tubes;~~
- (9) ~~laryngoscope (handle and blade);~~
- (10) ~~cardiac monitor and accessories;~~
- (11) ~~defibrillator.~~

(b) A vehicle identified as a Mobile Intensive Care Unit III may also, upon approval of the medical director carry the intravenous solution(s) and medications(s) authorized by 21 NCAC 32H .0402. The amounts and concentrations shall be concurrent with the medical protocols approved by the Office of Emergency Medical Services in effect for the Advanced Life Support program with which the MICU III is affiliated. A copy of the current medical protocols may be obtained from the sponsor hospital of the advanced life support program. One copy of 21 NCAC 32H may be obtained at no cost from the Office of Emergency Medical Services, 701 Barbour Drive, P.O. Box 29530, Raleigh, NC 27626-0530.

Statutory Authority G.S. 131E-157(a).

.0204 ADVANCED LIFE SUPPORT NONTRANSPORTING UNIT

A vehicle identified as an Advanced Life Support nontransporting unit shall carry equipment and supplies in accordance with the level of Advanced Life Support care offered by the provider with which the vehicle is affiliated. These requirements are defined in Rules .0202, .0203, .0205,

and .0207 of this Subchapter. These vehicles shall also comply with requirements and criteria set forth in North Carolina General Statutes 20-125, ~~dealing with~~ regarding horns and audible warning devices; 20-130.1, ~~dealing with~~ regarding the use of red lights and other visual warning devices; and 20-183.2, ~~dealing with~~ regarding vehicle equipment safety inspections.

Statutory Authority G.S. 131E-157(a).

.0205 MOBILE INTENSIVE CARE UNIT II

(a) In addition to equipment required in Rule .0201 of this Section, An an ambulance identified as a Mobile Intensive Care Unit II may, upon approval of the medical director, carry equipment and supplies to perform medical acts authorized by 21 NCAC 32H .0406. The amount of equipment or supplies carried on each MICU II shall be concurrent with the medical protocols approved by the Office of Emergency Medical Services in effect for the advanced Life Support program with this the MICU II is affiliated. shall carry the equipment and supplies required in Rule .0201 of this Section and the following equipment and medical supplies in amounts approved by the medical director:

- (1) ~~two way radio capable of continuous voice communications with the sponsor hospital;~~
- (2) ~~angiocath needles;~~
- (3) ~~vacutainers;~~
- (4) ~~I.V. administration sets appropriate to solution containers and needles;~~
- (5) ~~blind insertion airway devices;~~
- (6) ~~antishock trousers;~~
- (7) ~~sterile syringes;~~
- (8) ~~endotracheal tubes;~~
- (9) ~~laryngoscope (handle and blade);~~
- (10) ~~cardiac monitor and accessories;~~
- (11) ~~defibrillator.~~

(b) A vehicle identified as a Mobile Intensive Care Unit II may, upon the approval of the medical director carry the intravenous solution(s) and medications(s) authorized by 21 NCAC 32H .0406. The amounts and concentrations shall be concurrent with the medical protocols approved by the Office of Emergency Medical Services in effect for the Advanced Life Support program with which the MICU II is affiliated. A copy of the current medical protocols may be obtained from the sponsor hospital of the advanced life support program. One copy of 21 NCAC 32H may be obtained at no cost from the Office of Emergency Medical Services, 701 Barbour Drive, P.O. Box 29530, Raleigh, NC 27626-0530.

Statutory Authority G.S. 131E-157(a).

.0207 MOBILE INTENSIVE CARE UNIT IV

(a) In addition to equipment required in Rule .0201 of this Section, An an ambulance identified as a Mobile Intensive Care Unit IV may, upon approval of the medical director, carry equipment and supplies to perform medical acts authorized by 21 NCAC 32H .0407. The amount of equipment or supplies

carried on each MICU IV shall be concurrent with the medical protocols approved by the Office of Emergency Medical Services in effect for the advanced Life Support program with this the MICU IV is affiliated. ~~shall carry, in addition to the equipment referenced in Rule .0201 of this Section, an automatic external defibrillator (AED).~~

(b) A MICU IV may also, upon approval of the medical director, carry the medications(s) authorized by 21 NCAC 32H .0407. The amounts and concentrations shall be concurrent with the medical protocols approved by the Office of Emergency Medical Services in effect for the Advanced Life Support program with which the MICU IV is affiliated. A copy of the current medical protocols may be obtained from the sponsor hospital of the advanced life support program. One copy of 21 NCAC 32H may be obtained at no cost from the Office of Emergency Medical Services, 701 Barbour Drive, P.O. Box 29530, Raleigh, NC 27626-0530.

Statutory Authority G.S. 131E-157(a).

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Medical Care Commission intends to adopt rule cited as 10 NCAC 3L .1112; amend rules 10 NCAC 3L .0901 - .0907, .1001 - .1007, .1101 - .1111, .1201 - .1202, .1301 - .1302, .1401 - .1402 and repeal rule 3L .1303.

Proposed Effective Date: February 1, 1996.

A Public Hearing will be conducted at 9:30 a.m. on September 8, 1995 at the UNC-Wilmington, 214 University Union, 601 S. College Road, Wilmington, NC 28403-3291.

Reason for Proposed Action: To strengthen and clarify existing licensure rules governing home care agencies.

Comment Procedures: In order to allow the Commission sufficient time to review and evaluate your written comments prior to the hearing, please submit your written comments to Mr. Jackie Sheppard, APA Coordinator, DFS, P.O. Box 29530, Raleigh, NC 27626-0530, telephone (919) 733-2342 by August 18, 1995, but in no case later than the hearing on September 8, 1995.

Fiscal Note: These Rules do not affect the expenditures or revenues of local government or state funds.

SUBCHAPTER 3L - THE LICENSING OF HOME CARE AGENCIES

SECTION .0900 - GENERAL

.0901 DEFINITIONS

The following definitions will apply throughout this Subchapter:

- (1) "Agency director" means the person having adminis-

trative responsibility for the operation of the home care agency.

- (2) "Allied health personnel" means ~~in-home aides,~~ licensed practical nurses, physical therapy assistants, occupational therapy assistants or other health professionals as defined in occupational licensure laws that are subject to supervision by a health professional.
- (3) ~~"Appropriate health care professional" means a licensed health care provider authorized to supervise other personnel as defined in applicable occupational licensure laws and regulations.~~
- (3) (4) "Appropriate professional" means a licensed health care professional as defined in Subparagraph (3) of this Rule or a person with a baccalaureate degree in social work or an individual who meets the job specifications established for a social worker by the Office of State Personnel.
- (4) "Client" means an individual who receives home care services.
- (5) "Clinical respiratory services" means the provision of respiratory equipment and services that involve the assessment of a client's pulmonary status, monitoring of a client's response to therapy and reporting to the client's physician. Procedures, include but not limited to: oximetry, blood gases, delivery of medication via aerosolization, management of ventilatory support equipment, pulmonary function testing and infant monitoring.
- (6) (5) "Department" means the North Carolina Department of Human Resources.
- (7) (6) "Follow-up care" means services provided to a licensed hospital's discharged patient in ~~his~~ their home by a hospital's employees. All services except pulmonary care, pulmonary rehabilitation or ventilator services shall not exceed three visits in any two month period and shall not extend beyond a 12 month period following discharge.
- (8) "Geographic service area" means the geographic area in which a licensed agency provides home care services.
- (9) (7) "Governing body" means the person or group of persons having full legal authority ~~and ownership responsibility~~ for the operation of the ~~home care~~ agency.
- (10) (8) "Home care agency" means ~~a private or public organization which provides home care services; an agency as defined in G.S. 131E-136(2).~~
- (9) ~~"Home care agency premises" means the physical site where the home care agency maintains any staff performing administrative functions, and maintains its personnel records, or maintains its client service records, or holds itself out to the public as being a location for receipt of client referrals.~~
- (11) (10) "Home care services" means ~~any of the following services and directly related medical supplies and appliances, which are provided to an individual in a place of temporary or permanent residence used as an~~

- individual's home: those services as defined in G.S. 131E-136(3).
- (a) ~~Nursing care;~~
 - (b) ~~Physical, occupational or speech therapy, when provided to an individual who also is receiving nursing services, or any other of these therapy services, in a place of temporary or permanent residence used as the individual's home;~~
 - (c) ~~Medical social services;~~
 - (d) ~~In-home aide services that involve hands-on care to an individual;~~
 - (e) ~~Infusion nursing services; and~~
 - (f) ~~Assistance with pulmonary care, pulmonary rehabilitation or ventilation. The term "home care services" does not include the following:~~
 - (i) ~~health promotion, preventative health and community health services provided by public health departments;~~
 - (ii) ~~maternal and child health services provided by public health departments, by employees of the Department of Environment, Health, and Natural Resources under G.S. 130A-124, or by developmental evaluation centers under contract with the Department of Environment, Health, and Natural Resources to provide services under G.S. 130A-124;~~
 - (iii) ~~hospitals licensed under Article 5 or Chapter 131E of the General Statutes when providing follow-up care initiated to patients within six months after their discharge from the hospital;~~
 - (iv) ~~facilities and programs operated under the authority of G.S. 122C;~~
 - (v) ~~schools, when providing services pursuant to Article 9 of Chapter 115C;~~
 - (vi) ~~the practice of midwifery by a person licensed under Article 10A of Chapter 90 of the General Statutes;~~
 - (vii) ~~hospices licensed under Article 10 of Chapter 131E of the General Statutes when providing care to a hospice patient;~~
 - (viii) ~~an individual who engages solely in providing his own services to other individuals;~~
 - (ix) ~~incidental health care provided by an employee of a physician licensed to practice medicine in North Carolina in the normal course of the physician's practice; or~~
 - (x) ~~nursing registries if the registry discloses to a client or the client's responsible party, before providing any services, that:~~
 - (A) ~~it is not a licensed home care agency, and~~
 - (B) ~~it does not make any representations or guarantees concerning the training, supervision or competence of the personnel provided.~~
- (12) (44) "Home health agency" means an agency as defined in Chapter 131-136(4) of the General Statutes.
- (12) ~~"Home health aide" means an in-home aide qualified to provide services under a home health agency.~~
- (13) "Infusion nursing services" means those services related to the administration of pharmaceutical agents directly into a body organ or cavity ~~, or via the intravenous, intraspinal, or epidural routes. Routes of administration include but are not limited to subcutaneous, intravenous, intraspinal, epidural or intrathecal. Administration shall be by or under the supervision of a registered nurse in accordance with their legal scope of practice.~~
- (14) "In-home aide" means an individual qualified to provide hands-on personal care to home care clients.
- (15) "In-home care provider" means any individual who provides home care services as enumerated in G.S. 131E-136.
- (16) (44) "In home aide services" are these hands-on paraprofessional services which assist the individual, his their family or both with essential home management tasks, personal care tasks, or supervision of the client's activities, or all of the above, to enable the individual, his their family or both, to remain and function effectively at home as long as possible.
- (17) (45) "Licensed practical nurse" means a person duly licensed as such, holding a current license as required by North Carolina statute G.S. 90-171.30.
- (18) (46) "Medical social services" means those professional services provided to an individual in his their home by a medical social worker, or by a medical social worker assistant under the supervision of a medical social worker, when provided by a home care agency in conjunction with other nursing or therapy services provided by the same agency.
- (19) (47) "Medical social worker" means a person with a masters degree from a school of social work approved by the Council on Social Work Education who is eligible for certification by the North Carolina Certification Board for Social Work as a Certified Master Social Worker.
- (20) (48) "Medical social worker assistant" means a person who has a baccalaureate degree in social work, psychology, sociology, or other field related to social work, and has had at least one year of social work experience.
- (21) (49) "Nursing registry" means a person who maintains a list of nurses or in-home aides or both that is made available to persons seeking nursing care or in-home aide services. A "nursing registry" does not include a registry kept by a person who:
- (a) collects a fee from a nurse, in-home aide or person seeking the services when the fee is contingent upon the employment or use of a nurse or in-home aide from the list; or
 - (b) arranges or coordinates the delivery of services provided by a nurse or in-home aide from the list; or
 - (c) supervises, evaluates or controls the provision of

- services by a nurse or in-home aide from the list.
- (22) (20) "Nursing services" means professional services provided by a registered nurse or a licensed practical nurse under the supervision of a registered nurse.
- (23) (24) "Occupational therapist" means a person duly licensed as such, holding a current license as required by ~~North Carolina statute G.S. 90-270.70.~~
- (24) (22) "Occupational therapist assistant" means a person duly licensed as such, holding a current license as required by ~~North Carolina statute G.S. 90-270.70.~~
- (25) (23) "Occupational therapy services" means professional services provided by a licensed occupational therapist or a licensed occupational therapist assistant under the supervision of a licensed occupational therapist.
- (26) "Paraprofessional" means an in-home care provider who does not hold a professional license or professional certification and through the nature of their duties assists a professional.
- (27) "On-call services" means home care services made available to clients on a 24-hour basis in order to meet clients' unscheduled needs.
- (28) (24) "Personal care" includes tasks that range from assistance to an individual with basic personal hygiene, grooming, feeding and ambulation to medical monitoring and other health care related tasks.
- (29) (25) "Physical therapist" means a person duly licensed as such, holding a current license as required by ~~North Carolina statute G.S. 90-270.29.~~
- (30) (26) "Physical therapist assistant" means a person duly licensed as such holding a current license as required by ~~North Carolina statute G.S. 90-270.29.~~
- (31) (27) "Physical therapy services" means professional services provided by a licensed physical therapist or a licensed physical therapist assistant under the supervision of a licensed physical therapist.
- (32) (28) "Physician" means a person licensed as such, holding a current license as required by ~~North Carolina statute G.S. 90-15.~~
- (33) (29) "Plan of care" means the written description of the authorized home care services and tasks to be provided to a client.
- (34) "Premises" means the location or licensed site from which the agency provides home care services or maintains client service records or advertises itself as a home care agency.
- (30) ~~"Pulmonary care, pulmonary rehabilitation or ventilation services" means the provision of pulmonary support equipment and related service and includes, but is not limited to: oximetry, drawing of blood gases, or delivery of medications via aerosolization, and management of ventilatory support equipment.~~
- (35) (34) "Registered nurse" means a person duly licensed as such, holding a current license as required by ~~North Carolina statute G.S. 90-171.30.~~
- (36) (32) "Respiratory therapist" means a person who is

certified credentialed by the National Board for Respiratory Care.

- (37) "Respiratory practioner" means those persons who provide clinical respiratory services in a client's home.
- (38) "Scope of services" means those specific services provided by a licensed agency as listed on their home care license.
- (39) "Survey" means an inspection by the Division of Facility Services in order to assess the compliance of agencies with the home care licensure rules.
- (40) (33) "Social worker" means a person who meets the qualifications of the North Carolina Office of State Personnel for social workers.
- (41) (34) "Speech and language pathologist" means a person duly licensed as such, holding a current license as required by ~~North Carolina statute G.S. 90-294.~~
- (42) (35) "Speech therapy" means professional services provided by a licensed speech and language pathologist.
- (43) "Skilled Services" means all home care services enumerated in G.S. 131E-136(3) with the exception of in-home aide services.

Statutory Authority G.S. 131E-140.

.0902 LICENSE

Each ~~home care~~ agency premises shall obtain a license unless exempted by G.S. 131E-136(3).

Statutory Authority G.S. 131E-140.

.0903 APPLICATION FOR AND ISSUANCE OF LICENSE

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

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

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

also post a sign at the public access door with the agency name.

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

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

~~(f) Prior to change of ownership of a home care agency, the agency must notify the department. The licensee shall notify the Department in writing of any proposed change in ownership or name at least 30 days prior to the effective date of the change.~~

(g) Any agency adding a new service category as outlined in G.S. 131E-136 (3)(a)-(f) shall notify the department in writing at least 30 days prior to the provision of that service to any clients. The Department shall approve the added service prior to its implementation.

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

Statutory Authority G.S. 131E-140.

.0904 INSPECTIONS

(a) Any home care agency licensed by the Department shall be subject to proper inspections by an authorized representative of the Department at any time as a condition of holding such license.

(b) Any organization subject to licensure which presents itself to the public as a home care agency, which does not hold a license, and is or may be in violation of Rule .0902 of this Section and G.S. 131E-138 shall be subject to proper inspections at any time by authorized representatives of the Department.

(c) Any authorized representative of the Department shall make his their identity known to the person in charge prior to inspection.

(d) Inspection of service records shall be carried out in accordance with G.S. 131E-141(b).

(e) An inspection shall be considered proper whenever the purpose of the inspection is to determine whether the agency complies with the provisions of this Subchapter or whenever there is reason to believe that some condition exists which is not in compliance with the rules in this Subchapter. The agency shall allow immediate access to its premises and the records necessary to conduct an inspection and determine compliance with the rules of this Subchapter. Failure to do so shall result in termination of the survey and may result in injunctive relief as outlined in G.S.131E-142.

(f) An agency shall file a plan of correction for cited deficiencies within 10 working days of receipt. The Department shall

review and respond to a written plan of correction within 10 working days of receipt.

(g) Representatives of the Department may visit clients in their homes to assess the agency's compliance with the clients' plans of care and with the licensure rules. Clients will be contacted by the agency staff in the presence of Department staff for permission to visit.

Statutory Authority G.S. 131E-140.

.0905 MULTIPLE PREMISES

If a person operates multiple home care agency premises:

- (1) the Department may conduct inspections at any or all of the premises and shall issue a license to each of the premises based upon a sample inspection of any or all of the premises;
- (2) with 72 hours advance notice, the Department may request records from any of the premises necessary to ensure compliance with the rules in of this Section Subchapter ~~and be brought to the site being inspected, including the portions of personnel records subject to review. For agencies for whom a corporate or government policy precludes the disclosure of employee evaluations, a statement signed by the employee's supervisor attesting to its completion shall be accepted.~~
- (3) the premises may share hands-on care staff or administrative staff, or centralize the maintenance of records.

Statutory Authority G.S. 131E-140.

.0906 COMPLIANCE WITH LAWS

(a) The home care agency shall be in compliance with all applicable federal, state and local laws, rules and regulations.

(b) Staff of the home care agency shall be currently licensed or registered in accordance with applicable laws of the State of North Carolina.

(c) ~~An A-home care~~ agency shall be deemed to meet the licensure requirements and issued a license without further review or inspection if the agency is certified or accredited by one of the accrediting bodies specified in G.S. 131E-138(g) or is recognized by the Medical Care Commission as allowed by G.S. 131E-138(g).

~~The Department may, at its discretion, determine the frequency and extent of the review and inspection of home health agencies already certified as meeting federal requirements, but not more frequently than on an annual basis for routine reviews.~~

(d) Nothing in this Section shall prohibit the Department from conducting inspections as provided for in Rule .0904 of this Section.

(e) Any agency deemed to be in compliance by virtue of accreditation by one of the specified accrediting bodies shall submit to the Department a copy of its accreditation report within 30 days after the home care agency receives its report each time it is surveyed by the accrediting body. The agency shall notify the Department of any action taken that affects its

accreditation status, either temporarily or permanently. The Department may conduct annual validation surveys to assure compliance.

Statutory Authority G.S. 131E-140.

.0907 ADVERSE ACTION

~~(a) The Department may deny, suspend, revoke, recall or amend a license in accordance with G.S. 131E-139 for any home care agency which significantly fails to comply with the rules contained in this Subchapter or which fails to implement an approved plan of correction for deficiencies cited by the Department. An A-home care agency may appeal any adverse decision made by the Department concerning its license by making such appeal in accordance with the Administrative Procedure Act, G.S. 150B and departmental rules 10 NCAC 1B .0200 et seq. As provided for in G.S. 131E-142, the Department shall seek injunctive relief to prevent an entity from establishing or operating a home care agency without a license. Pursuant to G.S. 131E-141.1 a person shall be subject to criminal liability for establishing, conducting, managing, or operating a home care agency without a license.~~

(b) The Department may amend a license by reducing it from a full license to a provisional license whenever the Department finds that:

- (1) the licensee has substantially failed to comply with the provisions of Part C of Article 6 of Chapter 131E of the General Statutes and the rules promulgated under that Part; and
- (2) there is a reasonable probability that the licensee can remedy the licensure deficiencies within a reasonable length of time; and
- (3) there is a reasonable probability that the licensee will be able thereafter to remain in compliance with the home care licensure rules for the foreseeable future.

The Department shall give the licensee written notice of the amendment of its license. This notice shall be given by registered or certified mail or by personal service and shall set forth the reasons for the action.

(c) The provisional license shall be effective immediately upon its receipt by the licensee and must be posted in a prominent location, accessible to public view, within the licensed premises in lieu of the full license. The provisional license shall remain in effect until:

- (1) the Department restores the licensee to full licensure status; or
- (2) the Department revokes the licensee's license; or
- (3) the end of the licensee's licensure year.

If a licensee has a provisional license at the time that the licensee submits a renewal application, the license, if renewed, shall also be a provisional license unless the Department determines that the licensee can be returned to full license status. A decision to issue a provisional license is stayed during the pendency of an administrative appeal and the licensee may continue to display its full license during the appeal.

(d) The Department may revoke a license whenever:

- (1) The Department finds that:
 - (A) the licensee has substantially failed to comply with the provisions of Part C of Article 6 of Chapter 131E of the North Carolina General Statutes and the rules promulgated under those parts; and
 - (B) it is not reasonably probable that the licensee can remedy the licensure deficiencies within a reasonable length of time; or
- (2) The Department finds that:
 - (A) the licensee has substantially failed to comply with the provisions of Part C of Article 6 of Chapter 131E of the General Statutes; and
 - (B) although the licensee may be able to remedy the deficiencies within a reasonable time, it is not reasonably probable that the licensee will be able to remain in compliance with the home care licensure rules for the foreseeable future; or
- (3) The Department finds that there has been any failure to comply with the provisions of Part C of Article 6 of Chapter 131E of the North Carolina General Statutes and the rules promulgated under those parts that endangers the health, safety or welfare of the clients receiving services from the agency.

The issuance of a provisional license is not a procedural prerequisite to the revocation of a licensed pursuant to Subparagraphs (d)(1)(2) and (3) of this Rule.

Statutory Authority G.S. 131E-140.

SECTION .1000 - ADMINISTRATION

.1001 AGENCY MANAGEMENT AND SUPERVISION

(a) The governing body or its designee shall establish and assure implementation of written policies governing agency operation. Such policies shall be available for inspection by the Department. The policies shall include, at the minimum, provision for the evaluation of the quality and description of the scope of services offered; admission and discharge policies; supervision and of personnel; development of, and updates to, the plan of care, management of emergency care situations in the home; time frame for completion and return of service records to the agency; personnel qualifications; an organizational chart; program evaluation; employee and client confidentiality; and coordination of and referral to and from other community agencies and resources.

(b) The home care agency shall designate an individual to serve as agency director. The agency director shall have the authority and responsibility for administrative direction of the home care agency.

(c) The home care agency shall designate a professional responsible for supervising each type of home care service provided by the agency either directly or by contract. This individual may be the supervisor for one or more home care

services and may also serve as the agency director.

(d) There shall be written documentation that specifies the responsibilities and authority of the agency director and supervisor.

(e) If the position of agency director becomes vacant, the Department shall be notified within ~~one week~~ five working days in writing of such vacancy along with the name of the replacement, if available. Agency policies shall define the order of authority in the absence of the administrator.

(f) The agency shall have the ultimate responsibility for the services provided under its license; however, it may make arrangements with contractors and others to provide services in accordance with Rule .1111 of this Subchapter.

(g) ~~An A-home-care~~ agency shall have written policies which identify the specific geographic area in which the agency provides each service. ~~For home health agencies, these geographic area policies shall be consistent with the certificate of need restrictions on geographic area for the agency's home health agency clients. If an agency plans to expand its geographic service area without opening an additional site, the Department shall be notified in writing 30 days in advance.~~

Statutory Authority G.S. 131E-140.

.1002 ADMINISTRATIVE, FINANCIAL AND STATISTICAL RECORDS

(a) The ~~home-care~~ agency shall establish, maintain and make available for inspection the home care annual budget and statistical records.

(b) The agency shall record, maintain and make available to the Department statistical records as requested. The records shall include ~~information on the agency's home care staff, client demographics, payment sources and other statistical data as required for the operation of the agency or by the Department.~~ at a minimum the following:

- (1) Number of home care staff, including administrative, clerical, professional and paraprofessional and their total number of units of services;
- (2) Client demographics, including county of residence and age; and
- (3) Number of units of service by service category.

(c) Records shall be retained for a period of not less than three years.

(d) When ~~an a-home-care~~ agency operates as a part of a health care facility licensed under Article 5 or 6 of G.S. 131E, or as a part of a larger diversified agency, records of home care activities and expenditures that are separate and identifiable shall be maintained for the ~~home-care~~ agency.

Statutory Authority G.S. 131E-140.

.1003 PERSONNEL

(a) Written policies shall be established and implemented by the agency regarding infection control and exposure to communicable diseases consistent with Subchapter 19A of Title 15A, North Carolina Administrative Code. These policies and procedures shall include provisions for compliance with 29 CFR

1910 (Occupational Safety and Health Standards) which is incorporated by reference including subsequent amendments. Emphasis shall be placed on compliance with 29 CFR 1910-1030 (Airborne and Bloodborne Pathogens). Copies of Title 29 Part 1910 can be purchased from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 371954, Pittsburgh, PA 15250-7954 or by calling Washington, D.C. 202-512-1800. ~~20402 for thirty-eight dollars (\$38.00) The cost is twenty-one dollars (\$21.00) and may be purchased with a credit card. by a direct telephone call to the G.P.O. at 202/783-3238. Hands-on-care employees must have an annual skin test for TB. Individuals, who have previously tested positive to the TB skin test, shall obtain an annual verification that they are free of TB. This verification shall be obtained from the local health department, a private physician or health nurse employed by the agency. The Tuberculosis Control Branch of the North Carolina Department of Environment, Health, and Natural Resources, P.O. Box 27687, Raleigh, North Carolina 27611-7687 will provide free of charge, guidelines for conducting verification and Form DEHNR 3405 (Record of Tuberculosis Screening). Employees that are directly exposed to tuberculosis (TB) clients, including those involved with high hazard procedures, are required to have an initial or baseline tuberculosis skin test. For this category of employee, the tuberculosis test must be repeated every six months. For employees that do not work with known tuberculosis clients (in other words they do not have occupational exposure) the tuberculosis test would not be required.~~

(b) Written policies shall be established and implemented which include personnel record content, orientation and in-service education. Records on the subject of in-service education and attendance shall be maintained by the agency and retained for at least one year.

(c) Job descriptions for every position shall be established in writing which include qualifications and specific responsibilities. Individuals shall be assigned only to duties for which they are trained and competent to perform and when applicable for which they are properly licensed.

(d) Personnel records shall be established and maintained for each home care employee ~~which include education, training, previous experience, verification of professional or paraprofessional registration or license when applicable, other qualifications, and annual performance evaluations.~~ When requested, the records shall be available on the agency premises for inspection by the Department. These records shall be maintained for at least one year after termination from agency employment. The records shall include as a minimum:

- (1) an application or resume which lists education, training and previous employment that can be verified, including job title;
- (2) a job description with record of acknowledgment by the employee;
- (3) reference checks or verification of previous employment;
- (4) records of tuberculosis screening for employees for whom the test is necessary as described in Paragraph (a) of this Rule;

- (5) Documentation of Hepatitis B immunization or declination for hands-on care employees in accordance with the agency's exposure control plan;
- (6) airborne and bloodborne pathogen training for hands on care employees, including annual updates, in compliance with 29 CFR 1910 and in accordance with the agency's exposure control plan;
- (7) performance evaluations according to agency policy and at least annually;
- (8) verification of employees' credentials as applicable; and
- (9) records of the verification of competencies by agency supervisory personnel of all skills required of home care services personnel to carry out client care tasks to which the employee is assigned. The method of verification shall be defined in agency policy.

Statutory Authority G.S. 131E-140.

.1004 EVALUATION

(a) The ~~home care~~ agency's governing body or its designee shall, at least annually, conduct a comprehensive evaluation of the ~~home care~~ agency's total operation. ~~The evaluation shall assure the appropriateness and quality of the agency's services with findings used to verify policy implementation, to identify problems, and to establish problem resolution and policy revision as necessary.~~

(b) The evaluation shall assure the appropriateness and quality of the agency's services with findings used to verify policy implementation, to identify problems, and to establish problem resolution and policy revision as necessary.

(c) ~~(b)~~The evaluation ~~must~~ shall consist of an overall policy and administration review, including the scope of services offered, arrangements for services with other agencies or individuals, admission and discharge policies, supervision and plan of care, emergency care, service records, personnel qualifications and program evaluation. Data to be assessed shall include at a minimum the following ~~as a minimum~~:

- (1) number of clients receiving each services;
- (2) number of visits or hours for each service;
- (3) client outcomes;
- (4) adequacy of staff to meet client needs;
- (5) numbers and reasons for nonacceptance of clients; and
- (6) reasons for discharge.

(d) ~~(e)~~An evaluation of the agency's client records shall be carried out at least quarterly by appropriate professionals representing the scope of the agency's program. The evaluation shall include a review of sample active and closed client records to ensure that agency policies are followed in providing services, both direct and under arrangement, and to assure that the quality of service is satisfactory and appropriate. The review shall consist of a representative sample of all home care services provided by the agency.

(e) ~~(d)~~Documentation of the evaluation shall include the names of persons carrying out the evaluation, the criteria and

methods used to accomplish it, and ~~the~~ any action taken by the agency as a result of ~~the~~ its findings.

Statutory Authority G.S. 131E-140.

.1005 HOSPICE CARE

If ~~an a-home care~~ agency offers or provides a hospice program of care, such services shall be in compliance with all provisions of 10 NCAC 3T (Hospice Licensing Rules), with the exception of rules requiring a separate hospice license. Hospices shall be eligible for a home care license if they meet the requirements of 10 NCAC 3L and meet the standards for the specific home care services offered. The extent of the licensure review shall be at the discretion of the Department. Should the ~~home care~~ agency's hospice program be found in non-compliance with the hospice licensure rules or statutes, that shall be a violation of ~~their home care agency~~ either license. Adverse action shall be taken in accordance with Section .0900 of this Subchapter and injunctive relief may be sought in accordance with North Carolina General Statute 131E-206.

Statutory Authority G.S. 131E-140.

.1006 NURSING POOL

If ~~an A-home care~~ agency offers or provides a nursing pool, and does not wish to obtain a separate license for its nursing pool, such services shall be in compliance with all provisions of 10 NCAC 3V (Nursing Pool Licensing Rules), with the exception of rules requiring a separate nursing pool license. Should the ~~home care~~ agency's nursing pool be found in non-compliance with the nursing pool licensure rules and statutes, that shall be a violation of their home care agency license. Adverse action shall be taken in accordance with Section .0900 of this Subchapter and injunctive relief may be sought in accordance with North Carolina General Statute 131E-154.7.

Statutory Authority G.S. 131E-140.

.1007 CLIENT RIGHTS AND RESPONSIBILITIES

(a) ~~An A-home care~~ agency must provide each client with a written notice of the client's rights and responsibilities in advance of furnishing care to the client or during the initial evaluation visit before the initiation of services. The agency ~~must~~ shall maintain documentation showing that each client has received a copy of ~~his~~ their rights and responsibilities.

(b) The notice ~~must~~ shall include at a minimum the client's right to:

- (1) be informed and participate in ~~his~~ their plan of care;
- (2) voice grievances about ~~his~~ their care and not be subjected to discrimination or reprisal for doing so;
- (3) confidentiality of ~~his~~ their records;
- (4) be informed of his liability for payment for services; ~~and~~
- (5) be informed of the process for acceptance and

continuance of service and eligibility determination;

- (6) ~~(5) accept or refuse services; services;~~
- (7) be informed of the agency's on-call service;
- (8) be informed of supervisory accessibility and availability; and
- (9) be advised of the agency's procedures for discharge.

(c) ~~An A-home care~~ agency shall provide all clients with a telephone number for information, questions or complaints about services provided by the agency. The agency shall also provide the Division of Facility Services complaints hotline number or the Department of Human Resources Careline number. The Division of Facility Services will investigate all allegations of non-compliance with the rules.

(d) ~~An A-home care~~ agency shall investigate, within 72-hours, complaints made by a client or ~~his~~ their family, and must document both the existence of the complaint and the resolution of the complaint.

Statutory Authority G.S. 131E-140.

SECTION .1100 - SCOPE OF SERVICES

.1101 ACCEPTANCE OF CLIENTS FOR SERVICE PROVISION

Within the scope of services provided, the ~~The home care~~ agency shall develop and implement and follow written policies governing the acceptance of clients and client services. These policies and procedures shall include consideration of the following:

- (1) adequacy and suitability of agency personnel and resources to provide the services required by the client and information on resources available to cover staff absence;
- (2) reasonable expectation that the client's medical, nursing, personal, and social needs need for requested services can be met adequately at home by the agency;
- (3) adequate physical facilities in the client's home for his their plan of care; and
- (4) availability or absence of family or substitute family member able and willing to participate in the client's care where when necessary to ensure the safety of the client; client;
- (5) information on the scope of services provided and the geographic area served with each service;
- (6) notification to the referral source when one or more needed and requested services (including assessment) cannot be provided to a specific client within a time frame requested by the referral source and established by agency policy;
- (7) advance notification of at least 48 hours to the client or responsible party when service provision is to be reduced or terminated, except in cases where the client is in agreement with changes, there is a danger to a client or staff member, or the physician termi-

nates services; and

- (8) referral to and coordination with other appropriate agencies when the agency is unable to respond to a request for service promptly, or to continue to provide service.

Statutory Authority G.S. 131E-140.

.1102 NURSING SERVICES AND DUTIES

(a) If an agency provides nursing services, such services shall be provided by or under the supervision of a registered nurse and in accordance with the North Carolina Nursing Practice Act, G.S. Chapter 90, Article 9A, and the client's plan of care.

(b) Registered nurse duties shall include the following as a minimum:

- (1) regularly assess the nursing needs of the client;
- (2) develop and implement the client's nursing plan of care;
- (3) provide nursing services, treatment, and diagnostic and preventive procedures;
- (4) initiate preventive and rehabilitative nursing procedures appropriate for the client's care and safety;
- (5) observe signs and symptoms and report to the physician any reaction to treatment, drugs, or changes in the client's physical or emotional condition;
- (6) teach, supervise, and counsel the client and family members about providing care for the client at home; and
- (7) supervise and train other nursing service personnel.

(c) Licensed practical nurse duties are delegated by and performed under the supervision of a registered nurse. Consistent with the client's plan of care, duties may include; and include the following as a minimum:

- (1) observe, record and report to the supervisor on the general physical and mental condition of the client participating in assessment of the client's health status;
- (2) administer prescribed medications and treatments implementing nursing activities, including the administration of prescribed medical treatments and medications;
- (3) assist the physician or registered nurse in performing specialized procedures; and assisting in teaching the client and family members about providing care to the client at home; and
- (4) assist in teaching the client and family members about providing care to the client at home delegating tasks to in-home aides and supervising their performance of tasks within the limitations established in 21 NCAC 36 .0225(d)(3) adopted by reference.

(d) If an agency provides nursing services, the agency shall provide, at least, on-call nursing services on a 24 hour basis, seven days a week. The agency shall retain current on-call schedules and previous schedules for one year and make them available, on request, to the Department.

Statutory Authority G.S. 131E-140.

.1103 PHYSICAL THERAPY SERVICES

(a) If an agency provides physical therapy services, such services shall be provided by or under the supervision of a licensed physical therapist and in accordance with G.S. Chapter 90, Article 18B, Physical Therapy, and the plan of care.

(b) Physical therapy duties include the following ~~as at~~ a minimum:

- (1) assess the client to determine level of physical function;
- (2) establish and implement physical therapy treatment plan;
- (3) observe, record, and report to the physician any reaction to treatment or changes in the client's condition;
- (4) instruct the family in the client's total physical therapy program; and
- (5) instruct family members, in-home aides and other health team personnel in performing appropriate therapy treatment.

(c) When a licensed physical therapist assistant is providing services in the home, the licensed physical therapist shall be accessible at all times clients are receiving services, and meet the supervisory requirements specified in Rule .1110 of this Section.

(d) The licensed physical therapist shall perform all initial assessments, establish the plan of care, visit to perform plan of care updates and assess the client's functional status, as prescribed in Rule .1202 of this Subchapter, on discharge from services.

Statutory Authority G.S. 131E-140.

.1104 SPEECH THERAPY/PATHOLOGY SERVICES

(a) If an agency provides speech therapy, or services in speech and language pathology or audiology such services shall be provided in accordance with G.S. Chapter 90, Article 22, North Carolina Licensure Act for Speech and Language Pathologists and Audiologists and the client's plan of care.

(b) Speech pathologist duties shall include the following ~~as at~~ a minimum:

- (1) assess clients with speech, language, voice, dysphagia, and/or hearing disorders;
- (2) establish and implement the speech therapy treatment plan;
- (3) record and report to the physician any reaction to treatment ~~and or~~ changes in the client's condition;
- (4) teach other health team personnel and family members techniques to help improve and correct the client's speech, language, voice, dysphagia, and/or hearing potential; and
- (5) counsel the client and family about the client's speech, language, voice, dysphagia, and/or hearing disabilities.

Statutory Authority G.S. 131E-140.

.1105 OCCUPATIONAL THERAPY SERVICES

(a) If an agency provides occupational therapy, such services shall be provided by or under the supervision of a licensed occupational therapist in accordance with G.S. Chapter 90, Article 18D, Occupational Therapy and the plan of care.

(b) Occupational ~~therapist~~ therapy duties include the following ~~as at~~ a minimum:

- (1) assess the client's functional ability to perform activities of daily living;
- (2) establish and implement the occupational therapy treatment plan;
- (3) observe, record, and report to the physician any reaction to treatment and any changes in the client's condition;
- (4) instruct family members, in-home aides and other health team personnel in appropriate therapy methods; and
- (5) design, develop and fit orthotic devices and self-help devices.

(c) When a certified occupational therapist assistant is providing services in the home, the licensed occupational therapist shall be accessible at all times clients are receiving services, and meet the supervisory requirements specified in Rule .1110 of this Section.

(d) The licensed occupational therapist shall perform all initial assessments, establish the plan of care, visit to perform plan of care updates and discharge summaries as described in Rule .1202 of this Subchapter.

Statutory Authority G.S. 131E-140.

.1106 MEDICAL SOCIAL WORK SERVICES

(a) If an agency provides medical social work services, such services shall be provided by or under the supervision of a medical social worker and in accordance with the client's plan of care.

(b) Medical social work services include the following ~~as at~~ a minimum:

- (1) assist the physician and other members of the health team in understanding the significant social and emotional factors related to the client's health problems;
- (2) assess social and emotional factors in order to estimate the client's capacity and potential to cope with problems of daily living;
- (3) help the client and family to understand, accept, and follow medical recommendations and provide services planned to restore the client to optimum social and health adjustment within ~~his~~ their capacity;
- (4) assist the client and family with personal and environmental difficulties which predispose toward illness or interfere with the client obtaining maximum benefits from medical care; and
- (5) assist the client and family in the utilization of

appropriate community resources.

Statutory Authority G.S. 131E-140.

Statutory Authority G.S. 131E-140.

.1107 IN-HOME AIDE SERVICES

(a) If an agency provides in-home aide services, the services shall be provided in accordance with the client's plan of care.

(b) In-home aides shall follow instructions for client care written by the professional required for the services provided. In-home aide duties may include, but are not limited to the following:

- (1) help with prescribed exercises which the client and in-home aides have been taught by appropriate professional personnel;
- (2) provide or assist with personal care (i.e., bathing, care of mouth, skin and hair);
- (3) assist with ambulation;
- (4) assist client with self-administration of medications which are ordered by a physician or other person authorized by state law to prescribe;
- (5) perform incidental household services which are essential to the client's care at home; and
- (6) record and report changes in the client's condition, family situation or needs to the appropriate health care professional.

Statutory Authority G.S. 131E-140.

.1108 INFUSION NURSING SERVICES

(a) If an agency provides infusion nursing services, the services shall be provided by or under the supervision of a registered nurse with training in infusion services or special training in the drug and nutritional therapies the agency offers, as identified in agency policies, and in accordance with the North Carolina Nursing Practice Act, G.S. Chapter 90, Article 9A, and a plan of care signed by a physician.

(b) ~~Infusion nursing duties include the following as a minimum:~~

- (1) ~~evaluate the client's health and psychosocial needs;~~
- (2) ~~regularly assess the nursing needs of the client;~~
- (3) ~~develop and implement the client's infusion nursing plan of care;~~
- (4) ~~teach and train the client or caregiver to administer drugs to the client, where applicable;~~
- (5) ~~assess and provide nursing care to the client's administration site; and~~
- (6) ~~directly administer medications to the client.~~

(b) (e) If an agency provides or arranges for infusion nursing services, the agency shall provide ~~provide, at least,~~ on-call infusion nursing services on a 24 hour ~~hours~~ basis, seven days a week.

(c) If the agency provides or contracts for infusion pharmacy services there shall be policies and procedures governing the scope of pharmacy services provided. Pharmacy services shall be provided in accordance with the Pharmacy Laws of North Carolina and related rules and shall be provided on a 24-hour basis, seven days a week.

.1109 CLINICAL RESPIRATORY SERVICES, INCLUDING PULMONARY, OR VENTILATION SERVICES

(a) If an agency provides respiratory services ~~pulmonary, pulmonary rehabilitation~~ or ventilation services, the services shall be provided by or under the supervision of a respiratory therapist or a registered nurse with demonstrated competency in the delivery of respiratory services under a plan of care signed by a physician. Within the agency's defined scope of service, respiratory staff, including contractors, shall maintain an active license, certification or registry and shall demonstrate proof of education and experience sufficient for the safe delivery of service.

(b) ~~Pulmonary, pulmonary rehabilitation or ventilation Clinical respiratory services may~~ shall include the following:

- (1) assess ~~assessment of~~ the client's ongoing need for services; oxygen, other medical gasses and related equipment;
- (2) teach and train client or caregivers to self-administer home respiratory care ~~medical gasses or respiratory procedures;~~
- (3) ~~teach and train client or caregivers about home safety related to medical gasses and equipment;~~ collect laboratory specimens;
- (4) ~~collect laboratory specimens; and~~ evaluate functioning of ventilator support equipment;
- (5) evaluate functioning of ~~ventilatory support equipment; infant monitors; and~~
- (6) when ordered by a physician, administration of aerosolized medication.

(c) If an agency provides these services, the agency shall provide ~~provide, at least,~~ on-call respiratory ~~care~~ services emergency response on a 24 hour basis, seven days a week.

Statutory Authority G.S. 131E-140.

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

(a) In-home aides or other allied health personnel subject to occupational licensing laws shall meet competency testing requirements consistent with the appropriate occupational licensing laws and regulations established by the appropriate occupational licensing board. Each agency is responsible for documenting that its in-home aides and other in-home care providers are competent to perform client care tasks or activities to which they are assigned. These Such individuals shall be supervised by an appropriate health care professional perform delegated activities under the supervision of persons authorized by state law to provide such supervision.

(b) ~~Those in-home in-home aides or other allied health personnel and other in-home care providers~~ who are not subject to occupational licensing laws shall only be assigned client care activities for which they have demonstrated competency; the documentation of which is maintained

by the agency. Meeting competency includes a correct demonstration of tasks to an appropriate professional. Each agency is responsible for documenting that its in-home aides and other in-home care providers correctly demonstrate competence for all assigned client care tasks or activities. Such These individuals shall be supervised by an the appropriate professional or a competent, appropriately trained paraprofessional who is supervised by an appropriate professional who may further delegate specific supervisory activities to a competent, appropriately trained paraprofessional as designated by agency policy, provided that the following criteria are met:

- (1) there is continuous availability of the appropriate professional for supervision and consultation; and
- (2) accountability for supervisory activities delegated is maintained by the appropriate professional.

(c) Respiratory practitioners who are not subject to occupational licensing laws shall only be assigned duties for which they have demonstrated competency. Agencies that are providing clinical respiratory care services must provide supervision under the direction of a registered respiratory therapist, certified respiratory therapy assistant, or a registered nurse with sufficient education and clinical experience in the scope of the services offered.

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

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

(f) (e) An appropriate professional conducting supervisory visits for the in-home aide or other allied health personnel may simultaneously conduct the quarterly case review as required in Rule .1202(e) of this Subchapter. Documentation of supervisory visits shall be maintained in the agency's records and shall contain, at a minimum:

- (1) date of visit;
- (2) findings of visit; and
- (3) signature of person performing the visit.

(g) (f) Documentation of supervisory visits shall be maintained in the agency's records. When follow-up corrective action is needed for any or all of a specified type of in-home care provider based on findings of the supervisory visit, documentation of such corrective action by the appropriate supervisor shall be maintained in the employee(s) or other agency record.

(h) (g) The home care agency must have continuous supervision available, on-site where services are provided when necessary, during the hours that in-home aide or other allied health services are provided. An appropriate professional conducting a supervisory visit for any and all of a specified type of in-home care provider may simultaneously conduct the quarterly case review as required in Rule .1202 of this Subchapter.

(i) The appropriate professional shall be continuously available for supervision, on-site where services are provided when necessary, during the hours that in-home care services are provided.

Statutory Authority G.S. 131E-140.

.1111 ARRANGEMENTS FOR SERVICES WITH OTHER AGENCIES OR INDIVIDUALS

(a) When a home care agency makes arrangements for providing services through other agencies or individuals, or where the home care agency contracts with a state or county agency to provide licensed home care services, there shall be a written agreement, signed by both parties which includes the following:

- (1) specific service to be provided;
- (2) period of time the contract is to be in effect;
- (3) availability of services;
- (4) responsibility for development of the plan of care prior to notification of the client;
- (4) (5) financial arrangements;
- (5) (6) verification that any individual providing service is appropriately licensed or registered as required by statute;
- (6) (7) provision for supervision of contract personnel where applicable;
- (7) (8) assurance that individuals providing services under contractual arrangements meet the same requirements as those specified for home care agency personnel; and
- (8) (9) provision for the documentation of services rendered in the client's service record; record;
- (9) provision for the sharing of assessment and plan of care data; and
- (10) the geographic service area the contractor agrees to serve.

(b) All contract services shall be provided in accordance with the client's plan of care.

(c) The home care agency shall assure that all contract services are provided in accordance with the agreement. Agreements are to be reviewed and updated, if necessary, on an annual basis.

(d) The agency who is subcontracting its work must maintain or produce a complete home care record for the client.

Statutory Authority G.S. 131E-140.

.1112 HOME MEDICAL EQUIPMENT AND SUPPLIES

If an agency provides medical supplies and equipment in conjunction with home care services as defined in G.S. 131E-136(3), the agency shall have policies and procedures governing their management. These policies shall address at the minimum:

- (1) set-up, delivery, electrical safety and environmental requirements for equipment.
- (2) proper cleaning and storage, preventive maintenance and repair according to manufacturer's guidelines.
- (3) transportation, tracking, and recall of equipment to meet all applicable regulatory requirements.
- (4) emergency preparedness and backup of systems for equipment or power failure.
- (5) client instruction materials for each item of home medical equipment or supplies provided.

Statutory Authority G.S. 131E-140.

SECTION .1200 - CASE REVIEW AND PLAN OF CARE

.1201 POLICIES

An A-home-care agency shall have develop and implement written policies and procedures for assuring to assure that services and items to be provided are specified under a plan of care.

Statutory Authority G.S. 131E-140.

.1202 CASE REVIEW AND PLAN OF CARE

(a) The plan of care is shall be established in collaboration with the client and incorporated in the service record. The plan of care must be reviewed at least every three months by the appropriate agency professional and revised as needed based on the client's needs. If the client record is thinned, the original and updated authorization or orders for care as appropriate shall be maintained in the current client's record. If physician orders are needed for the services, a home care health professional shall notify the physician of any changes in the client's condition which ~~indicate~~ indicates the need for altering the plan of care or for terminating services. Based upon the findings of the client assessment, the plan of care shall include ~~as at~~ at a minimum the following:

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

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

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

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

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

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

Statutory Authority G.S. 131E-140.

SECTION .1300 - PHARMACEUTICALS AND MEDICAL TREATMENT ORDERS

.1301 POLICIES, PROCEDURES AND STAFF RESPONSIBILITY

If the ~~home care~~ agency administers any pharmaceuticals or medical treatments, it shall ~~have~~ develop and implement policies and procedures relative to the administration of ~~drugs~~ pharmaceuticals and treatments. The policies shall specify staff accountability for:

- (1) recognizing side effects;
- (2) recognizing toxic effects;
- (3) recognizing allergic reactions;
- (4) recognizing immediate desired effects;
- (5) recognizing unusual and unexpected effects;
- (6) recognizing changes in the client's condition that contraindicates continued administration of the medication;
- (7) anticipating those effects which may rapidly endanger a client's life or well-being; and
- (8) notifying the physician of any problems.

Statutory Authority G.S. 131E-140.

.1302 ORDERS

(a) Orders for pharmaceuticals and medical treatments or orders for in-home aide services when required, shall be signed by the physician or other person authorized by State law to prescribe such treatments and the original incorporated in the client's service records. Care may commence in the interim with evidence of a verbal order.

(b) Verbal orders for the administration of pharmacological agents and other medical treatment interventions shall be given to a licensed nurse, recorded and signed by the person receiving it and countersigned by the physician or other person authorized by State law to prescribe within ~~two weeks~~ 30 days.

(c) Verbal orders for allied health services other than nursing ~~or in-home aide services when required~~, shall be given to either a licensed nurse or the appropriate health professional, recorded in the client record and signed by the person receiving it and countersigned by the physician or other person authorized by State law to prescribe within ~~two weeks~~ 30 days from the time given.

Statutory Authority G.S. 131E-140.

.1303 STAFF RESPONSIBILITY

~~(a) If a home care agency administers any pharmaceuticals or medical treatments, agency licensed nursing staff shall be responsible for checking all medications and shall be specifically accountable for:~~

- ~~(1) recognizing side effects;~~
- ~~(2) recognizing toxic effects;~~
- ~~(3) recognizing allergic reactions;~~
- ~~(4) recognizing immediate desired effects;~~
- ~~(5) recognizing unusual and unexpected effects;~~
- ~~(6) recognizing changes in the client's condition that contraindicates continued administration of the medication;~~
- ~~(7) anticipating those effects which may rapidly endanger a client's life or well-being; and~~
- ~~(8) notifying the physician of any problems.~~

~~(b) Agency licensed nursing staff shall instruct the client and family members as necessary in following the drug regimen prescribed by the physician or other person authorized by State law to prescribe such regimens.~~

Statutory Authority G.S. 131E-140.

SECTION .1400 - SERVICE RECORDS

.1401 REQUIREMENT

(a) The agency shall develop and implement written policies governing content and handling of client records.

~~(b) (a) The home care agency shall maintain a service client record for each client receiving services. Each page of the client record shall have the client's name. All entries in the record shall reflect the actual date of entry. Reference to any activity which occurred on a date prior to the date of entry shall be identified as a late or out of sequence entry. A system for maintaining originals and copies must shall be defined described in the agency policies and procedures.~~

(c) The agency shall assure that originals of service client records are kept confidential and secure on the licensed premises unless in accordance with Rule .0905 of this Subchapter, or subpoenaed by a court of legal jurisdiction, or to conduct an evaluation as required in Rule .1004 of this Subchapter.

~~(d) If a record is removed to conduct an evaluation, the~~

record shall be returned to the agency premises within five working days. The agency shall maintain a sign out log that includes to whom the record was released, client's name and date removed.

~~(e) (d)~~ A copy of the service client record for each client ~~receiving services~~ must be readily available to the appropriate health professional(s) providing services or managing the delivery of such services.

~~(f) (e)~~ Service Client records shall be retained for a period of not less than five years from the date of the most recent discharge of the client, unless the client is a minor in which case the record must be retained until ~~one year~~ three years after the client's 18th birthday. When an agency ceases operation, the Department shall be notified in writing where the records will be stored for the required retention period.

Statutory Authority G.S. 131E-140.

.1402 CONTENT OF RECORD

(a) If the ~~home care~~ agency is not providing services to a client which require a physician's order, the service record shall contain the following information as a minimum:

- (1) Admission data:
 - (A) identification data such as name, address, telephone number, date of birth, sex, marital status, social security number; all information essential to the identification of the client and a copy of the signed client's right's form or documentation of its delivery;
 - (B) names of next of kin or legal guardian;
 - (C) names of other family members;
 - (D) source of referral; and
 - (E) assessment of home environment.
- (2) Service data:
 - (A) initial assessments by appropriate professional of the client's functional status in the areas of social, mental, physical health, environmental, economic, activities of daily living and instrumental activities of daily living;
 - (B) identification of problems, the establishment of goals and proposed intervention and indication of the client's understanding of and approval for services to be provided;
 - (C) a record of all services provided, directly and by contract, with entries dated and signed by the individual providing the service; Records shall include dates and times of services provision;
 - (D) discharge summary which includes an overall summary of services provided by the agency and the date and reason for discharge. When specific service to a client is terminated and other services continue, there shall be documentation of the date and reason for terminating the specific service; and
 - (E) evidence of coordination of services when the client is receiving more than one home care service.

(b) If the ~~home-care~~ agency is providing services to a client which require a physician's order, the service record shall include ~~as~~ at a minimum all of the items described in Paragraph (a) of this Rule and the following items:

- (1) Admission data:
 - (A) admission and discharge dates from hospital or other institution when applicable; and
 - (B) names of physician(s) responsible for the client's care.
- (2) Service data:
 - (A) client's diagnoses; ~~and~~
 - (B) physician's orders for pharmaceuticals and medical ~~treatments~~; treatments; ~~and~~
 - (C) If the agency is providing services to a hospital or nursing facility patient, the agency's record shall include at a minimum the following items:
 - (i) referral information;
 - (ii) dates and times of services; and
 - (iii) documentation of services provided.

Statutory Authority G.S. 131E-140.

Notice is hereby given in accordance with G.S. 150B-21.2 that the Commission for MH/DD/SAS intends to repeal rules cited as 10 NCAC 14N .0901 - .0905; 18J .0507 - .0511; 18K .0262 - .0263; 18L .0601 - .0607; 18N .0601 - .0605; 18N .0801 - .0709; and 18O .0517 - .0524.

Proposed Effective Date: May 1, 1996.

Instructions on How to Demand a Public Hearing (must be requested in writing within 15 days of notice): Anyone who wishes to demand a public hearing should contact Charlotte Tucker, Division of Mental Health, Developmental Disabilities and Substance Abuse Services, 325 N. Salisbury St., Raleigh, NC 27603, 919-733-4774 by August 14, 1995.

Reason for Proposed Action: To repeal above-referenced rules and to include content in a newly proposed Subchapter 10 NCAC 14V, subject to public hearing on August 7, 1995.

Comment Procedures: Any interested person may present comments by submitting a written statement to Charlotte Tucker, Division of MH/DD/SAS, 325 N. Salisbury St., Raleigh, NC 27603. These comments will be accepted through August 14, 1995.

Fiscal Note: These Rules do not affect the expenditures or revenues of local government or state funds.

CHAPTER 14 - MENTAL HEALTH: GENERAL

SUBCHAPTER 14N - LICENSURE RULES FOR SUBSTANCE ABUSE FACILITIES

SECTION .0900 - DAY TREATMENT FACILITIES FOR INDIVIDUALS WHO ARE SUBSTANCE ABUSERS

.0901 SCOPE

~~(a) Day treatment services are day/night services provided in a group setting for individuals with substance abuse problems. A day treatment facility shall only provide detoxification services if the facility also meets the requirements of 10 NCAC 14N .0400.~~

~~(b) Day treatment is provided for individuals who need more structured treatment for substance abuse than that provided by outpatient treatment, and may serve as an alternative to a 24 hour treatment program. Day treatment services, other than detoxification, shall have structured programs, including individual, group, and family counseling, recreational therapy, peer groups, substance abuse education, life skills education, and continuing care planning.~~

~~(c) A client enrolled in a day treatment service shall be provided a structured program of treatment for a minimum of five hours or more per week. The number of hours per day, the number of days per week, and the number of weeks of treatment will vary specific to the individual client's needs.~~

Statutory Authority G.S. 122C-26; 143B-147.

.0902 HOURS OF OPERATION FOR THE DAY TREATMENT FACILITY

~~Each day treatment facility shall operate at least three days per week, but not fewer than 12 hours per week, 12 months per year.~~

Statutory Authority G.S. 122C-26; 143B-147.

.0903 STAFF REQUIRED

~~(a) The staff of the day treatment facility shall include a minimum of one full time or equivalent certified alcoholism, drug abuse or substance abuse counselor for every 16 or fewer clients.~~

~~(b) If the facility falls below the prescribed ratio in Paragraph (a) of this Rule, and cannot meet the prescribed ratio by employing a counselor who is certified, then it may employ an uncertified counselor as long as this individual meets the certification requirements within a maximum of 26 months from the date of employment.~~

~~(c) In facilities which provide services to minors, a minimum of two staff members shall be present with minor clients at all times, and a minimum ratio of one staff member to each eight or fewer clients shall be maintained. In the event that only one minor client is in the facility, only one staff member is required to be present.~~

Statutory Authority G.S. 122C-26; 143B-147.

.0904 STAFF TRAINING

~~(a) Each facility staff member shall have a training plan completed annually and documented along with documentation~~

of attendance at training events.

(b) ~~Each facility shall have at least one staff member on duty trained in the following areas:~~

- (1) ~~cardio pulmonary resuscitation;~~
- (2) ~~seizure management;~~
- (3) ~~the Heimlich maneuver or other Red Cross first aid techniques for relieving airway obstructions;~~
- (4) ~~basic first aid;~~
- (5) ~~alcohol and other drug withdrawal symptoms;~~
- (6) ~~medication education and administration; and~~
- (7) ~~symptoms of secondary complications due to alcoholism and drug addiction.~~

(c) ~~Each direct care staff member shall receive continuing education to include understanding of the nature of addiction, the withdrawal syndrome, group therapy, family therapy and other treatment methodologies.~~

(d) ~~Each direct care staff member in a day treatment facility that serves minors shall receive specialized training in youth development and therapeutic techniques in working with youth.~~

Statutory Authority G.S. 122C-26; 143B-147.

.0905 EMERGENCY MEDICAL SERVICES

~~Each facility shall have and implement written procedures for handling medical emergencies. These procedures shall include provisions for the following:~~

- (1) ~~immediate access to a physician;~~
- (2) ~~acute care hospital services; and~~
- (3) ~~assistance from a local ambulance service, rescue squad, or other trained medical personnel within 20 minutes of the facility.~~

Statutory Authority G.S. 122C-26; 143B-147.

CHAPTER 18 - MENTAL HEALTH: OTHER PROGRAMS

SUBCHAPTER 18J - AREA PROGRAM MANAGEMENT STANDARDS

SECTION .0500 - INTERAGENCY/ COMMUNITY RELATIONS

.0507 SCOPE

~~Each area program should establish interagency relationships with other local human service agencies, including its contract agencies, to assure a comprehensive system of services for individuals who are mentally ill, mentally retarded or substance abusers. In addition, activities to acquaint the community and other agencies with the needs of, and services for, individuals served by the area program is essential. The standards in this Section apply to area programs only.~~

Statutory Authority G.S. 143B-147.

.0508 CONSULTATION SERVICES

~~Each area program shall have the capacity to provide consul-~~

~~tation services which shall include case, program and administrative consultation to contract agencies and to other service providers.~~

Statutory Authority G.S. 143B-147.

.0509 PUBLIC INFORMATION AND OUTREACH SERVICES

~~Each area program shall provide public information and outreach services which shall be designed to promote community awareness of services available through the area program.~~

Statutory Authority G.S. 143B-147.

.0510 AGREEMENT WITH LOCAL SCHOOL UNITS

~~Each area program shall develop a written agreement with any local school administrative unit when education related services for children with special needs are jointly provided.~~

Statutory Authority G.S. 115C-363; 143B-147.

.0511 DISASTER RELIEF PLANNING

~~Each area program shall document efforts to participate in local disaster relief planning.~~

Statutory Authority G.S. 143B-147.

SUBCHAPTER 18K - CONTRACT AGENCY MANAGEMENT STANDARDS

SECTION .0200 - FISCAL SERVICES

.0262 SCOPE

~~The standards in this Section apply to contract agencies only.~~

Statutory Authority G.S. 122-35.49; 143B-147.

.0263 COMPLIANCE WITH DIVISION REGULATIONS

~~Each contract agency shall comply with all applicable portions of the Division's rules relating to fiscal management as codified in 10 NCAC 14C Sections .1000 and .1100 and 10 NCAC 14D .0006 and contained in Section 25 of the "Area Program Budgeting and Procedures Manual" (division publication APSM 75-1), adopted pursuant to G.S. 150B-14(e).~~

Statutory Authority G.S. 122C-141; 122C-142; 143B-147.

SUBCHAPTER 18L - PROGRAM COMPONENT OPERATIONAL STANDARDS

SECTION .0600 - CLIENT ELIGIBILITY

.0601 SCOPE

~~The standards in this Section apply to each component of the area program and its contract agencies.~~

Statutory Authority G.S. 143B-147.

.0602 SCREENING

(a) ~~The governing body of each component shall develop written policies establishing a systematic means of screening each individual at initial contact by interviewing the individual to determine the individual's need for services.~~

(b) ~~The policy shall designate who is deemed qualified to make screening determinations.~~

Statutory Authority G.S. 143B-147.

.0603 SERVICE PURPOSE AND ELIGIBILITY REQUIREMENTS

~~The governing body shall develop and implement written policies that address the purpose for each service provided and the client eligibility requirements.~~

Statutory Authority G.S. 143B-147.

.0604 CROSS-REFERENCE TO CLIENT FEE FOR SERVICE

~~The governing body of each component not subject to licensure under G.S. 122C, Article 2 shall comply with the provisions of 10 NCAC 14K .0309.~~

Statutory Authority G.S. 122C-146; 143B-147.

.0605 GEOGRAPHICAL AREA

~~The governing body of each component shall develop written policies specifying the geographical areas from which individuals will be admitted.~~

Statutory Authority G.S. 143B-147.

.0606 WAITING LISTS

~~The governing body of each component shall develop written policies concerning waiting lists.~~

Statutory Authority G.S. 143B-147.

.0607 EXPLANATION OF PROGRAM RULES AND POLICIES

~~Each component shall make its client eligibility rules and policies available for review by potential clients, families or other interested individuals or agencies.~~

Statutory Authority G.S. 143B-147.

SUBCHAPTER 18N - OPTIONAL SERVICES FOR INDIVIDUALS OF ALL DISABILITY GROUPS

SECTION .0600 - PERSONAL ASSISTANCE

.0601 SCOPE

(a) ~~Personal assistance is a service which provides aid to a~~

~~client who has mental illness, developmental disabilities or substance abuse so that the client can engage in activities and interactions from which the client would otherwise be limited or excluded because of a disability or disabilities. The assistance includes:~~

- ~~(1) assistance in personal or regular living activities in the client's home;~~
- ~~(2) support in skill development; or~~
- ~~(3) support and accompaniment of the client in regular community activities or in specialized treatment, habilitation or rehabilitation service programs.~~

~~(b) If these Rules are in conflict with Medicaid rules or Medicare regarding Personal Care, and Medicaid or Medicare is to be billed, then the Medicaid or Medicare rules shall prevail.~~

Statutory Authority G.S. 143B-147.

.0602 HOUSING REVIEW

(a) ~~When personal assistance for a client includes providing service in the client's home, one of the purposes of the service is to assess the safety and sanitation of the home with the client.~~

(b) ~~If the safety or sanitation is in question, it shall be brought to the attention of the client and the professional responsible for the treatment/habilitation or case management of the client, so that the situation can be discussed as a part of the regular treatment/habilitation or case management planning process.~~

Statutory Authority G.S. 143B-147.

.0603 STAFF TRAINING

~~Individuals who are employed to provide personal assistance shall have:~~

- ~~(1) at least a high school diploma or its equivalent; and~~
- ~~(2) special training regarding the needs of the specific client for whom assistance will be provided.~~

Statutory Authority G.S. 143B-147.

.0604 SUPERVISION OF STAFF

(a) ~~Personal assistance shall be provided under the direction of a supervisor who is a qualified professional as defined in 10 NCAC 14K .0103 and incorporated by reference. This incorporation by reference includes subsequent amendments and editions of the referenced material.~~

(b) ~~When a specific client's disability is different from that for which the supervisor is trained, the personal assistance employee shall have access to consultation from a qualified professional who is trained in a discipline related to the client's needs.~~

Statutory Authority G.S. 143B-147.

.0605 EMERGENCY PRECAUTIONS

~~Instead of the instructions set forth in 10 NCAC 18L .0805, individuals employed to provide personal assistance shall be~~

~~specifically informed in each personal assistance arrangement regarding safety precautions and 24 hour emergency procedures.~~

Statutory Authority G.S. 143B-147.

SECTION .0700 - SUPERVISED LIVING

.0701 SCOPE

~~(a) Supervised living is a residential service as defined in 10 NCAC 140 .0701, except that the service is provided to one adult client.~~

~~(b) Any rule which is incorporated by reference in this Section shall include subsequent amendments and editions of the referenced material.~~

Statutory Authority G.S. 143B-147.

.0702 CROSS-REFERENCE TO HOURS OF OPERATION

~~Each supervised living service shall comply with the hours of operation delineated in 10 NCAC 140 .0702.~~

Statutory Authority G.S. 143B-147.

.0703 CROSS-REFERENCE TO STAFF REQUIREMENTS

~~Each supervised living service shall comply with the staff requirements delineated in 10 NCAC 140 .0704(a) and (b).~~

Statutory Authority G.S. 143B-147.

.0704 SPECIAL STAFFING REQUIREMENTS

~~Individuals who provide services to a client in a supervised living arrangement shall receive training relevant to the needs of the client served.~~

Statutory Authority G.S. 143B-147.

.0705 CROSS-REFERENCE TO MEDICAL STATEMENT

~~Each supervised living service shall comply with the medical statement requirements delineated in 10 NCAC 140 .0706.~~

Statutory Authority G.S. 143B-147.

.0706 CROSS-REFERENCE TO SERVICE COORDINATION

~~Each supervised living service shall comply with the service coordination requirements delineated in 10 NCAC 140 .0707.~~

Statutory Authority G.S. 143B-147.

.0707 CROSS-REFERENCE TO PROGRAM ACTIVITIES

~~Each supervised living service shall comply with the program activities requirements delineated in 10 NCAC 140 .0708.~~

Statutory Authority G.S. 143B-147.

.0708 CROSS-REFERENCE TO CLIENT TRAINING IN HEALTH AND SAFETY

~~Each supervised living service shall comply with the training in health and safety requirements delineated in 10 NCAC 140 .0709.~~

Statutory Authority G.S. 143B-147.

.0709 CROSS-REFERENCE TO PARTICIPATION OF FAMILY OR OTHERS

~~Each supervised living service shall comply with 10 NCAC 140 .0710 regarding participation of family or the legally responsible person.~~

Statutory Authority G.S. 143B-147.

SUBCHAPTER 180 - OPTIONAL SERVICES FOR INDIVIDUALS WHO ARE SUBSTANCE ABUSERS

SECTION .0500 - TREATMENT ALTERNATIVES STREET CRIMES (TASC) FOR INDIVIDUALS WHO ARE SUBSTANCE ABUSERS

.0517 SCOPE

~~(a) Treatment alternatives to street crimes (TASC) is a support service designed to offer a supervised community based alternative to incarceration or potential incarceration primarily to individuals who are alcohol or other drug abusers but also to individuals who are mentally ill or mentally retarded and who are involved in crimes of a non-violent nature.~~

~~(b) This service provides a liaison between the criminal justice system and alcohol and other drug treatment and educational services. It provides screening, identification, evaluation, referral and monitoring of alcohol or other drug abusers for the criminal justice system.~~

Statutory Authority G.S. 143B-147.

.0518 POPULATION SERVED

~~Each TASC program shall be designed to serve individuals who have a documented substance abuse problem and who are involved in crimes of a nonviolent nature.~~

Statutory Authority G.S. 122C-57; 143B-147.

.0519 STAFF QUALIFICATIONS

~~(a) Each staff member shall have a baccalaureate degree in either criminal justice or human service related fields or an associate in arts degree with four years' experience in criminal justice or human service related fields.~~

~~(b) TASC personnel shall receive continuing education in the following areas:~~

- ~~(1) the physiological, sociological and psychological correlates of substance abuse;~~

- (2) ~~substance abuse treatment;~~
- (3) ~~judicial and political issues related to substance abuse; and~~
- (4) ~~substance abuse treatment and rehabilitation resources.~~

Statutory Authority G.S. 122C-57; 143B-147.

.0520 SCREENING AND IDENTIFICATION

~~Each TASC program shall provide to the criminal justice system screening and identification for prospective clients.~~

Statutory Authority G.S. 122C-57; 143B-147.

.0521 EVALUATION

~~Each TASC program shall conduct or secure an assessment or evaluation for each prospective client referred from the criminal justice system.~~

Statutory Authority G.S. 122C-57; 143B-147.

.0522 REFERRAL

~~Each TASC program shall refer each client to substance abuse treatment or to an educational program based on the preliminary assessment of his substance abuse dysfunction.~~

Statutory Authority G.S. 122C-57; 143B-147.

.0523 MONITORING/REPORTING

~~Each TASC program shall develop and implement a monitoring and reporting procedure for each client.~~

Statutory Authority G.S. 122C-57; 143B-147.

.0524 SUCCESS/FAILURE CRITERIA

~~Each TASC program shall establish and implement a written set of criteria to measure client success or failure, including readmission criteria.~~

Statutory Authority G.S. 122C-57; 143B-147.

Notice is hereby given in accordance with G.S. 150B-21.2 that the Department of Human Resources/Division of Medical Assistance intends to amend rule cited as 10 NCAC 26B .0110.

Proposed Effective Date: October 1, 1995.

A Public Hearing will be conducted at 1:30 p.m. on August 15, 1995 at the N.C. Division of Medical Assistance, 1985 Umstead Drive, Kirby Building, Room 132, Raleigh, NC.

Reason for Proposed Action: (1) Elimination of the submittal of the Ambulance Call Report (ACR) for claims processing of ambulance claims. (2) Elimination of the state specific ambu-

lance claim form to the UB-92 claim form.

Comment Procedures: Written comments concerning this rule-making action must be submitted by August 15, 1995 to: Division of Medical Assistance, 1985 Umstead Drive, Raleigh, NC 27603, Attn: Portia Rochelle, APA Coordinator. Oral comments may be presented at the hearing. A fiscal note statement is available upon written request from the same address.

Fiscal Note: This Rule does not affect the expenditures or revenues of local government or state funds.

CHAPTER 26 - MEDICAL ASSISTANCE

SUBCHAPTER 26B - MEDICAL ASSISTANCE PROVIDED

SECTION .0100 - GENERAL

.0110 AMBULANCE SERVICES

(a) Reimbursement for ambulance services shall be made only for transportation to the nearest appropriate facility (hospital, nursing home, or intermediate care facility), doctor's office or clinic that provides medical services.

(b) Services provided by an ambulance provider under the Medicaid program must be demonstrated to be medically necessary and are subject to limitations described herein. Medical necessity is indicated when the patient's condition is such that any other means of transportation would endanger the patient's health. Ambulance transportation is not considered medically necessary when any other means of transportation can be safely utilized.

(c) Emergency ambulance transportation is for the client to receive immediate and prompt medical services arising in an emergency situation. Emergency transportation to a physicians' office is covered only if all the following conditions are met:

- (1) The patient is enroute to a hospital.
- (2) There is medical need for a professional to stabilize the patient's condition.
- (3) The ambulance continues the trip to the hospital immediately after stabilization.

(d) Non-emergency ambulance transportation to and from a physician directed office, clinic, or other medical facility in which the individual is an inpatient is covered in the following situation:

- (1) Medical necessity is indicated when the use of other means of transportation is medically contraindicated because it would endanger the patient's health. This refers to clients who require transport by stretcher.
- (2) Client is in need of medical services that cannot be provided in the place of residence.
- (3) Return transportation from a facility which has capability of providing total care for every aspect of injury or disease to a facility which has fewer resources to offer highly specialized care.

~~(e) When claiming Medicaid reimbursement, providers of ambulance services must submit documentation to show that ambulance services were medically necessary. At a minimum the documentation must include:~~

- ~~(1) Proper completion of claim form with recipient's medical condition described in sufficient detail to demonstrate that transportation by any other means would be medically inappropriate.~~
- ~~(2) Legible copy of ambulance call report which indicates purpose for transport, treatments and patient's response.~~
- ~~(3) Sufficient description of patient's condition to justify that patient could only be moved by stretcher.~~

(e) In order to claim Medicaid reimbursement, providers of ambulance services must be able to document that ambulance services were medically necessary.

- (1) The UB-92 claim form must describe the recipient's medical condition at the time of transport by using appropriate condition codes to demonstrate that transportation by any other means would be medically inappropriate.
- (2) A legible copy of the ambulance call report to support the condition codes used must be kept on file by the provider for five years which indicates:
 - (A) the purpose for transport,
 - (B) the treatments,
 - (C) the patient's response, and
 - (D) the patient's condition that sufficiently justifies transport by stretcher was medically necessary.

(f) Prior approval is required for non-emergency transportation for recipients to receive out-of-state services or to return to North Carolina or nearest appropriate facility.

Authority G.S. 108A-25(b); 108A-54; 42 C.F.R. 440.170.

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

Notice is hereby given in accordance with G.S. 150B-21.2 that the EHNR - Environmental Management Commission intends to amend rules cited as 15A NCAC 2B .0303, .0308 - .0310, .0315 and .0316.

Proposed Effective Date: November 1, 1995.

Instructions on How to Demand a Public Hearing (must be requested in writing within 15 days of notice): Any person may request the Environmental Management Commission conduct a public hearing on the proposed reclassification by submitting a written request for a public hearing, postmarked no later than July 29, 1995 to Suzanne Hoover, Division of Environmental Management, Water Quality Section, P.O. Box 29535, Raleigh, NC 27626-0535. The request for the public hearing must specify which rule for which the hearing is being requested.

Reason for Proposed Action: To reclassify surface waters in the Little Tennessee, Catawba, Yadkin-Pee Dee, Lumber, and Neuse River Basins to protect these waters' use for primary recreational activities and to identify an unnamed tributary in the classification listing for the Tar-Pamlico River Basin.

Comment Procedures: All persons interested in the proposed rule amendments are encouraged to submit written comments. Comments must be postmarked by August 14, 1995, and submitted to Suzanne Hoover, Division of Environmental Management, Water Quality Section, P.O. Box 29535, Raleigh, NC 27626-0535.

Fiscal Note: These Rules do not affect the expenditures or revenues of local government or state funds.

CHAPTER 2 - ENVIRONMENTAL MANAGEMENT

SUBCHAPTER 2B - SURFACE WATER STANDARDS: MONITORING

SECTION .0300 - ASSIGNMENT OF STREAM CLASSIFICATIONS

.0303 LITTLE TENN RIVER BASIN AND SAVANNAH RIVER DRAINAGE AREA

(a) Places where the schedule may be inspected:

- (1) Clerk of Court:
Clay County
Graham County
Jackson County
Macon County
Swain County
Transylvania County
- (2) North Carolina Department of Environment, Health, and Natural Resources
Asheville Regional Office
Interchange Building
59 Woodfin Place
Asheville, North Carolina

(b) Unnamed Streams. Such streams entering Georgia or Tennessee will be classified "C Tr." Such streams in the Savannah River drainage area entering South Carolina will be classified "B Tr."

(c) The Little Tennessee River Basin and Savannah River Drainage Area Schedule of Classifications and Water Quality Standards was amended effective:

- (1) February 16, 1977;
- (2) March 1, 1977;
- (3) July 13, 1980;
- (4) February 1, 1986;
- (5) October 1, 1987;
- (6) March 1, 1989;
- (7) January 1, 1990;
- (8) July 1, 1990;
- (9) August 1, 1990;

- (10) March 1, 1991;
- (11) August 3, 1992;
- (12) February 1, 1993;
- (13) August 1, ~~1994~~, 1994;
- (14) November 1, 1995.

(d) The Schedule of Classifications of Water Quality Standards for the Little Tennessee Basin and Savannah River Drainage Area was amended effective March 1, 1989 as follows:

- (1) Nantahala River (Index No. 2-57) from source to the backwaters of Nantahala Lake and all tributary waters were reclassified from Class B-trout, Class C-trout and Class C to Class B-trout ORW, Class C-trout ORW and Class C ORW.
- (2) Chattooga River (Index No. 3) including Scotsman Creek, Overflow Creek, Big Creek, Talley Mill Creek and all tributary waters were reclassified from Class B-trout, Class C-trout and Class C to Class B-trout ORW, Class C-trout ORW and Class C ORW and Clear Creek and all tributary waters were reclassified from Class C-trout and Class C to Class B-trout and Class B.

(e) The Schedule of Classifications and Water Quality Standards for the Little Tennessee River Basin and Savannah River Drainage Area was amended effective January 1, 1990 as follows:

- (1) North Fork Coweeta Creek (Index No. 2-10-4) and Falls Branch (Index No. 2-10-4-1) were reclassified from Class C to Class B.
- (2) Burningtown Creek (Index No. 2-38) was reclassified from C-trout to B-trout.

(f) The Schedule of Classifications and Water Quality Standards for the Little Tennessee River Basin and Savannah River Drainage Area was amended effective July 1, 1990 by the reclassification of Alarka Creek (Index No. 2-69) from source to Upper Long Creek (Index No. 2-69-2) including all tributaries from Classes C and C Tr to Classes C HQW and C Tr HQW.

(g) The Schedule of Classifications and Water Quality Standards for the Little Tennessee River Basin and Savannah River Drainage Area was amended effective March 1, 1991 as follows:

- (1) Cartoogechaye Creek [Index Nos. 2-19-(1) and 2-19-(16)] from Gibson Cove Branch to bridge at U.S. Hwy. 23 and 441 and from the bridge at U.S. Hwy. 23 and 441 to the Little Tennessee River was reclassified from Classes WS-III Tr and C Tr to Classes WS-III and B Tr and B Tr respectively.
- (2) Coweeta Creek (Index Nos. 2-10) from its source to the Little Tennessee River including all tributaries except Dryman Fork (Index No. 2-10-3) and North Fork Coweeta Creek (Index No. 2-10-4) was reclassified from Classes C and C Tr to Classes B and B Tr.

(h) The Schedule of Classifications and Water Quality Standards for the Little Tennessee River Basin and Savannah River Drainage Area was amended effective August 3, 1992

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

(i) The Schedule of Classifications and Water Quality Standards for the Little Tennessee River Basin and Savannah River Drainage Area has been amended effective February 1, 1993 as follows:

- (1) Bearwallow Creek from its source to 2.3 miles upstream of the Toxaway River [Index No. 4-7-(1)] was revised to indicate the application of an additional management strategy (referencing 15A NCAC 2B .0201(d) to protect downstream waters; and
- (2) the Tuckaseegee River from its source to Tennessee Creek [Index No. 2-79-(0.5)] including all tributaries was reclassified from Classes WS-III&B Tr HQW, WS-III HQW and WS-III to Classes WS-III Tr ORW and WS-III ORW.

(j) The Schedule of Classifications and Water Quality Standards for the Little Tennessee River Basin and Savannah River Drainage Area was amended effective August 1, 1994 with the reclassification of Deep Creek [Index Nos. 2-79-63-(1) and 2-79-63-(16)] from its source to the Great Smokey Mountains National Park Boundary including tributaries from Classes C Tr, B Tr and C Tr HQW to Classes WS-II Tr and WS-II Tr CA.

(k) The Schedule of Classifications and Water Quality Standards for the Little Tennessee River Basin and Savannah River Drainage Area was amended effective November 1, 1995 as follows:

- (1) Deep Creek from the Great Smoky Mountains National Park Boundary to the Tuckaseegee River [Index no. 2-79-63-(21)] was reclassified from Class C Tr to Class B Tr; and
- (2) the Tuckaseegee River from the West Fork Tuckaseegee River to Savannah Creek and from Macks Town Branch to Cochran Branch [Index Nos. 2-79-(24), 2-79-(29.5) and 2-79-(38)] was reclassified from Classes WS-III Tr, WS-III Tr CA and C to Classes WS-III&B Tr, WS-III&B Tr CA and B.

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

.0308 CATAWBA RIVER BASIN

- (a) Places where the schedules may be inspected:
 - (1) Clerk of Court:

Alexander County
Avery County
Burke County
Caldwell County
Catawba County
Gaston County
Iredell County
Lincoln County
McDowell County
Mecklenburg County
Union County
Watauga County

(2) North Carolina Department of Environment, Health, and Natural Resources:

- (A) Mooresville Regional Office
919 North Main Street
Mooresville, North Carolina
(B) Asheville Regional Office
Interchange Building
59 Woodfin Place
Asheville, North Carolina

(b) Unnamed Streams. Such streams entering South Carolina are classified "C".

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

- (1) March 1, 1977;
- (2) August 12, 1979;
- (3) April 1, 1982;
- (4) January 1, 1985;
- (5) August 1, 1985;
- (6) February 1, 1986;
- (7) March 1, 1989;
- (8) May 1, 1989;
- (9) March 1, 1990;
- (10) August 1, 1990;
- (11) August 3, 1992;
- (12) April 1, 1994;
- (13) July 1, 1995;
- (14) November 1, 1995.

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

- (1) Wilson Creek (Index No. 11-38-34) and all tributary waters were reclassified from Class B-trout and Class C-trout to Class B-trout ORW and Class C-trout ORW.

(e) The Schedule of Classifications and Water Quality Standards for the Catawba River Basin was amended effective May 1, 1989 as follows:

- (1) Henry Fork [Index Nos. 11-129-1-(1) and 11-129-1-(2)] from source to Laurel Creek, including all tributaries, were reclassified from Class WS-I, C and C trout to Class WS-I ORW, C ORW and C trout ORW, except Ivy Creek and Rock Creek which will remain Class C trout and Class C.
- (2) Jacob Fork [Index Nos. 11-129-2-(1) and

11-129-2-(4)] from source to Camp Creek, including all tributaries, were reclassified from Class WS-III trout and WS-III to WS-III trout ORW and WS-III ORW.

(f) The Schedule of Classifications and Water Quality Standards for the Catawba River Basin was amended effective March 1, 1990 as follows:

- (1) Upper Creek [Index No. 11-35-2-(1)] from source to Timbered Branch including all tributaries except Timbered Branch (Index No. 11-35-2-9) was reclassified from Class C Trout to Class C Trout ORW.
- (2) Steels Creek [Index No. 11-35-2-12(1)] from source to Little Fork and all tributaries was reclassified from Class C Trout to Class C Trout ORW.

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

(h) The Schedule of Classifications and Water Quality Standards for the Catawba River Basin was amended effective April 1, 1994 as follows:

- (1) Friday Lake (Index No. 11-125.5) from its source to Little Paw Creek was reclassified from Class C to Class B.
- (2) The Linville River [Index No. 12-29-(1)] from Grandmother Creek to Linville Falls was reclassified from Class C Tr to Class B Tr.

(i) The Schedule of Classifications and Water Quality Standards for the Catawba River Basin was amended effective July 1, 1995 with the reclassification of Clark Creek from a point 0.6 mile downstream of Catawba County SR 2014 to 0.4 mile upstream of Larkard Creek [Index No. 11-129-5-(4.5)], and Howards Creek from its source to 0.7 mile upstream of Lincoln County State Road 1200 [Index No. 11-129-4], including associated tributaries from Class WS-IV to Classes C and WS-IV.

(j) The Schedule of Classifications and Water Quality Standards for the Catawba River Basin was amended effective November 1, 1995 with the reclassification of the Catawba River (Lake Hickory) from Rhodhiss dam to highway 321 [Index No. 11-51] from Class WS-IV CA to Class WS-IV&B CA.

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

.0309 YADKIN-PEE DEE RIVER BASIN

(a) Places where the schedule may be inspected:

- (1) Clerk of Court:
Alexander County
Anson County
Cabarrus County
Caldwell County
Davidson County
Davie County
Forsyth County
Guilford County
Iredell County
Mecklenburg County
Montgomery County
Randolph County
Richmond County
Rowan County
Stanly County
Stokes County
Surry County
Union County
Watauga County
Wilkes County
Yadkin County
- (2) North Carolina Department of Environment,
Health, and Natural Resources:
 - (A) Mooresville Regional Office
919 North Main Street
Mooresville, North Carolina
 - (B) Winston-Salem Regional Office
8025 North Point Boulevard, Suite 100
Winston-Salem, North Carolina
 - (C) Fayetteville Regional Office
Wachovia Building
Suite 714
Fayetteville, North Carolina
 - (D) Asheville Regional Office
Interchange Building
59 Woodfin Place
Asheville, North Carolina

(b) Unnamed Streams. Such streams entering Virginia are classified "C," and such streams entering South Carolina are classified "C".

(c) The Yadkin-Pee Dee River Basin Schedule of Classifications and Water Quality Standards was amended effective:

- (1) February 12, 1979;
- (2) March 1, 1983;
- (3) August 1, 1985;
- (4) February 1, 1986;
- (5) October 1, 1988;
- (6) March 1, 1989;
- (7) January 1, 1990;
- (8) August 1, 1990;
- (9) January 1, 1992;
- (10) April 1, 1992;
- (11) August 3, 1992;

- (12) December 1, 1992;
- (13) April 1, 1993;
- (14) September 1, 1994;
- (15) August 1, ~~1995~~, 1995;
- (16) November 1, 1995.

(d) The Schedule of Classifications and Water Quality Standard for the Yadkin-Pee Dee River Basin has been amended effective October 1, 1988 as follows:

- (1) Mitchell River [Index No. 12-62-(1)] from source to mouth of Christian Creek (North Fork Mitchell River) including all tributaries has been reclassified from Class B Tr to Class B Tr ORW.
- (2) Mitchell River [Index No. 12-62-(7)] from mouth of Christian Creek (North Fork Mitchell River) to Surry County SR 1315 including all tributaries has been classified from Class C Tr to C Tr ORW, except Christian Creek and Robertson Creek which will be reclassified from Class B Tr to Class B Tr ORW.
- (3) Mitchell River [Index No. 12-62-(12)] from Surry County SR 1315 to mouth of South Fork Mitchell River including all tributaries from Class C to Class C ORW.

(e) The Schedule of Classifications and Water Quality Standards for the Yadkin-Pee Dee River Basin was amended effective March 1, 1989 as follows:

- (1) Elk Creek [Index Nos. 12-24-(1) and 12-24-(10)] and all tributary waters were reclassified from Class B-trout, Class C-trout and Class B to Class B-trout ORW, Class C-trout ORW and Class B ORW.

(f) The Schedule of Classifications and Water Quality Standards for the Yadkin-Pee Dee River Basin was amended effective January 1, 1990 as follows: Barnes Creek (Index No. 13-2-18) was reclassified from Class C to Class C ORW.

(g) The Schedule of Classifications and Water Quality Standards for the Yadkin-Pee Dee River Basin has been amended effective January 1, 1992 as follows:

- (1) Little River [Index Nos. 13-25-(10) and 13-25-(19)] from Suggs Creek to Densons Creek has been reclassified from Classes WS-III and C to Classes WS-III HQW and C HQW.
- (2) Densons Creek [Index No. 13-25-20-(1)] from its source to Troy's Water Supply Intake including all tributaries has been reclassified from Class WS-III to Class WS-III HQW.
- (3) Bridgers Creek (Index No. 13-25-24) from its source to the Little River has been reclassified from Class C to Class C HQW.

(h) The Schedule of Classifications and Water Quality Standards for the Yadkin-Pee Dee River Basin was amended effective April 1, 1992 with the reclassification of the North Prong South Fork Mitchell River from Class C to Class C Trout.

(i) The Schedule of Classifications and Water Quality Standards for the Yadkin-Pee Dee River was amended effective August 3, 1992 with the reclassification of all water supply

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

(j) The Schedule of Classifications and Water Quality Standards for the Yadkin-Pee Dee River Basin has been amended effective December 1, 1992 as follows:

- (1) Pike Creek (Index No. 12-46-1-2) was reclassified from Class C Tr to Class C Tr HQW;
- (2) Basin Creek (Index No. 12-46-2-2) was reclassified from Class C Tr to Class C Tr ORW;
- (3) Bullhead Creek (Index No. 12-46-4-2) was reclassified from Class C Tr to Class C Tr ORW;
- (4) Rich Mountain Creek (Index No. 12-46-4-2-2) was reclassified from Class Tr to Class C Tr ORW; and
- (5) Widows Creek (Index No. 12-46-4-4) was reclassified from Class C Tr HQW to Class C Tr ORW.

(k) The Schedule of Classifications and Water Quality Standards for the Yadkin-Pee Dee River Basin has been amended effective September 1, 1994 as follows:

- (1) Lanes Creek [Index Nos. 13-17-40-(1) and 13-17-40-(10.5)] from its source to the Marshville water supply dam including tributaries was reclassified from Classes WS-II and WS-II CA to Class WS-V.
- (2) The South Yadkin River [Index Nos. 12-108-(9.7) and 12-108-(15.5)] from Iredell County SR 1892 to a point 0.7 mile upstream of the mouth of Hunting Creek including associated tributaries was reclassified from Classes WS-V, C and WS-IV to Classes WS-V, WS-IV, C and WS-IV CA.
- (3) The Yadkin River [Index Nos. 12-(53) and 12-(71)] from a point 0.3 mile upstream of the mouth of Elkin Creek (River) to the Town of King water supply intake including associated tributaries was reclassified from Classes C and WS-IV to Classes WS-IV and WS-IV CA.
- (4) The Yadkin River [Index Nos. 12-(80.5), 12-(81.5) and 12-(84.5)] from the Town of King water supply intake to the Davie County water supply intake reclassified from Classes C, B, WS-IV and WS-V to Classes WS-IV, WS-IV&B and WS-IV CA.

(l) The Schedule of Classifications and Water Quality Standards for the Yadkin-Pee Dee River Basin has been amended effective August 1, 1995 as follows: Bear Creek [Index Nos. 12-108-18-(3), 12-108-18-(3.3)], Little Bear Creek [Index No. 12-108-18-2], and Blue Branch [Index No. 12-108-18-2-1] were reclassified from WS-II and WS-II CA (Critical Area) to C and WS-IV.

(m) The Schedule of Classifications and Water Quality Standards for the Yadkin-Pee Dee River Basin was amended effective November 1, 1995 with the identification of an unnamed tributary with three segments: from its source to the backwaters of Butner Mill Pond [Index No. 12-79.5-(1)] classified as WS-IV; Butner Mill Pond [Index No. 12-79.5(2)] classified as WS-IV&B; and from the dam at Butner Mill Pond to the Yadkin River [Index No. 12-79.5(3)] classified as WS-IV.

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

.0310 LUMBER RIVER BASIN

(a) Places where the schedule may be inspected:

- (1) Clerk of Court:
Bladen County
Brunswick County
Columbus County
Cumberland County
Hoke County
Montgomery County
Moore County
Richmond County
Robeson County
Scotland County
- (2) North Carolina Department of Environment, Health, and Natural Resources:
(A) Fayetteville Regional Office
Wachovia Building
Suite 714
Fayetteville, North Carolina
(B) Wilmington Regional Office
127 Cardinal Drive Extension
Wilmington, North Carolina

(b) Unnamed Streams. Such streams entering South Carolina are classified "C Sw".

(c) The Lumber River Basin Schedule of Classification and Water Quality Standards was amended effective:

- (1) March 1, 1977;
- (2) December 13, 1979;
- (3) September 14, 1980;
- (4) April 12, 1981;
- (5) April 1, 1982;
- (6) February 1, 1986;
- (7) July 1, 1990;
- (8) August 1, 1990;
- (9) August 3, ~~1992~~; 1992;
- (10) November 1, 1995.

(d) The Schedule of Classifications and Water Quality Standards for the Lumber River Basin was amended effective July 1, 1990 by the reclassification of Naked Creek (Index No. 14-2-6) from source to Drowning Creek including all tributaries from Class WS-III to Class WS-III ORW.

(e) The Schedule of Classifications and Water Quality Standards for the Lumber River Basin was amended effective August 3, 1992 with the reclassification of all water supply

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

(f) The Schedule of Classifications and Water Quality Standards for the Lumber River Basin was amended effective November 1, 1995 by the reclassification of the Lumber River from 2.0 miles upstream of highway 401 to a point 0.5 mile upstream of Powell Branch [Index Nos. 14-(3), 14-(4), 14-(4.5), 14-(7) and 14-(10.3)] from Classes WS-IV Sw HQW, WS-IV Sw HQW CA and C Sw HQW to Classes WS-IV&B Sw HQW, WS-IV&B Sw HQW CA and B Sw HQW.

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

.0315 NEUSE RIVER BASIN

(a) Places where the schedule may be inspected:

- (1) Clerk of Court:
Beaufort County
Carteret County
Craven County
Durham County
Franklin County
Granville County
Greene County
Johnston County
Jones County
Lenoir County
Nash County
Orange County
Pamlico County
Person County
Pitt County
Wake County
Wayne County
Wilson County
- (2) North Carolina Department of Environment, Health, and Natural Resources:
 - (A) Raleigh Regional Office
3800 Barrett Drive
Raleigh, North Carolina
 - (B) Washington Regional Office
1424 Carolina Avenue
Washington, North Carolina
 - (C) Wilmington Regional Office
127 Cardinal Drive
Wilmington, North Carolina
- (b) The Neuse River Basin Schedule of Classification and

Water Quality Standards was amended effective:

- (1) March 1, 1977;
 - (2) December 13, 1979;
 - (3) September 14, 1980;
 - (4) August 9, 1981;
 - (5) January 1, 1982;
 - (6) April 1, 1982;
 - (7) December 1, 1983;
 - (8) January 1, 1985;
 - (9) August 1, 1985;
 - (10) February 1, 1986;
 - (11) May 1, 1988;
 - (12) July 1, 1988;
 - (13) October 1, 1988;
 - (14) January 1, 1990;
 - (15) August 1, 1990;
 - (16) December 1, 1990;
 - (17) July 1, 1991;
 - (18) August 3, 1992;
 - (19) April 1, ~~1994~~ 1994;
 - (20) November 1, 1995.
- (c) The Schedule of Classifications and Water Quality Standards for the Neuse River Basin has been amended effective July 1, 1988 as follows:
- (1) Smith Creek [Index No. 27-23-(1)] from source to the dam at Wake Forest Reservoir has been reclassified from Class WS-III to WS-I.
 - (2) Little River [Index No. 27-57-(1)] from source to the N.C. Hwy. 97 Bridge near Zebulon including all tributaries has been reclassified from Class WS-III to WS-I.
 - (3) An unnamed tributary to Buffalo Creek just upstream of Robertson's Pond in Wake County from source to Buffalo Creek including Leo's Pond has been reclassified from Class C to B.
- (d) The Schedule of Classifications and Water Quality Standards for the Neuse River Basin has been amended effective October 1, 1988 as follows:
- (1) Walnut Creek (Lake Johnson, Lake Raleigh) [Index No. 27-34-(1)]. Lake Johnson and Lake Raleigh have been reclassified from Class WS-III to Class WS-III & B.
 - (2) Haw Creek (Camp Charles Lake) (Index No. 27-86-3-7) from the backwaters of Camp Charles Lake to dam at Camp Charles Lake has been reclassified from Class C to Class B.
- (e) The Schedule of Classifications and Water Quality Standards for the Neuse River Basin has been amended effective January 1, 1990 as follows:
- (1) Neuse-Southeast Pamlico Sound ORW Area which includes all waters within a line beginning at the southwest tip of Ocracoke Island, and extending north west along the Tar-Pamlico River Basin and Neuse River Basin boundary line to Lat. 35 degrees 06' 30", thence in a southwest direction to Ship Point and all tributaries, were reclassified from Class SA NSW to Class SA NSW ORW.

(2) Core Sound (Index No. 27-149) from northeastern limit of White Oak River Basin (a line from Hall Point to Drum Inlet) to Pamlico Sound and all tributaries, except Thorofare, John Day Ditch were reclassified from Class SA NSW to Class SA NSW ORW.

(f) The Schedule of Classifications and Water Quality Standards for the Neuse River Basin was amended effective December 1, 1990 with the reclassification of the following waters as described in (1) through (3) of this Paragraph.

- (1) Northwest Creek from its source to the Neuse River (Index No. 27-105) from Class SC Sw NSW to Class SB Sw NSW;
- (2) Upper Broad Creek [Index No. 27-106-(7)] from Pamlico County SR 1103 at Lees Landing to the Neuse River from Class SC Sw NSW to Class SB Sw NSW; and
- (3) Goose Creek [Index No. 27-107-(11)] from Wood Landing to the Neuse River from Class SC Sw NSW to Class SB Sw NSW.

(g) The Schedule of Classifications and Water Quality Standards for the Neuse River Basin was amended effective July 1, 1991 with the reclassification of the Bay River [Index No. 27-150-(1)] within a line running from Flea Point to the Hammock, east to a line running from Bell Point to Darby Point, including Harper Creek, Tempe Gut, Moore Creek and Newton Creek, and excluding that portion of the Bay River landward of a line running from Poorhouse Point to Darby Point from Classes SC Sw NSW and SC Sw NSW HQW to Class SA NSW.

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

(i) The Schedule of Classifications and Water Quality Standards for the Neuse River Basin was amended effective April 1, 1994 as follows:

- (1) Lake Crabtree [Index No. 27-33-(1)] was reclassified from Class C NSW to Class B NSW.
- (2) The Eno River from Orange County State Road 1561 to Durham County State Road 1003 [Index No. 27-10-(16)] was reclassified from Class WS-IV NSW to Class WS-IV&B NSW.
- (3) Silver Lake (Index No. 27-43-5) was reclassified from Class WS-III NSW to Class WS-III&B NSW.

(j) The Schedule of Classifications and Water Quality

Standards for the Neuse River Basin was amended effective November 1, 1995 with the reclassification of an unnamed tributary to Hannah Creek (Tuckers Lake) [Index No. 27-52-6-0.5] from Class C NSW to Class B NSW.

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

.0316 TAR-PAMLICO RIVER BASIN

(a) Places where the schedule may be inspected:

- (1) Clerk of Court:
Beaufort County
Dare County
Edgecombe County
Franklin County
Granville County
Halifax County
Hyde County
Martin County
Nash County
Pamlico County
Person County
Pitt County
Vance County
Warren County
Washington County
Wilson County
- (2) North Carolina Department of Environment, Health, and Natural Resources:
 - (A) Raleigh Regional Office
3800 Barrett Drive
Raleigh, North Carolina
 - (B) Washington Regional Office
1424 Carolina Avenue
Washington, North Carolina

(b) Unnamed Streams. All drainage canals not noted in the schedule are classified "C Sw," except the main drainage canals to Pamlico Sound and its bays which will be classified "SC."

(c) The Tar-Pamlico River Basin Schedule of Classification and Water Quality Standards was amended effective:

- (1) March 1, 1977;
- (2) November 1, 1978;
- (3) June 8, 1980;
- (4) October 1, 1983;
- (5) June 1, 1984;
- (6) August 1, 1985;
- (7) February 1, 1986;
- (8) August 1, 1988;
- (9) January 1, 1990;
- (10) August 1, 1990;
- (11) August 3, 1992;
- (12) April 1, ~~1994~~ 1994;
- (13) November 1, 1995.

(d) The Schedule of Classifications and Water Quality Standards for the Tar-Pamlico River Basin has been amended effective August 1, 1988 as follows:

- (1) Tar River (Index No. 28-94) from a point 1.2 miles

downstream of Broad Run to the upstream side of Tranter Creek from Class C to Class B.

(e) The Schedule of Classifications and Water Quality Standards for the Tar-Pamlico River Basin has been amended effective January 1, 1990 by the reclassification of Pamlico River and Pamlico Sound [Index No. 29-(27)] which includes all waters within a line beginning at Juniper Bay Point and running due south to Lat. 35° 18' 00", long. 76° 13' 20", thence due west to lat. 35° 18' 00", long 76° 20' 00", thence northwest to Shell Point and including Shell Bay, Swanquarter and Juniper Bays and their tributaries, but excluding the Blowout, Hydeland Canal, Juniper Canal and Quarter Canal were reclassified from Class SA and SC to SA ORW and SC ORW.

(f) The Schedule of Classifications and Water Quality Standards for the Tar-Pamlico River Basin has been amended effective January 1, 1990 by adding the supplemental classification NSW (Nutrient Sensitive Waters) to all waters in the basin from source to a line across Pamlico River from Roos Point to Persimmon Tree Point.

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

(h) The Schedule of Classifications and Water Quality Standards for the Tar-Pamlico River Basin was amended effective April 1, 1994 with the reclassification of Blounts Creek from Herring Run to Blounts Bay [Index No. 29-9-1-(3)] from Class SC NSW to Class SB NSW.

(i) The Schedule of Classifications and Water Quality Standards for the Tar-Pamlico River Basin was amended effective November 1, 1995 with the addition of Huddles Cut (previously unnamed in the schedule) classified as SC NSW with and Index No. of 29-25.5.

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

Notice is hereby given in accordance with G.S. 150B-21.2 that the EHNR - Environmental Management Commission intends to amend rule cited as 15A NCAC 2B .0308.

Proposed Effective Date: February 1, 1996.

A Public Hearing will be conducted at 7:00 p.m. on September 7, 1995 at the McDowell County Admin. Bldg., 10 East Court Street, Marion, NC.

Reason for Proposed Action: To reclassify surface waters in the Catawba River Basin to protect their primary recreational uses.

Comment Procedures: Comments, statements, data and other information can be submitted in writing prior to, during or after the hearing but no later than October 7, 1995. Verbal comments may be presented at the public hearing. The Hearing Officer may limit the length of time that you may speak so that all those who wish to speak may have an opportunity to do so. Written comments should be submitted to Suzanne Hoover, Division of Environmental Management, P.O. Box 29535, Raleigh, NC 27626-0535.

Fiscal Note: This Rule does not affect the expenditures or revenues of local government or state funds.

SECTION .0300 - ASSIGNMENT OF STREAM CLASSIFICATIONS

.0308 CATAWBA RIVER BASIN

(a) Places where the schedules may be inspected:

- (1) Clerk of Court:
Alexander County
Avery County
Burke County
Caldwell County
Catawba County
Gaston County
Iredell County
Lincoln County
McDowell County
Mecklenburg County
Union County
Watauga County
- (2) North Carolina Department of Environment, Health, and Natural Resources:
 - (A) Mooresville Regional Office
919 North Main Street
Mooresville, North Carolina
 - (B) Asheville Regional Office
Interchange Building
59 Woodfin Place
Asheville, North Carolina

(b) Unnamed Streams. Such streams entering South Carolina are classified "C".

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

- (1) March 1, 1977;
- (2) August 12, 1979;
- (3) April 1, 1982;
- (4) January 1, 1985;
- (5) August 1, 1985;

- (6) February 1, 1986;
- (7) March 1, 1989;
- (8) May 1, 1989;
- (9) March 1, 1990;
- (10) August 1, 1990;
- (11) August 3, 1992;
- (12) April 1, 1994;
- (13) July 1, ~~1995~~ 1995;
- (14) November 1, 1995;
- (15) February 1, 1996.

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

- (1) Wilson Creek (Index No. 11-38-34) and all tributary waters were reclassified from Class B-trout and Class C-trout to Class B-trout ORW and Class C-trout ORW.

(e) The Schedule of Classifications and Water Quality Standards for the Catawba River Basin was amended effective May 1, 1989 as follows:

- (1) Henry Fork [Index Nos. 11-129-1-(1) and 11-129-1-(2)] from source to Laurel Creek, including all tributaries, were reclassified from Class WS-I, C and C trout to Class WS-I ORW, C ORW and C trout ORW, except Ivy Creek and Rock Creek which will remain Class C trout and Class C.
- (2) Jacob Fork [Index Nos. 11-129-2-(1) and 11-129-2-(4)] from source to Camp Creek, including all tributaries, were reclassified from Class WS-III trout and WS-III to WS-III trout ORW and WS-III ORW.

(f) The Schedule of Classifications and Water Quality Standards for the Catawba River Basin was amended effective March 1, 1990 as follows:

- (1) Upper Creek [Index No. 11-35-2-(1)] from source to Timbered Branch including all tributaries except Timbered Branch (Index No. 11-35-2-9) was reclassified from Class C Trout to Class C Trout ORW.
- (2) Steels Creek [Index No. 11-35-2-12(1)] from source to Little Fork and all tributaries was reclassified from Class C Trout to Class C Trout ORW.

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

supply purposes.

(h) The Schedule of Classifications and Water Quality Standards for the Catawba River Basin was amended effective April 1, 1994 as follows:

- (1) Friday Lake (Index No. 11-125.5) from its source to Little Paw Creek was reclassified from Class C to Class B.
- (2) The Linville River [Index No. 12-29-(1)] from Grandmother Creek to Linville Falls was reclassified from Class C Tr to Class B Tr.

(i) The Schedule of Classifications and Water Quality Standards for the Catawba River Basin was amended effective July 1, 1995 with the reclassification of Clark Creek from a point 0.6 mile downstream of Catawba County SR 2014 to 0.4 mile upstream of Larkard Creek [Index No. 11-129-5-(4.5)], and Howards Creek from its source to 0.7 mile upstream of Lincoln County State Road 1200 [Index No. 11-129-4], including associated tributaries from Class WS-IV to Classes C and WS-IV.

(j) Note: Paragraph (j) is proposed in another rulemaking notice also published in this issue.

(k) The Schedule of Classifications and Water Quality Standards for the Catawba River Basin was amended effective February 1, 1996 with the reclassification of the North Fork Catawba River [Index No. 11-24-(1)] from Laurel Branch to Armstrong Creek from Class C Tr to Class B Tr.

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

Notice is hereby given in accordance with G.S. 150B-21.2 that the EHNHR - Environmental Management Commission intends to amend rule cited as 15A NCAC 2B .0315.

Proposed Effective Date: February 1, 1996.

A Public Hearing will be conducted at 7:00 p.m. on September 11, 1995 at the Craven County Courthouse, Superior Courtroom, 302 Broad Street, New Bern, NC.

Reason for Proposed Action: To reclassify surface waters in the Neuse River Basin to protect the waters' use for primary recreational activities.

Comment Procedures: Comments, statements, data and other information can be submitted in writing prior to, during or after the hearing but no later than October 11, 1995. Verbal comments may be presented at the public hearing. The Hearing Officer may limit the length of time that you may speak so that all those who wish to speak may have an opportunity to do so. Written comments should be submitted to Suzanne Hoover, Division of Environmental Management, P.O. Box 29535, Raleigh, NC 27626-0535.

Fiscal Note: This Rule does not affect the expenditures or

revenues of local government or state funds.

SECTION .0300 - ASSIGNMENT OF STREAM CLASSIFICATIONS

.0315 NEUSE RIVER BASIN

(a) Places where the schedule may be inspected:

- (1) Clerk of Court:
Beaufort County
Carteret County
Craven County
Durham County
Franklin County
Granville County
Greene County
Johnston County
Jones County
Lenoir County
Nash County
Orange County
Pamlico County
Person County
Pitt County
Wake County
Wayne County
Wilson County
- (2) North Carolina Department of Environment,
Health, and Natural Resources:
 - (A) Raleigh Regional Office
3800 Barrett Drive
Raleigh, North Carolina
 - (B) Washington Regional Office
1424 Carolina Avenue
Washington, North Carolina
 - (C) Wilmington Regional Office
127 Cardinal Drive
Wilmington, North Carolina

(b) The Neuse River Basin Schedule of Classification and Water Quality Standards was amended effective:

- (1) March 1, 1977;
- (2) December 13, 1979;
- (3) September 14, 1980;
- (4) August 9, 1981;
- (5) January 1, 1982;
- (6) April 1, 1982;
- (7) December 1, 1983;
- (8) January 1, 1985;
- (9) August 1, 1985;
- (10) February 1, 1986;
- (11) May 1, 1988;
- (12) July 1, 1988;
- (13) October 1, 1988;
- (14) January 1, 1990;
- (15) August 1, 1990;
- (16) December 1, 1990;
- (17) July 1, 1991;
- (18) August 3, 1992;

(19) April 1, ~~1994~~, 1994;

(20) November 1, 1995;

(21) February 1, 1996.

(c) The Schedule of Classifications and Water Quality Standards for the Neuse River Basin has been amended effective July 1, 1988 as follows:

- (1) Smith Creek [Index No. 27-23-(1)] from source to the dam at Wake Forest Reservoir has been reclassified from Class WS-III to WS-I.
- (2) Little River [Index No. 27-57-(1)] from source to the N.C. Hwy. 97 Bridge near Zebulon including all tributaries has been reclassified from Class WS-III to WS-I.
- (3) An unnamed tributary to Buffalo Creek just upstream of Robertson's Pond in Wake County from source to Buffalo Creek including Leo's Pond has been reclassified from Class C to B.

(d) The Schedule of Classifications and Water Quality Standards for the Neuse River Basin has been amended effective October 1, 1988 as follows:

- (1) Walnut Creek (Lake Johnson, Lake Raleigh) [Index No. 27-34-(1)]. Lake Johnson and Lake Raleigh have been reclassified from Class WS-III to Class WS-III & B.
- (2) Haw Creek (Camp Charles Lake) (Index No. 27-86-3-7) from the backwaters of Camp Charles Lake to dam at Camp Charles Lake has been reclassified from Class C to Class B.

(e) The Schedule of Classifications and Water Quality Standards for the Neuse River Basin has been amended effective January 1, 1990 as follows:

- (1) Neuse-Southeast Pamlico Sound ORW Area which includes all waters within a line beginning at the southwest tip of Ocracoke Island, and extending north west along the Tar-Pamlico River Basin and Neuse River Basin boundary line to Lat. 35 degrees 06' 30", thence in a southwest direction to Ship Point and all tributaries, were reclassified from Class SA NSW to Class SA NSW ORW.
- (2) Core Sound (Index No. 27-149) from northeastern limit of White Oak River Basin (a line from Hall Point to Drum Inlet) to Pamlico Sound and all tributaries, except Thorofare, John Day Ditch were reclassified from Class SA NSW to Class SA NSW ORW.

(f) The Schedule of Classifications and Water Quality Standards for the Neuse River Basin was amended effective December 1, 1990 with the reclassification of the following waters as described in (1) through (3) of this Paragraph.

- (1) Northwest Creek from its source to the Neuse River (Index No. 27-105) from Class SC Sw NSW to Class SB Sw NSW;
- (2) Upper Broad Creek [Index No. 27-106-(7)] from Pamlico County SR 1103 at Lees Landing to the Neuse River from Class SC Sw NSW to Class SB Sw NSW; and
- (3) Goose Creek [Index No. 27-107-(11)] from Wood

Landing to the Neuse River from Class SC Sw NSW to Class SB Sw NSW.

(g) The Schedule of Classifications and Water Quality Standards for the Neuse River Basin was amended effective July 1, 1991 with the reclassification of the Bay River [Index No. 27-150-(1)] within a line running from Flea Point to the Hammock, east to a line running from Bell Point to Darby Point, including Harper Creek, Tempe Gut, Moore Creek and Newton Creek, and excluding that portion of the Bay River landward of a line running from Poorhouse Point to Darby Point from Classes SC Sw NSW and SC Sw NSW HQW to Class SA NSW.

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

(i) The Schedule of Classifications and Water Quality Standards for the Neuse River Basin was amended effective April 1, 1994 as follows:

- (1) Lake Crabtree [Index No. 27-33-(1)] was reclassified from Class C NSW to Class B NSW.
- (2) The Eno River from Orange County State Road 1561 to Durham County State Road 1003 [Index No. 27-10-(16)] was reclassified from Class WS-IV NSW to Class WS-IV&B NSW.
- (3) Silver Lake (Index No. 27-43-5) was reclassified from Class WS-III NSW to Class WS-III&B NSW.

(j) *Note: Paragraph (j) is proposed in another rulemaking notice also published in this Issue.*

(k) The Schedule of Classification and Water Quality Standards for the Neuse River Basin was amended effective February 1, 1996 with the reclassification of the Neuse River [Index No. 27-(96)] from the Streets Ferry bridge to a line across the river from Johnson Point to McCotter Point from Class SC Sw NSW to Class SB Sw NSW.

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

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Board of Physical Therapy Examiners intends to adopt rules cited as 21 NCAC 48D .0011; 48G .0501 - .0516, .0601; 48H .0701 - .0704; amend 48C .0103; 48D .0006; 48E .0110; 48F .0002; and repeal 48D .0008; 48H .0104.

Temporary: Rule (21 NCAC 48E .0110) was filed as a temporary amendment effective July 21, 1995 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner.

Proposed Effective Date: October 1, 1995.

A Public Hearing will be conducted at 2:00 p.m. on August 10, 1995 at the NC Board of Physical Therapy Examiners, 18 West Colony Place, Suite 120, Durham, NC 27705.

Reason for Proposed Action:

21 NCAC 48D .0011; 48G .0501-.0516; 48G .0601; 48H .0701-.0704 - To adopt rules for contested case hearings, disciplinary actions and the adoption of rules. To adopt a rule for applicants with special needs.

21 NCAC 48C .0103; 48D .0006; 48E .0110; 48F .0002 - To amend rules on fees, notification of examination results, prohibited practice and foreign trained physical therapists to make them consistent with current practice.

21 NCAC 48D .0008; 48H .0104 - To repeal rules no longer needed.

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 July 14, 1995 to 5:00 p.m. on August 14, 1995. Such written comments must be delivered or mailed to Constance W. Peake, North Carolina Board of Physical Therapy Examiners, 18 West Colony Place, Suite 120, Durham, NC 27705.

Fiscal Note: These Rules do not affect the expenditures or revenues of local government or state funds.

SUBCHAPTER 48C - SCOPE OF PHYSICAL THERAPY PRACTICE

SECTION .0100 - PHYSICAL THERAPISTS

.0103 PROHIBITED PRACTICE

(a) A physical therapist is prohibited from employing acts, tests, procedures, treatments and modalities in the treatment of patients that are beyond the scope of the practice of physical therapy. Any patient whose condition requires medical diagnosis of disease or treatment beyond the scope of physical therapy must be referred to a licensed medical doctor or dentist.

(b) A physical therapist may not permit any person working under his or her supervision to engage in acts or practices beyond the scope allowed by the Physical Therapy Practice Act or these Rules.

TITLE 21 - OCCUPATIONAL LICENSING BOARDS

CHAPTER 48 - BOARD OF PHYSICAL THERAPY EXAMINERS

(c) Physical therapy does not include the application of roentgen rays or radioactive materials, but this does not prevent a physical therapist from reviewing x-rays.

(d) A physical therapist is prohibited from financially compensating any person, firm or corporation for referring a patient to the physical therapist.

(e) A physical therapist is prohibited from receiving financial compensation solely for referring a patient to any person, firm or corporation.

(f) A physical therapist is prohibited from soliciting a patient by direct personal contact within 90 days after the patient sustains an injury or suffers the onset of disease or infirmity.

Statutory Authority G.S. 90-270.24; 90-270.26; 90-270.35.

SUBCHAPTER 48D - EXAMINATIONS

.0006 NOTIFICATION OF EXAMINATION RESULTS

(a) Individuals. All applicants will be notified in writing of the results of the examination.

(b) North Carolina Educational Programs. After each examination the North Carolina educational programs that had graduates taking the examination in North Carolina will be sent scores, but identification numbers and names will not be included. The North Carolina passing level ~~and the cumulative data~~ for the examination will be included.

Statutory Authority G.S. 90-270.26.

.0008 LICENSED PERSONS TAKING THE EXAMINATION

~~If a physical therapist who is already licensed in the state by means other than a PT exam desires to take a PT exam, he may do so at the current cost of the examination providing he sends a written request to the executive secretary stating his reason for wanting to take the examination.~~

Statutory Authority G.S. 90-270.26; 90-270.33.

.0011 APPLICANTS WITH SPECIAL NEEDS

Examination candidates who need special accommodations for the examination as a result of a medical or physical dysfunction should file an Accommodation Request Form and supporting documentation with the executive secretary at least 60 days before the examination date.

Statutory Authority G.S. 90-270.60; P.L. 101-336.

SUBCHAPTER 48E - APPLICATION FOR LICENSURE

SECTION .0100 - REQUIREMENTS

.0110 FOREIGN-TRAINED PHYSICAL THERAPISTS

(a) English Translations. All application forms and supporting

documents must be in English or accompanied by an English translation.

(b) Supporting Documents. In addition to the other requirements of this Section and G.S. 90-270.30, each foreign-trained applicant must submit the following:

- (1) If the applicant has been graduated from a physical therapy educational program, a certification of physical therapy education is to be submitted directly to the Board.
- (2) If the applicant does not meet the requirements of (b)(1) of this Rule, the Board will examine the applicant's educational background to determine if the general college and professional instruction is substantially equivalent to that of a United States physical therapy educational program. At a minimum, 120 semester hours of college education is required, which includes a minimum of 57 semester hours of professional curriculum, including basic health sciences, clinical sciences and clinical education. It is the responsibility of the applicant to make arrangements with a credentialing service acceptable to the Board to have the credentials evaluated. The Board will make its own review of applicant's educational program and is not bound by the findings of the credentialing service.
- (3) Proof acceptable to the Board that a minimum score of 210 has been obtained on the TSE (Test of Spoken English) or the SPEAK (Speaking Proficiency English Assessment Kit) examination administered prior to July 1, 1995, or for examinations administered on or after July 1, 1995 a minimum score of 45 will be required on the TSE examination, or that English is the applicant's native language.

Statutory Authority G.S. 90-270.26; 90-270.29; 90-270.30; 90-270.31.

SUBCHAPTER 48F - CERTIFICATES: FEES: INVESTIGATIONS: RECORDS OF LICENSEES

.0002 FEES

- (a) The following fees are charged by the Board:
- (1) application for physical therapist licensure:
 - (A) by endorsement or examination taken in another state, one hundred dollars (\$100.00);
 - (B) by examination, one hundred dollars (\$100.00) plus cost of examination;
 - (C) by revival of lapsed license pursuant to 21 NCAC 48G .0203(2)(a), one hundred dollars (\$100.00) plus cost of examination;
 - (D) by revival of lapsed license pursuant to 21 NCAC 48G .0203(2)(b), one hundred dollars (\$100.00);
 - (2) application for physical therapist assistant licensure:
 - (A) by endorsement or examination taken in another state, ninety dollars (\$90.00);
 - (B) by examination, ninety dollars (\$90.00) plus cost

of examination;

- (C) by revival of lapsed license pursuant to 21 NCAC 48G .0203(2)(a), ninety dollars (\$90.00) plus cost of examination;
- (D) by revival of lapsed license pursuant to 21 NCAC 48G .0203(2)(b), ninety dollars (\$90.00);
- (3) renewal for all persons, forty dollars (\$40.00);
- (4) penalty for late renewal, twenty dollars (\$20.00) plus renewal fee;
- (5) revival of license lapsed less than five years, twenty-five dollars (\$25.00) plus renewal fee;
- (6) transfer of licensure information fee, including either the examination scores or licensure verification or both, fifteen dollars (\$15.00);
- (7) retake examination, thirty dollars (\$30.00) plus actual cost of examination;
- (8) certificate replacement or duplicate, fifteen dollars (\$15.00);
- (9) directory of licensees, five dollars (\$5.00);
- (10) computer print-out or labels of any portion of list of physical therapists, sixty dollars (\$60.00);
- (11) computer print-out or labels of any portion of list of physical therapist assistants, sixty dollars (\$60.00);
- (12) processing fee for returned checks, maximum allowed by law.

(b) The application fee is not refundable. The Board shall consider written requests for a refund of other fees based on personal or economic hardship.

(c) A certified check or money order is required for payment of application fees listed in Parts (a)(1)(A), (B), (C), (D), and (2)(A), (B), (C), and (D) of this Rule.

Statutory Authority G.S. 25-3-512; 90-270.33.

SUBCHAPTER 48G - RETENTION OF LICENSE

SECTION .0500 - CONTESTED CASE HEARINGS

.0501 RIGHT TO HEARING

When the Board acts or proposes to act, other than in rulemaking 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 a contested case hearing. When the Board proposes to act in such a manner, it shall give any such affected person notice of right to a hearing personally or by mailing by certified mail to the last address provided to the Board a notice of the proposed action and a notice of a right to a hearing.

Statutory Authority G.S. 90-270.26; 150B-38.

.0502 REQUEST FOR HEARING

(a) When a person believes that his or her rights, duties, or privileges have been substantially affected by the Board's action without notice of a right to a contested case hearing being provided, that person may file with the Board a formal request

for a hearing.

(b) Any person substantially affected or aggrieved by the Board's action or proposed action must file a request for a contested case hearing in the Board's office so that it is received by the Board within 30 days of the date such person receives notice of the Board's action or proposed action. For purposes of this Rule, "notice" is given by the Board and received by the person:

- (1) for an action taken or proposed to be taken by the entire Board, on the date notice of such action is personally delivered to or is mailed by the Board to the person at the last address provided to the Board;
- (2) for an action proposed by a committee of the Board, including a probable cause or investigatory committee, from the date the proposed resolution, proposal for settlement, or other proposed action is personally delivered to or is mailed to the person at the last known address provided to the Board. Provided, however, that if within 15 days of receipt of such notice the person proposes in writing to continue informal negotiations to settle the matters at issue, the Board or its committee handling such matter may, in its discretion, agree to toll the running of the 30 day period or extend the 30 day period on such terms as the Board deems appropriate;
- (3) for any person substantially affected by a decision of the Board concerning licensure, including an approval or rejection of an application form for licensure, or the failure to renew or reinstate a license, from the date notice of such decision is personally delivered to or is mailed to the person at the last address provided to the Board.

(c) To request a contested case hearing, the person shall submit a request bearing the following notations to the Board's office: REQUEST FOR CONTESTED CASE HEARING. The request shall 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 .0503 of this Section, a hearing will be scheduled.

Statutory Authority G.S. 90-270.26; 150B-38.

.0503 GRANTING OR DENYING HEARING REQUEST

(a) The Board will grant a request for a hearing if it determines that the party requesting the hearing is a "person aggrieved" within the meaning of G.S. 150B-2(6).

(b) The denial of a request for a hearing will be issued immediately upon decision, and in no case later than 60 days

after the submission of the request. Such denial shall contain a statement of the reasons leading the Board to deny the request.

(c) Approval of a request for a hearing will be signified by the issuing of a notice as required by G.S. 150B-38(b) and explained in Rule .0505 of this Section.

Statutory Authority G.S. 90-270.26; 150B-38.

.0504 COMPLAINTS AND INVESTIGATIONS

(a) In order to file a complaint with the Board, the following information should be submitted to the Board in writing:

- (1) name and address of person alleged to have violated Physical Therapy Practice Act;
- (2) succinct statement of conduct giving rise to complaint;
- (3) name, address and telephone number of complainant.

(b) Upon receipt of a written complaint alleging misconduct that might subject a licensee to disciplinary action, or upon the receipt of confirmation that a violation of the Physical Therapy Practice Act has occurred, the Board may investigate such matter to determine whether probable cause exists to institute formal disciplinary proceedings.

(c) The Executive Secretary of the Board and a member appointed by the Chair shall serve as a probable cause or investigating committee. This committee may be assisted by the Board's attorney or investigator or by a former member of the Board retained for the purpose of such investigation.

(d) The probable cause committee shall investigate the complaint. The committee shall determine whether or not there is probable cause to believe that the licensee has violated any statute or board rule which would justify a disciplinary hearing. If the committee determines that such probable cause exists, the committee may confer with the licensee in an attempt to settle the matter through informal means. If the committee and the licensee reach an agreement on the disposition of the matter under investigation, the committee may cause to be drafted a proposed settlement agreement, which may include proposed findings of fact, conclusions of law, and a consent order, for presentation to and consideration by the Board. Such settlement agreement shall be presented to and approved by the licensee before they are presented to the Board for consideration and approval.

(e) If the probable cause committee and the licensee are not able to settle the matter under investigation by informal means, the licensee may request a contested case hearing pursuant to Rule .0502 of this Section or the Board may give notice of a disciplinary or contested case hearing, if required.

(f) If probable cause is found, but it is determined that a disciplinary hearing is not warranted, the committee may recommend that the Board issue a reprimand to the licensee. The committee shall mail a copy of its recommendation to the licensee.

(g) Within 20 days after receipt of the recommendation, the licensee may refuse the reprimand and request a contested case hearing pursuant to this Section. Such refusal and request shall be filed with the Board. The legal counsel for the Board shall

thereafter prepare, file, and serve a Notice of Hearing.

(h) In the alternative, within 20 days after receipt of the recommendation, the licensee may request an informal meeting with the Board to discuss the basis of the committee's recommendation and present reasons why the Board should not follow the committee's recommendation. There shall be no sworn testimony presented, nor shall there be a formal record of the proceedings.

(i) If the licensee does not request a contested case hearing or an informal meeting with the Board, the Board shall determine whether to accept the committee's recommendation and issue the reprimand. A letter of caution is not considered disciplinary action against a licensee.

(j) Participation by a current Board member in the investigation of a complaint shall disqualify that Board member from participating in the decision making process of a contested case hearing.

(k) Subsequent to the issuance of a notice of hearing, the attorney prosecuting the contested case for the Board may not communicate, directly or indirectly, in connection with any issue of fact or question of law, with any party, including the members of the Board assigned to make a decision or to make findings of fact and conclusions of law in the contested case, except on notice and opportunity for all parties to participate. However, the attorney prosecuting the matter for the Board may continue to communicate concerning such contested case with the members of the probable cause committee who investigated such matter, with persons not parties to the contested case who may be called as witnesses, including the person who filed the complaint and with the Board members about other matters.

Statutory Authority G.S. 90-270.26; 150B-38; 150B-40.

.0505 NOTICE OF HEARING

(a) The Board shall give the party or parties in a contested case a notice of hearing not less than 15 days before the hearing. Said notice shall contain the following information, in addition to the items specified in G.S. 150B-38(b):

- (1) the name, position, address and telephone number of a person at the office of the Board to contact for further information or discussion;
- (2) the date, time, and place for a pre-hearing conference, if any; and
- (3) any other relevant information regarding the procedure of the hearing.

(b) If the Board determines that the public health, safety, or welfare requires emergency action, it may issue an order summarily suspending a license. Upon service of the order, the licensee to whom the order is directed shall immediately cease the practice of physical therapy in North Carolina, and deliver said license to the Board in the manner specified in the order. The Board shall promptly give notice of hearing pursuant to G.S. 150B-38 following service of the order. The suspension shall remain in effect pending issuance by the Board of a final agency decision pursuant to G.S. 150B-42.

Statutory Authority G.S. 90-270.26; 70.36(9); 150B-3(c); 150B-

38.

.0506 WRITTEN RESPONSE TO THE NOTICE OF HEARING

Any party served with a notice of hearing may file a written response. Such response shall be served on the Board by certified mail at the address specified in the notice of hearing. The written response must be mailed to all parties to the proceeding not less than 10 days prior to the hearing.

Statutory Authority G.S. 90-270.26; 150B-38.

.0507 WHO SHALL HEAR CONTESTED CASES

(a) All contested case hearings will be conducted by the Board, a panel consisting of a majority of the members of the Board, or an administrative law judge designated to hear the case pursuant to G.S. 150B-40(e).

(b) The Board is authorized to employ an attorney to advise the presiding officer on matters of procedure and evidentiary rulings.

Statutory Authority G.S. 90-270.26; 150B-38; 150B-40.

.0508 PRE-HEARING CONFERENCE

(a) The Board may direct the parties to attend an informal pre-hearing conference, or the parties may request such a conference, at a time and place selected by mutual agreement. If the parties do not agree on the time and place for the pre-hearing conference within a reasonable time, the Board through its attorneys may set the time and place of the pre-hearing conference, giving reasonable written notice to all parties in the proceedings. The board may designate one of its staff members or attorneys to conduct the conference.

(b) Upon the agreement of the parties, all or part of the pre-hearing conference may be conducted by telephone or other electronic means, if each party has an opportunity to participate while the conference is taking place.

(c) The parties shall conduct the pre-hearing conference to deal, where applicable, with:

- (1) exploring settlement possibilities;
- (2) formulating, clarifying, and simplifying the issues to be contested at the hearing;
- (3) preparing stipulations of facts or findings;
- (4) specifying the identity and number of witnesses;
- (5) determining the extent to which direct evidence, rebuttal evidence, or cross-examination will be presented in written form and the extent to which telephone, video tape, or other electronic means will be used as a substitute for proceedings in person;
- (6) determining what depositions, discovery orders, or subpoenas will be needed;
- (7) determining the need for consolidation of cases or joint hearing;
- (8) determining the order of presentation of evidence and cross-examination; and

- (9) considering any other matters which may promote the prompt, orderly, and efficient disposition of the case.

Statutory Authority G.S. 90-270.26; 150B-38.

.0509 PETITION FOR INTERVENTION

(a) A person desiring to intervene in a contested case must file a written petition with the Board's office. The petition should bear the notation: PETITION TO INTERVENE IN THE CASE OF (Name of Case).

(b) The petition must include the following information:

- (1) the name and address of petitioner;
- (2) the business or occupation of petitioner, where relevant;
- (3) a full identification of the hearing in which petitioner is seeking to intervene;
- (4) the statutory or non-statutory grounds for intervention;
- (5) any claim or defense in respect of which intervention is sought; and
- (6) a summary of the arguments or evidence petitioner seeks to present.

(c) If the Board determines to allow intervention, notice of that decision will be issued promptly to all parties, and to the petitioner. In cases of discretionary intervention, such notification will include a statement of any limitations of time, subject matter, evidence or whatever else is deemed necessary which are imposed on the intervenor.

(d) If the Board's decision is to deny intervention, the petitioner will be notified promptly. Such notice will be in writing, will identify the reasons for the denial, and will be issued to the petitioner and all parties.

Statutory Authority G.S. 90-270.26; 150B-38.

.0510 TYPES OF INTERVENTION

(a) Intervention of Right. A petition to intervene as a right, as provided in the North Carolina Rules of Civil Procedure, Rule 24, will be granted if the petitioner meets the criteria of that rule and the petition is timely.

(b) Permissive Intervention. A petition to intervene permissively, as provided in the North Carolina Rules of Civil Procedure, Rule 24, will be granted if the petitioner meets the criteria of that rule and the Board determines that:

- (1) there is sufficient legal or factual similarity between the petitioner's claimed rights, privileges, or duties and those of the parties to the hearings; and
- (2) permitting the petitioner to intervene as a party would aid the purpose of the hearing.

(c) Discretionary Intervention. The Board may allow discretionary intervention, with whatever limits and restrictions are deemed appropriate.

Statutory Authority G.S. 90-270.26; 150B-38.

.0511 DISQUALIFICATION OF BOARD

MEMBERS

(a) Self-disqualification. No Board member shall discuss with any party the merits of any case pending before the Board. Any Board member who has direct knowledge about a case prior to the commencement of the proceeding shall disqualify himself or herself from any participation in the case. If for any other reason a Board member determines that personal bias or other factors render that member unable to hear a contested case and perform all duties in an impartial manner, that Board member shall voluntarily decline to participate in the hearing or decision.

(b) Petition for Disqualification. If for any reason any party in a contested case believes that a Board member is personally biased or otherwise unable to hear a contested case and perform all duties in an impartial manner, the party may file a sworn, notarized affidavit with the Board.

(c) Contents of Affidavit. The affidavit must state all facts the party deems to be relevant to the disqualification of the Board member.

(d) Timeliness and Effect of Affidavit. An affidavit of disqualification will be considered timely if filed 10 days before commencement of the hearing. Any other affidavit will be considered timely provided it is filed at the first opportunity after the party becomes aware of facts which give rise to a reasonable belief that a Board member may be disqualified under this Rule.

(e) Where a petition for disqualification is filed less than 10 days before or during the course of a hearing, the hearing shall continue with the challenged Board member sitting. Petitioner shall have the opportunity to present evidence supporting the petition, and the petition and any evidence relative thereto presented at the hearing shall be made a part of the record. The Board, before rendering its decision, shall decide whether the evidence justifies disqualification. In the event of disqualification the disqualified member will not participate in further deliberation or decision of the case.

(f) Procedure for Determining Disqualification:

- (1) The Board will appoint a board member or the Board's attorney to investigate the allegations of the affidavit.
- (2) At a special proceeding convened to consider the petition for disqualification, the investigator will report to the Board the findings of the investigation.
- (3) The Board shall decide whether to disqualify the challenged individual, and issue its decision in the record.
- (4) The person whose disqualification is to be determined will not participate in the decision but may be called upon to furnish information at the special proceeding.
- (5) When a Board member is disqualified prior to the commencement of the hearing or after the hearing has begun, such hearing will continue with the remaining members sitting provided that the remaining members still constitute a majority of the Board.
- (6) If a sufficient number of Board members are

disqualified pursuant to this Rule so that a majority of the Board cannot conduct the hearing, the Board shall petition the Office of Administrative Hearings to appoint an administrative law judge to hear the contested case pursuant to G.S. 150B-40(e).

Statutory Authority G.S. 90-270.26; 150B-40.

.0512 SUBPOENAS

(a) Requests for subpoenas for the attendance and testimony of witnesses or for the production of documents, either at a hearing or for the purposes of discovery, shall be made in writing to the Board, shall identify any document sought with specificity, and shall include the full name and home or business address of all persons to be subpoenaed and, if known, the date, time, and place for responding to the subpoena. The Chairman or the Secretary of the Board shall issue the requested subpoenas within three days of receipt of the request.

(b) Subpoenas shall contain: the caption of the case; the name and address of the person subpoenaed; the date, hour and location of the hearing in which the witness is commanded to appear; a particularized description of the books, papers, records or objects the witness is directed to bring to the hearing, if any; the identity of the party on whose application the subpoena was issued; the date of issue; the signature of the presiding officer or his designee; and a "return of service". The "return of service" form, as filled out, shows the name and capacity of the person serving the subpoena, the date on which the subpoena was delivered to the person directed to make service, the date on which service was made, the person on whom service was made, the manner in which service was made, and the signature of the person making service.

(c) Subpoenas shall be served as provided by the Rules of Civil Procedure, G.S. 1A-1. The cost of service, fees, and expenses of any witnesses or any documents subpoenaed shall be paid by the party requesting the subpoena. The subpoena shall be issued in duplicate, with a "return of service" form attached to each copy. A person serving the subpoena shall fill out the "return of service" form for each copy and properly return one copy to the Board with the attached "return of service" form completed.

(d) Any person receiving a subpoena from the Board may object thereto by filing a written objection to the subpoena with the Board's office. Such objection shall include a concise, but complete, statement of reasons why the subpoena should be quashed or modified. These reasons may include lack of relevancy of the evidence sought, or any other reason sufficient in law for holding the subpoena invalid, such as that the evidence is privileged, that appearance or production would be so disruptive as to be unreasonable in light of the significance of the evidence sought, or other undue hardship.

(e) Any objection to a subpoena must be served on the party who requested the subpoena simultaneously with the filing of the objection with the Board.

(f) The party who requested the subpoena may file a written response to the objection within such time period allowed by the Board. The written response shall be filed with the Board and

served by the requesting party on the objecting witness.

(g) After receipt of the objection and response thereto, if any, the Board shall issue a notice to the party who requested the subpoena and the party challenging the subpoena, and may notify any other party or parties of an open hearing before the presiding officer, to be scheduled as soon as practicable. At the hearing, evidence and testimony may be presented, limited to the narrow questions raised by the objection and response.

(h) Promptly after the close of such hearing, the presiding officer will rule on the challenge and issue a written decision. A copy of the decision will be issued to all parties and made a part of the record.

Statutory Authority G.S. 90-270.26; 150B-39; 150B-40.

.0513 WITNESSES

Any party may be a witness and may present witnesses on the party's behalf at the hearing. All oral testimony at the hearing shall be under oath or affirmation and shall be recorded. At the request of a party or upon the Board's own motion, the presiding officer may exclude witnesses from the hearing room so that they cannot hear the testimony of other witnesses.

Statutory Authority G.S. 90-270.26; 150B-40; 150B-43.

.0514 CONTINUANCES

A request for a continuance shall be addressed to the Board, and shall be granted in the Board's discretion.

Statutory Authority G.S. 90-270.26; 150B-38; 150B-40.

.0515 FINAL DECISION

In all cases heard by the Board, the Board will issue its decision within 60 days after its next regularly scheduled meeting following the close of the hearing. This decision will be the prerequisite "final agency decision" for the right to judicial review.

Statutory Authority G.S. 90-270.26; 150B-38; 150B-42.

.0516 PROPOSALS FOR DECISION

(a) When an administrative law judge conducts a hearing pursuant to G.S. 150B-40(e), a "proposal for decision" shall be served on all parties to the proceeding at their mailing address or upon their counsel of record. The parties may file written exceptions to this "Proposal for decision" and submit their own proposed findings of fact and conclusions of law. The exceptions and alternative proposals must be filed with the Board within 15 days after the party has received the "proposal for decision" as drafted by the administrative law judge, and must be served on all other parties at the same time it is filed with the Board.

(b) Any party may file a written argument to the Board within 15 days after receipt of the proposal for decision. Any party may file a request to present oral argument to the Board. Such request must be filed within 15 days of the receipt of the proposal for decision.

(c) Upon receipt of a request for oral argument, notice will be issued promptly to all parties designating the time and place for such oral argument.

(d) Giving due consideration to the proposal for decision and the exceptions and arguments of the parties, the Board may adopt the proposal for decision or may modify it as the Board deems necessary. The decision rendered will be a part of the record and a copy thereof given to all parties. The decision as adopted or modified becomes the "final agency decision" for the right to judicial review. Said decision will be rendered by the Board within 60 days of the next regularly scheduled meeting following the oral arguments, or if none, within 60 days of the next regularly scheduled Board meeting following receipt of the last document filed in the case.

Statutory Authority G.S. 90-270.26; 150B-38; 150B-40; 150B-42.

SECTION .0600 - DISCIPLINARY ACTION

.0601 PROHIBITED ACTIONS

(a) Behaviors and activities which may result in disciplinary action by the Board pursuant to G.S. 90-270.36(1), (6), (7), (8) and (9) and G.S. 90-270.35(4) include, but are not limited to, the following:

- (1) recording false or misleading data, measurements or notes regarding a patient;
- (2) delegating responsibilities to a person when the licensee delegating knows or has reason to know that the competency of that person is impaired by physical or psychological ailments, or by alcohol or other pharmacological agents, prescribed or not;
- (3) practicing or offering to practice beyond the scope permitted by law;
- (4) accepting and performing professional responsibilities which the licensee knows or has reason to know that he or she is not competent to perform;
- (5) performing, without adequate supervision, professional services which the licensee is authorized to perform only under the supervision of a licensed professional, except in an emergency situation where a person's life or health is in danger;
- (6) harassing, abusing, or intimidating a patient either physically or verbally;
- (7) failure to exercise supervision over persons who are authorized to practice only under the supervision of the licensed professional;
- (8) exercising undue influence on the patient, including the recommendation of unnecessary treatment for the financial gain of the practitioner or of a third party;
- (9) directly or indirectly offering, giving, soliciting, or receiving or agreeing to receive, any fee or other consideration to or from a third party for the referral of a client;
- (10) failure to file a report, or filing a false report, required by law or by the Board, or impeding or

obstructing such filing or inducing another person to do so;

- (11) revealing identifiable data, or information obtained in a professional capacity, without prior consent of the patient, except as authorized or required by law;
- (12) guaranteeing that a cure will result from the performance of professional services;
- (13) altering a license by changing the expiration date, certification number, or any other information appearing on the license;
- (14) using a license which has been altered;
- (15) permitting or allowing another person to use his or her license for the purpose of physical therapy;
- (16) delegating professional responsibilities to a person when the licensee delegating such responsibilities know or has reason to know that such a person is not qualified by training, by experience, or by licensure;
- (17) violating any term of probation, condition, or limitation imposed on the licensee by the Board;
- (18) kissing, fondling, inappropriately touching or engaging in any other activities of a sexual nature with a patient;
- (19) billing or charging for services or treatment not performed;
- (20) refusing to treat a patient because third party benefits have expired.

(b) When a person licensed to practice physical therapy is also licensed in another jurisdiction and that other jurisdiction takes disciplinary action against the licensee, the North Carolina Board of Physical Therapy Examiners may summarily impose the same or lesser disciplinary action upon receipt of the other jurisdiction's actions. The licensee may request a hearing. At the hearing the issues will be limited to:

- (1) whether the person against whom action was taken by the other jurisdiction and the North Carolina licensee are the same person;
- (2) whether the conduct found by the other jurisdiction also violates the North Carolina Physical Therapy Act; and
- (3) whether the sanction imposed by the other jurisdiction is lawful under North Carolina law.

(c) In accordance with G.S. 150B-3(c) a license may be summarily suspended if the public health, safety, or welfare requires emergency action. This determination is delegated to the Chairman or Executive Secretary of the Board pursuant to G.S. 90-270.26(8). Such a finding shall be incorporated with the order of the Board of Physical Therapy Examiners and the order shall be effective on the date specified in the order or on service of the certified copy of the order at the last known address of the licensee, whichever is later, and continues to be effective during the proceedings. Failure to receive the order because of refusal of service or unknown address does not invalidate the order. Proceedings shall be commenced promptly.

(d) When the Board receives a notice from a Clerk of

Superior Court that the license of a physical therapist or a physical therapist assistant has been forfeited pursuant to G.S. 15A-1331A, the licensee shall be required to surrender the license to the Board immediately and not to engage in the practice of physical therapy during the period of forfeiture. Forfeiture under this section shall not limit in any way the Board's authority to take further disciplinary action against the licensee in accordance with the Board's rules and procedures.

Statutory Authority G.S. 15A-1331A; 90-270.24; 90-270.26; 90-270.35(4); 90-270.36; 150B-3.

SUBCHAPTER 48H - RULEMAKING AND ADMINISTRATIVE HEARINGS PROCEDURES

SECTION .0100 - AVAILABILITY OF RULES

.0104 CONTESTED CASES

~~The following rules establishing procedures for contested cases, adopted by the Office of Administrative Hearings and contained in Title 26, Chapter 3 of the North Carolina Administrative Code, are hereby adopted by reference for contested cases for which the Board has authority to adopt rules under G.S. 150B-38(h): .0001(1), .0005, .0006, .0012, .0013, .0014, .0015, .0016, .0017, .0018, .0019, .0020, .0021 and .0024. This adoption is made under G.S. 150B-14(b) and applies to the listed rules in 26 NCAC 3 as amended as of July 1, 1988. References in such rules to the Office of Administrative Hearings shall be deemed for this purpose to be references to the Board, and the presiding officer for Board hearings shall have the powers and duties given in such rules to the administrative law judge. Copies of the rules adopted by reference are on file in the Board's office and may be obtained there.~~

Statutory Authority G.S. 150B-11; 150B-14(a)(b); 150B-38(h).

SECTION .0700 - ADOPTION OF RULES

.0701 PETITIONS

(a) Any person wishing to submit a petition to the Board requesting the adoption, amendment or repeal of a rule shall file the petition with the Board's Executive Secretary at the address specified in 21 NCAC 48A .0001 of these Rules.

(b) The petition should contain the following information:

- (1) a proposed text of the rule to be adopted or amended or a citation to the rule to be repealed;
- (2) a statement of the reason for the proposal, including statutory authority;
- (3) effect of the proposed rule change on the practice of physical therapy;
- (4) any data supporting the proposal;
- (5) name, address and telephone number of each petitioner.

(c) The Board will consider whether to grant or deny a petition at its next regularly scheduled meeting following receipt of a completed petition, but in any event, no more than 120 days after a completed petition is filed with the Board.

(d) If the Board denies the petition, the petitioner shall be notified in writing, stating the reasons for the denial. If the decision is to approve the petition, the Board shall initiate a rulemaking proceeding by issuing a rulemaking notice, as provided in these Rules.

Statutory Authority G.S. 90-270.26; 150B-20.

.0702 MAILING LIST

(a) Any person desiring to be placed on the mailing list for the Board's rulemaking notices may file a request with the Board in writing, furnishing the name and mailing address of the person to whom the notice is to be sent.

(b) The Board will charge an annual fee of ten dollars (\$10.00) to each person on the mailing list for copying and mailing costs. A person shall remain on the list so long as the annual fee is paid.

Statutory Authority G.S. 90-270.26; 150B-21.1.

.0703 HEARINGS

(a) Any person desiring to present oral comments on a proposed rule must file a written notification with the Board at the address specified in 21 NCAC 48A .0001, at least five days prior to the hearing. This requirement may be waived or a failure to file a request may be excused by the presiding officer. Any person making oral comments is encouraged to submit a written copy of the presentation prior to or at the hearing.

(b) In order to allow for a full and fair opportunity for persons who wish to make oral comments at a rulemaking hearing to speak, the presiding officer shall be entitled to impose time limits on the length of presentations. The presiding officer shall inform persons making oral comments of any time limits deemed necessary to accomplish a full and effective public hearing on the proposed rule.

(c) Any person may file a written submission with the Board up to and including the day of the hearing, unless a longer period is stated in the particular notice or an extension of time is granted following notice. A written submission must clearly state the rule or proposed rule to which the comments are addressed and must also include the name and address of the person submitting it.

(d) The authority of the presiding officer shall include, but not be limited to, the following:

- (1) ensuring a record is made of the proceedings;
- (2) control of the order and recognition of speakers;
- (3) elimination of repetitious presentations; and
- (4) general management of the hearing.

(e) The Board's chair shall designate a Board member or a staff member to serve as presiding officer.

Statutory Authority G.S. 90-270.26; 150B-21.2.

.0704 DECLARATORY RULINGS

(a) A declaratory ruling is a quasi-judicial order of the Board, by which it addresses issues raised by an interested person regarding:

- (1) the manner in which a statute administered by the Board applies to a given fact situation;
 - (2) the manner in which a rule adopted by the Board applies to a given fact situation; or
 - (3) whether a particular rule of the Board is valid.
- (b) A declaratory ruling issued by the Board:
- (1) is binding upon the Board and upon the person requesting it;
 - (2) may be reviewed by the courts in the same manner as the final agency decision in a contested case; and
 - (3) may be altered by a subsequent declaratory ruling of the Board, but may not be altered retroactively.
- (c) All requests for a declaratory ruling shall be in writing and submitted to the Board at the address specified in 21 NCAC 48A .0001 and must include the following information:
- (1) name and address of person requesting declaratory ruling;
 - (2) statute or rule to which request relates;
 - (3) statement of the manner in which the person requesting declaratory ruling is aggrieved by the rule or statute or its potential application to him; and
 - (4) the consequences of a failure to issue a declaratory ruling.

(d) Whenever the Board believes that issuance of a declaratory ruling is undesirable, it may refuse to issue one. The person requesting the declaratory ruling shall be furnished with a full and complete statement from the Board as to why the request is being denied.

Statutory Authority G.S. 90-270.26; 150B-4.

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).

DEPARTMENT OF AGRICULTURE

Markets

2 NCAC 43L .0202 - Gate Fees	RRC Objection	05/18/95
Agency Revised Rule	Obj. Removed	05/18/95
2 NCAC 43L .0304 - Horse Facility	RRC Objection	05/18/95
Agency Revised Rule	Obj. Removed	05/18/95

DEPARTMENT OF COMMERCE

Banking Commission

4 NCAC 3C .0201 - Establishment of Branches and Limited Service Facilities	RRC Objection	05/18/95
Agency Revised Rule	Obj. Removed	05/18/95
4 NCAC 3C .0202 - Discontinuance	RRC Objection	05/18/95
Agency Revised Rule	Obj. Removed	05/18/95
4 NCAC 3C .0204 - Conversion of Branch to Limited Service Facility	RRC Objection	05/18/95
Agency Revised Rule	Obj. Removed	05/18/95
4 NCAC 3C .0301 - Change of Location of Main Office, Branch or Ltd Svc Facility	RRC Objection	05/18/95
Agency Revised Rule	Obj. Removed	05/18/95
4 NCAC 3C .0901 - Books and Records	RRC Objection	05/18/95
Agency Revised Rule	Obj. Removed	05/18/95
4 NCAC 3C .1001 - Loan Documentation	RRC Objection	05/18/95
Agency Revised Rule	Obj. Removed	05/18/95
4 NCAC 3C .1101 - Definitions: Issuance of Capital Notes and Debentures	RRC Objection	05/18/95
Agency Revised Rule	Obj. Removed	05/18/95
4 NCAC 3C .1302 - Share Purchase and Option Plans	RRC Objection	05/18/95
Agency Revised Rule	Obj. Removed	05/18/95
4 NCAC 3C .1601 - Fees, Copies and Publication Costs	RRC Objection	05/18/95
Agency Revised Rule	Obj. Removed	05/18/95

DEPARTMENT OF COMMUNITY COLLEGES

Community Colleges

23 NCAC 2C .0604 - Program Review	RRC Objection	06/14/95
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ENVIRONMENT, HEALTH, AND NATURAL RESOURCES

Coastal Management

15A NCAC 7H .0306 - General Use Standards for Ocean Hazard Areas	Obj. Cont'd	05/18/95
Rule Returned to Agency	Obj. Cont'd	06/14/95
Agency Filed Rule for Codification Over RRC Objection	Eff.	06/27/95
15A NCAC 7H .0308 - Specific Use Standards for Ocean Hazard Areas	RRC Objection	03/16/95
Agency Revised Rule	Obj. Cont'd	04/20/95
Rule Returned to Agency		04/20/95
Agency Filed Rule for Codification Over RRC Objection	Eff.	05/04/95
15A NCAC 7M .0202 - Policy Statements	RRC Objection	03/16/95
Rule Returned to Agency	Obj. Cont'd	04/20/95
Agency Filed Rule for Codification Over RRC Objection	Eff.	05/04/95

Environmental Management

15A NCAC 2B .0201 - Antidegradation Policy (Noticed in 9:24, 1073)		
Rule Withdrawn by Agency		06/14/95
15A NCAC 2B .0211 - Fresh Surface Water Quality Stds. for Class C Waters (Noticed in 9:24, 1073)		
Rule Withdrawn by Agency		06/14/95
15A NCAC 2B .0212 - Fresh Surface Water Quality Stds. for Class WS-I Waters (Noticed in 9:24, 1073)		
Rule Withdrawn by Agency		06/14/95
15A NCAC 2B .0214 - Fresh Surface Water Quality Stds. for Class WS-II Waters (Noticed in 9:24, 1073)		
Rule Withdrawn by Agency		06/14/95
15A NCAC 2B .0215 - Fresh Surface Water Quality Stds. for Class WS-III Waters (Noticed in 9:24, 1073)		
Rule Withdrawn by Agency		06/14/95
15A NCAC 2B .0216 - Fresh Surface Water Quality Stds. for WS-IV Waters (Noticed in 9:24, 1073)		
Rule Withdrawn by Agency		06/14/95
15A NCAC 2B .0218 - Fresh Surface Water Quality Stds. for Class WS-V Waters (Noticed in 9:24, 1073)		
Rule Withdrawn by Agency		06/14/95
15A NCAC 2B .0219 - Fresh Surface Water Quality Stds. for Class B Waters (Noticed in 9:24, 1073)		
Rule Withdrawn by Agency		06/14/95
15A NCAC 2B .0220 - Tidal Salt Water Quality Stds. for Class SC Waters (Noticed in 9:24, 1073)		
Rule Withdrawn by Agency		06/14/95
15A NCAC 2B .0221 - Tidal Salt Water Quality Stds. for Class SA Waters (Noticed in 9:24, 1073)		
Rule Withdrawn by Agency		06/14/95
15A NCAC 2B .0222 - Tidal Salt Water Quality Stds. for Class SB Waters (Noticed in 9:24, 1073)		
Rule Withdrawn by Agency		06/14/95
15A NCAC 2B .0223 - Nutrient Sensitive Waters (Noticed in 9:24, 1073)		
Rule Withdrawn by Agency		06/14/95
15A NCAC 2B .0224 - High Quality Waters (Noticed in 9:24, 1073)		
Rule Withdrawn by Agency		06/14/95
15A NCAC 2B .0225 - Outstanding Resource Waters (Noticed in 9:24, 1073)		
Rule Withdrawn by Agency		06/14/95
15A NCAC 2B .0226 - Exemptions from Surface Water Quality Standards (Noticed in 9:24, 1073)		
Rule Withdrawn by Agency		06/14/95
15A NCAC 2B .0227 - Water Quality Management Plans (Noticed in 9:24, 1073)		
Rule Withdrawn by Agency		06/14/95
15A NCAC 2B .0228 - Effluent Channels (Noticed in 9:24, 1073)		
Rule Withdrawn by Agency		06/14/95

Health: Epidemiology

15A NCAC 19A .0202 - Control Measures - HIV	RRC Objection	06/14/95
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HUMAN RESOURCES

Facility Services

10 NCAC 30 .0305 - Persons Subject to Licensure	RRC Objection	05/18/95
Agency Revised Rule	Obj. Removed	05/18/95
10 NCAC 30 .0506 - Simplified Reporting for Certain Organizations	RRC Objection	05/18/95
Agency Revised Rule	Obj. Removed	05/18/95
10 NCAC 30 .0607 - License Year	RRC Objection	05/18/95
Agency Revised Rule	Obj. Removed	05/18/95

Medical Assistance

10 NCAC 26H .0104 - Cost Reporting: Auditing and Settlements		
Rule Withdrawn by Agency		04/20/95
Agency Resubmitted Rule	RRC Objection	05/18/95

<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>05/18/95</i>
10 NCAC 26M .0301 - Program Definition	<i>RRC Objection</i>	<i>04/20/95</i>
<i>Agency Revised Rule</i>	<i>RRC Objection</i>	<i>04/20/95</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>05/18/95</i>
10 NCAC 26M .0302 - Access to Care	<i>RRC Objection</i>	<i>04/20/95</i>
<i>Agency Revised Rule</i>	<i>RRC Objection</i>	<i>04/20/95</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>05/18/95</i>
10 NCAC 26M .0303 - Patient Informing	<i>RRC Objection</i>	<i>04/20/95</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>05/18/95</i>
10 NCAC 26M .0304 - Relationship with Carolina Access	<i>RRC Objection</i>	<i>04/20/95</i>
<i>Agency Revised Rule</i>	<i>RRC Objection</i>	<i>04/20/95</i>
<i>Rule Withdrawn by Agency</i>		<i>05/18/95</i>
10 NCAC 26M .0305 - Relationship with EPSDT program	<i>RRC Objection</i>	<i>04/20/95</i>
<i>Agency Revised Rule</i>	<i>RRC Objection</i>	<i>04/20/95</i>
<i>Rule Withdrawn by Agency</i>		<i>05/18/95</i>
10 NCAC 26M .0306 - Relationship with Sub-Contractors (Renumbered to .0304)	<i>RRC Objection</i>	<i>04/20/95</i>
<i>Agency Revised Rule</i>	<i>RRC Objection</i>	<i>04/20/95</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>05/18/95</i>
10 NCAC 26M .0307 - Utilization Review Requirements	<i>RRC Objection</i>	<i>04/20/95</i>
<i>Agency Revised Rule</i>	<i>RRC Objection</i>	<i>04/20/95</i>
<i>Rule Withdrawn by Agency</i>		<i>05/18/95</i>
10 NCAC 26M .0308 - Enrollee and Sub-Contractor Appeals and Grievances	<i>RRC Objection</i>	<i>04/20/95</i>
<i>Agency Revised Rule (Renumbered to .0305)</i>	<i>Obj. Removed</i>	<i>05/18/95</i>

INDEPENDENT AGENCIES

State Health Plan Purchasing Alliance Board

24 NCAC 5 .0202 - Establishment of Alliance Market Areas	<i>RRC Objection</i>	<i>06/14/95</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>06/14/95</i>
24 NCAC 5 .0401 - Purpose		
<i>Rule Withdrawn by Agency</i>		<i>06/14/95</i>
24 NCAC 5 .0402 - Definitions		
<i>Rule Withdrawn by Agency</i>		<i>06/14/95</i>
24 NCAC 5 .0403 - Application for Membership		
<i>Rule Withdrawn by Agency</i>		<i>06/14/95</i>
24 NCAC 5 .0404 - Participation Requirements		
<i>Rule Withdrawn by Agency</i>		<i>06/14/95</i>
24 NCAC 5 .0405 - Annual Renewal		
<i>Rule Withdrawn by Agency</i>		<i>06/14/95</i>
24 NCAC 5 .0406 - Employer Qualification and Employee Enrollment Period		
<i>Rule Withdrawn by Agency</i>		<i>06/14/95</i>
24 NCAC 5 .0407 - Waiting Period		
<i>Rule Withdrawn by Agency</i>		<i>06/14/95</i>
24 NCAC 5 .0408 - Open Enrollment Period		
<i>Rule Withdrawn by Agency</i>		<i>06/14/95</i>
24 NCAC 5 .0409 - Enrollment Additions Outside Open Enrollment		
<i>Rule Withdrawn by Agency</i>		<i>06/14/95</i>
24 NCAC 5 .0410 - Disenrollment of Member Small Employer		
<i>Rule Withdrawn by Agency</i>		<i>06/14/95</i>
24 NCAC 5 .0411 - Disenrollment of Enrollees		
<i>Rule Withdrawn by Agency</i>		<i>06/14/95</i>
24 NCAC 5 .0412 - Continuation of Benefits		
<i>Rule Withdrawn by Agency</i>		<i>06/14/95</i>
24 NCAC 5 .0413 - Payment to Insurance Agents and Brokers		
<i>Rule Withdrawn by Agency</i>		<i>06/14/95</i>
24 NCAC 5 .0414 - Alliance Participation Fee		

<i>Rule Withdrawn by Agency</i>		06/14/95
24 NCAC 5 .0415 - Notification of Rate Changes		
<i>Rule Withdrawn by Agency</i>		06/14/95
24 NCAC 5 .0416 - Employer Monthly Payment Procedures and Requirements		
<i>Rule Withdrawn by Agency</i>		06/14/95
24 NCAC 5 .0417 - Overdue Payments; Late Fees; Termination		
<i>Rule Withdrawn by Agency</i>		06/14/95
24 NCAC 5 .0418 - Reinstatement Following Termination for Non-Payment		
<i>Rule Withdrawn by Agency</i>		06/14/95
24 NCAC 5 .0419 - Monthly Payments to AHCS		
<i>Rule Withdrawn by Agency</i>		06/14/95

LABOR

OSHA

13 NCAC 7A .0602 - Definitions	<i>RRC Objection</i>	05/18/95
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	05/18/95
13 NCAC 7A .0603 - Safety and Health Programs	<i>RRC Objection</i>	05/18/95
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	05/18/95
13 NCAC 7F .0201 - Construction	<i>RRC Objection</i>	06/14/95
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	06/14/95

LICENSING BOARDS AND COMMISSIONS

Acupuncture Licensing Board

21 NCAC 1 .0301 - Standards for Continuing Education	<i>RRC Objection</i>	06/14/95
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	06/14/95

Board of Cosmetic Art Examiners

21 NCAC 14F .0014 - Salon Renewal	<i>RRC Objection</i>	03/16/95
<i>No Response from Agency</i>	<i>Obj. Cont'd</i>	04/20/95
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	05/18/95
21 NCAC 14I .0401 - App. for Lic. by Individuals Who Have Been Convicted of a Felony	<i>RRC Objection</i>	03/16/95
<i>No Response from Agency</i>	<i>Obj. Cont'd</i>	04/20/95
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	05/18/95
21 NCAC 14I .0402 - Requests for Preapplication Review of Felony Convictions	<i>RRC Objection</i>	03/16/95
<i>No Response from Agency</i>	<i>Obj. Cont'd</i>	04/20/95
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	05/18/95

Board of Licensed Professional Counselors

21 NCAC 53 .0208 - Supervised Professional Practice	<i>RRC Objection</i>	06/14/95
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	06/14/95
21 NCAC 53 .0309 - Agreement to Abide by NCBLPC Ethical Standards	<i>RRC Objection</i>	06/14/95
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	06/14/95

Board of Practicing Psychologists

21 NCAC 54 .2704 - HSP-P Requirements On and After June 30, 1994	<i>RRC Objection</i>	05/18/95
<i>Rule Returned to Agency</i>	<i>Obj. Cont'd</i>	06/14/95
<i>Agency Filed Rule for Codification Over RRC Objection</i>	<i>Eff.</i>	06/21/95
21 NCAC 54 .2705 - HSP-PP Requirements	<i>RRC Objection</i>	05/18/95
<i>Rule Returned to Agency</i>	<i>Obj. Cont'd</i>	06/14/95
<i>Agency Filed Rule for Codification Over RRC Objection</i>	<i>Eff.</i>	06/21/95

<p>21 NCAC 54 .2706 - HSP-PA Requirements On and After June 30, 1994 <i>Rule Returned to Agency</i> <i>Agency Filed Rule for Codification Over RRC Objection</i></p>	<p>RRC Objection 05/18/95 Obj. Cont'd 06/14/95 Eff. 06/21/95</p>
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Real Estate Commission

<p>21 NCAC 58E .0203 - Application and Criteria for Original Approval <i>Agency Revised Rule</i></p>	<p>RRC Objection 06/14/95 Obj. Removed 06/14/95</p>
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STATE PERSONNEL

Office of State Personnel

<p>25 NCAC 1E .0305 - Use of Sick Leave <i>Agency Revised Rule</i></p>	<p>RRC Objection 06/14/95 Obj. Removed 06/14/95</p>
<p>25 NCAC 1E .1302 - Policy <i>Agency Revised Rule</i></p>	<p>RRC Objection 06/14/95 Obj. Removed 06/14/95</p>
<p>25 NCAC 1E .1304 - Qualifying to Participate in Voluntary Shared Leave Program <i>Agency Revised Rule</i></p>	<p>RRC Objection 06/14/95 Obj. Removed 06/14/95</p>
<p>25 NCAC 1N .0201 - Purpose (Noticed in 9:23, 2018) <i>Rule Withdrawn by Agency</i></p>	<p>06/14/95</p>

TRANSPORTATION

Division of Highways

<p>19A NCAC 2B .0221 - General Motorist Services Signs <i>Agency Revised Rule</i></p>	<p>RRC Objection 06/14/95 Obj. Removed 06/14/95</p>
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This Section contains the full text of some of the more significant Administrative Law Judge decisions along with an index to all recent contested cases decisions which are filed under North Carolina's Administrative Procedure Act. Copies of the decisions listed in the index and not published are available upon request for a minimal charge by contacting the Office of Administrative Hearings, (919) 733-2698.

<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>ALJ</u>	<u>DATE OF DECISION</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
ADMINISTRATION				
<i>Division of Purchase and Contract</i>				
Senter-Sanders Tractor Corp. v. Admin., Div. of Purchase & Contract	94 DOA 0803	Nesnow	03/06/95	
CMC Maintenance Co., a Div. of RDS Corp. v. Dept. of Administration, Div. of Purchase & Contract, et al.	95 DOA 0194	Phipps	06/13/95	
<i>State Construction Office</i>				
W. M. Piatt & Company v. State Construction Office, DOA	94 DOA 0738	Nesnow	04/11/95	10:3 NCR 221
Holland Group, Inc. v. Dept. of Administration, St. Construction Office	94 DOA 1565	Nesnow	06/01/95	10:7 NCR 619
ALCOHOLIC BEVERAGE CONTROL COMMISSION				
Ali Alsaras v. Alcoholic Beverage Control Commission	94 ABC 0526	Chess	05/16/95	
Norman D. Forbes v. Alcoholic Beverage Control Commission	94 ABC 0787	Gray	03/17/95	
Albert Stanley Tomanec v. Alcoholic Beverage Control Commission	94 ABC 1168	Becton	03/07/95	
Robert Johnson v. Alcoholic Beverage Control Commission	94 ABC 1661	West	05/01/95	
Stinking Mercury, Inc. v. Alcoholic Beverage Control Commission	94 ABC 1682	Chess	05/03/95	
Alcoholic Beverage Control Comm. v. Depot Stop N Go, Inc.	94 ABC 1694	Mann	03/29/95	
John H. Robinson v. Alcoholic Beverage Control Commission	94 ABC 1727	Morrison	05/18/95	
Clara and Carson Young v. Alcoholic Beverage Control Commission	94 ABC 1729	Chess	05/11/95	
Bryan Lynn Whitaker, Susan Ansley Whitaker v. ABC Commission	94 ABC 1784	Mann	04/19/95	
Diamond Club, Inc. v. Alcoholic Beverage Control Commission	94 ABC 1803	Mann	04/07/95	
Alcoholic Beverage Control Commission v. Weisner, Inc.	95 ABC 0068	West	06/07/95	
Robert Louis Reese v. Alcoholic Beverage Control Commission	95 ABC 0074	Chess	05/25/95	
Ray E. Bailey v. Alcoholic Beverage Control Commission	95 ABC 0210	Gray	05/01/95	
Legwin Z. Williams v. Alcoholic Beverage Control Commission	95 ABC 0224	Nesnow	05/31/95	10:6 NCR 417
CRIME CONTROL AND PUBLIC SAFETY				
<i>Crime Victims Compensation Commission</i>				
John Pavlikianidis v. Victims Compensation Commission	94 CPS 0237	Morrison	03/21/95	10:2 NCR 176
Fay, Cynthia, S. Dalton v. Crime Victims Compensation Commission	94 CPS 0445**	West	05/30/95	
Phyllis H. Steinmetz v. Crime Victims Compensation Commission	94 CPS 0542	West	05/16/95	
Hubert Johnson, Edna J. Carter v. Crime Victims Compensation Comm.	94 CPS 1177	Mann	06/12/95	
Wayne L. Utley v. Crime Victims Compensation Commission	94 CPS 1180	Becton	03/07/95	
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**ROYAL JAMES CAFE
ED & SUE BOOK, OWNERS,
Respondents.**

RECOMMENDED DECISION

10:8

Based upon the official documents in the file, sworn testimony of the witnesses, and other competent and admissible evidence, the undersigned makes the following:

FINDINGS OF FACT

1. On November 30, 1994, William Arrington, Jr., an Environmental Health Specialist with the Carteret County Health Department, conducted a routine quarterly inspection of the Royal James Cafe in Beaufort, North Carolina.
2. Mr. Arrington scored the restaurant at a grade of 64.
3. Mr. Arrington immediately revoked the restaurant's permit.
4. The minimum score necessary to maintain a Grade C rating is 70.
5. During a previous quarterly inspection of the Royal James Cafe conducted on February 17, 1994, the restaurant had received a grade of 90. The Respondents were warned at that time that there were several areas that needed improving and failure to correct the problems could result in a grade of B or lower.
6. The September 14, 1994 inspection resulted in a grade of 80. Mr. Arrington went over the problems he observed with Sue Book, co-owner, and Linda Duncley, the manager.
7. On December 6, 1994, Mr. Arrington provided the Respondents with a list of all the areas requiring maintenance before a new permit for the restaurant could be issued.
8. After the Respondents made the necessary improvements, a new permit was issued on December 30, 1994.
9. During the inspection conducted on February 2, 1995, the restaurant received a grade of 96.5.
10. North Carolina General Statutes §130A-23(d) provides in pertinent part as follows:

A permit issued pursuant to G.S. 130A-228 or G.S. 130A-248 shall be revoked immediately for failure of a market or a facility to maintain a minimum grade of C. The Secretary shall immediately give notice of the suspension or revocation and shall immediately file a petition for a contested case in accordance with G.S. 150B-23.

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

CONCLUSIONS OF LAW

1. The North Carolina General Assembly has adopted a regulatory system for restaurants and other food handling establishments which is codified in North Carolina General Statutes §§130A-247 through 130A-250. In these statutes, the General Assembly has given rulemaking authority to the Commission for Health Services to regulate such establishments. Within this authority, the General Assembly has instructed the Commission to adopt a grading system, and the Commission has adopted such a system in its rules that establishes a score of 70% as the minimum score to retain a grade of C.
2. North Carolina General Statutes §130A-23 provides for the immediate revocation of any food establishment's permit when the establishment receives a score below 70 during any quarterly inspection.
3. The Petitioner concedes that the Respondents' permit to operate a restaurant is a property interest which cannot be taken away without due process of law.
4. The Respondents contend that due process required that they receive notice and an opportunity to be heard prior to any revocation of their permit to operate their restaurant.
5. Although the Respondents contend that the immediate revocation of their permit violates their right to due process, the courts have long recognized that affording due process also involves a balancing of the interests of all citizens, and at times

the state has a legitimate interest in acting prior to providing an opportunity for a hearing in order to protect the rights of others.

6. Where the State has an important interest to protect and probable cause to believe that an individual or operation poses a real and immediate danger to that interest, interim or temporary emergency deprivation of a property right pending a prompt judicial or administrative hearing is constitutional. In re Lamm, 116 N.C. App. 382, 448 S.E.2d 125 (1994).
7. The statutes regulating restaurants and other food handling establishments reflect the General Assembly's recognition of the need to protect the public health due to the dangers inherent in food handling activities. However, unless a determination is made that an imminent hazard exists or that the facility is so poorly operated that it cannot maintain a grade of C, a restaurant is given an intent to suspend or revoke notice and an opportunity for a hearing prior to being closed. N.C. Gen. Stat. §130A-23.
8. The General Assembly has determined that when an imminent hazard exists or an establishment's grade falls below a C, the threat to the public's health requires the immediate revocation of the establishment's permit, followed by immediate notice and petition for a hearing. In making such a determination, the General Assembly attempted to balance the rights of the individual against the rights of the public and determined that in certain circumstances, such as an establishment receiving a grade below 70%, some limitations on the individual's rights are necessary to protect the public's health and welfare.
9. The courts have utilized a three step balancing test which examines the following factors to resolve due process issues involving the necessity for a predeprivation hearing:

First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safe-guards; and, finally, the government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.

Matthews v. Eldridge, 424 U.S. 319, 335, 96 S.Ct. 893, 903, 47 L.Ed.2d 18, 53 (1976).

10. Here, the private interest affected by the challenged official action is that of restaurateurs' interest in continued operation of their restaurant pending a hearing on the issue of whether the restaurant's continued operation poses a threat to the public safety for failure to meet certain sanitation standards. Our courts have noted that such an interest is not an insubstantial one since a license suspension or revocation cannot be undone. "The state does not make a [licensee] whole for any personal inconvenience and economic hardship suffered during a delay between erroneous deprivation and postsuspension restoration of [the licensee's] privileges." Henry v. Edmisten, 315 N.C. 474, 482, 340 S.E.2d 720, 726 (1986).
11. For purposes of determining whether license revocation procedures satisfy due process requirements, several factors, such as the maximum period for which the license can be revoked, the timeliness of postsuspension review, and the existence of hardship relief, affect the weight of the licensee's interest in continuous use of his licensed privileges. Henry v. Edmisten, 315 N.C. 474, 340 S.E.2d 720 (1986).
12. Where prompt postsuspension review is available, the presence of such review reduces the need for hardship relief and together with the brevity of the suspension period, reduces the actual weight of the private interest in continuous use and possession of one's license pending the outcome of the hearing. Henry v. Edmisten, 315 N.C. 474, 340 S.E.2d 720 (1986). Neither the statute nor rules involved in this case address the issue of the duration of the automatic license revocation or the availability of hardship relief. While contested case proceedings are to be instituted immediately, there is no time limitation regarding when a final agency decision must be rendered.
13. The second step in the balancing test requires the weighing of the risk of erroneous deprivation of the private interest as a result of the procedures used and the probable value of additional procedural safeguards. Due process does not demand governmental decision making must comply with standards that assure error-free determinations. When prompt postdeprivation review is available, due process generally requires no more than that predeprivation procedures used be designed for determining that the facts justifying the official action are as a responsible government official warrants them to be. Henry v. Edmisten, 315 N.C. 474, 340 S.E.2d 720 (1986); In re Lamm, 116 N.C. App. 382, 448 S.E.2d 125 (1994). The Petitioner's procedures do not provide for any review by anyone, including even a supervisor, to determine that the facts justifying the license revocation are as the person conducting the inspection claims them to be. Thus, the inherent risk of error is great. Review of the inspection report by at least one other official would diminish the risk of error

and would not unduly delay action that protects the public welfare.

14. The third and final factor that must be weighed is the state's interest served by the summary procedure used. The proceeding prescribed by North Carolina General Statutes §130A-23(d) promotes the State's compelling need to protect the public health due to the dangers inherent in food handling activities. The summary and automatic character of the revocation is reasonably related to the purpose of the statute, i.e., to protect the public from food handling practices that pose a threat to public health and safety. The regulatory scheme for licensing food handling establishments provides a rational basis for a legitimate state interest that is reasonably necessary to prevent the infliction of public harm. Predeprivation hearings requiring notice and opportunity to be heard could encourage dilatory tactics on the part of licensees to try to maintain their license, frustrating the purpose of the statute and creating a further risk of harm to his or her clientele and the proper administration of justice. Henry v. Edmisten, 315 N.C. 474, 340 S.E.2d 720 (1986); In re Lamm, 116 N.C. App. 382, 448 S.E.2d 125 (1994).
15. Nevertheless, balancing the statute's procedure for revoking a licensee's license, the state's compelling interest in the public's health and safety does not in this instance outweigh the private interests involved and the risks of erroneously depriving those interest.
16. The immediate revocation of the Respondents' permit was carried out in accordance with the provisions of North Carolina General Statutes §130A-23.
17. The evidence establishes that there were numerous violations of the regulations regarding the operation of a food handling establishment at the Respondents' premises and the imposition of a score below a Grade C was not arbitrary or capricious. Had a postdeprivation hearing been required within some reasonable period of the revocation or had some predeprivation review to determine that the inspection had been carried out properly occurred, then the Respondents' due process claims would have been without merit
18. The powers of an administrative law judge do not include the authority to declare a provision of the general statutes unconstitutional. The undersigned is, however, of the opinion that the statutory provision for automatic revocation of a license whenever an establishment receives a sanitation grade of below 70% which provides no safeguards to assure that the facts precipitating the revocation are true or prompt postdeprivation hearing violates due process.

RECOMMENDED DECISION

The North Carolina Department of Environment, Health, and Natural Resources will make the final decision in this matter. It is recommended that the agency suspend its revocation of the Respondents' permit and petition the superior court for review of the constitutionality of the statutory provision involved in this contested case.

ORDER

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

NOTICE

Before the agency makes the FINAL DECISION, it is required by North Carolina General Statutes section 150B-36(a) to give each party an opportunity to file exceptions to this RECOMMENDED DECISION, and to present written arguments to those in the agency who will make the final decision.

The agency is required by North Carolina General Statutes section 150B-36(b) to serve a copy of the Final Decision on all parties and to furnish a copy to the Parties' attorney of record.

This the 30th day of June, 1995.

Brenda B. Becton
Administrative Law Judge

WESLEY BROWN,
Petitioner,

v.

N.C. STATE UNIVERSITY,
Respondent.

RECOMMENDED DECISION

APPEARANCES

For Petitioner: Alan McSurely
157 ½ East Franklin St.
Chapel Hill, NC 27514

ISSUES

1. Did the Respondent have just cause to dismiss the Petitioner from his employment for improper personal conduct?
2. Did the Respondent unlawfully discriminate against Petitioner on the basis of his race in dismissing him?
3. In dismissing Petitioner, did the Respondent unlawfully retaliate against him for speech associated with workplace concerns or for exercising his right to bring a previous employment-related grievance?
4. Did the Respondent follow the proper procedure in suspending and dismissing Petitioner?

STATUTES AND RULES INVOLVED

N.C. Gen. Stat. 126-35
N.C. Gen. Stat. 126-36
N.C. Admin. Code, tit. 25, r. 1J .0600 *et seq.*
42 U.S.C. §§ 2000e *et seq.*
29 C.F.R. Part 1910
N.C. Admin. Code, tit. 13, r. 7F .0101

STIPULATION AGREEMENTS

The Petitioner was a permanent State employee and was subject to the provisions of the State Personnel Act.

FINDINGS OF FACT

1. Petitioner, Wesley Brown, began working for the Respondent, North Carolina State University (NCSU) in its

Physical Plant on or about January 21, 1980.

2. In March of 1994, Petitioner held the position of Electrician II in NCSU's Physical Plant, and was assigned to NCSU's College of Veterinary Medicine under the supervision of Lawrence Bradley, Assistant to the Director of Physical Plant for College of Veterinary Medicine Services.

3. In March of 1994, Petitioner was the only African-American trades employee stationed at the College of Veterinary Medicine, although his supervisor Mr. Bradley also is African-American.

4. In March of 1994, the immediate supervisor of the trade shops at the College of Veterinary Medicine was Garden Freeman, a Caucasian maintenance mechanic.

5. During his employment at NCSU, Petitioner had been active in the NCSU Physical Plant Employees Association and served for a period of time as the Association's president. In that capacity Petitioner voiced concerns to Physical Plant management, including Mr. Bradley and Physical Plant Director James Vespi, about workplace practices such as proposed changes in certain duties of Physical Plant housekeeping employees.

6. In 1993, Petitioner filed a grievance under NCSU's Grievance and Appeal Procedure, alleging racial discrimination in his failure to receive a promotion. In the same year Petitioner also filed an EEOC Charge based on the same grievance.

7. Mr. Bradley testified that he was aware of Petitioner's grievance, but was not involved in the events leading to the grievance or its resolution.

8. Prior to March 1994, Petitioner maintained a good work performance record and had received no disciplinary action.

9. NCSU's Physical Plant has established and maintains a Respiratory Protection Program (the Program) for its employees. The Program's objective is to eliminate or minimize employee exposure to recognized airborne hazards that are likely to cause death or serious physical harm, as required by federal occupational health and safety law, in particular 29 C.F.R. § 1910.134.

10. 29 C.F.R. § 1910.134 provides, in pertinent part:

(a) Permissible practice. (1) In the control of those occupational diseases caused by breathing air contaminated with harmful dusts, fogs, fumes, mists, gases, smokes, sprays, or vapors, the primary objective shall be to prevent atmospheric contamination. This shall be accomplished as far as feasible by accepted engineering control measures. . . . When effective engineering controls are not feasible, or while they are being instituted, appropriate respirators shall be used pursuant to the following requirements.

(2) Respirators shall be provided by the employer when such equipment is necessary to protect the health of the employee. . . . The employer shall be responsible for the establishment and maintenance of a respiratory protective program which shall include the requirements outlined in paragraph (b) of this section.

(3) The employee shall use the provided respiratory protection in accordance with instructions and training received.

(Respondent's Exhibit 1)

11. The Program is coordinated by Harold J. "Jim" Thomas, Assistant to the Director of Physical Plant for Safety, and Lisa Sasser, Manager for Personnel and Training for Physical Plant, and is administered by Physical Plant in conjunction with NCSU's Department of Environmental Health and Safety.

12. Mr. Thomas testified that, in accordance with the requirement of 29 C.F.R. § 1910.134(a), it is the policy and practice of Physical Plant that no employee may enter an area of possible hazardous exposure without prior identification of the hazard, application of engineering controls to eliminate the hazard if possible, and proper respiratory protective equipment as dictated by the type of hazard present.

13. 29 C.F.R. § 1910.134 further provides, in pertinent part:

(b) (10) Persons should not be assigned to tasks requiring use of respirators unless it has been determined that they are physically able to perform the work and use the equipment. The local physician shall determine what health and physical conditions are pertinent. The respirator user's medical status should be reviewed periodically (for instance, annually).

(Respondent's Exhibit 1)

14. The Program provides respirator training and fit testing for Physical Plant employees who have been designated by their supervisors to participate in the Program, and who have been determined to be medically fit to wear a respirator. Mr. Thomas testified that Physical Plant supervisors were instructed to designate employees to participate in the Program on the basis of the supervisor's determination whether those employees might encounter airborne hazards in the performance of their duties.

15. In compliance with 29 C.F.R. § 1910.134, Physical Plant requires employees who are designated as participants in the Program to undergo a medical examination at periodic intervals to determine whether they are medically fit to wear a respirator.

16. In 1994, the required medical examinations were administered by physicians affiliated with the Duke Occupational Health Service of the Duke University Medical Center. Mr. Thomas testified that the Duke Occupational Health Service was chosen for its specialty in occupational medicine, and, as a healthcare provider independent of NCSU, to eliminate any potential conflict of interest between the employer's objectives and the employees' health interests.

17. Mr. Thomas testified that the scope of the medical examination for determination of respirator fitness was determined by the Duke Occupational Health Service, in accordance with the requirement of 29 C.F.R. § 1910.134(b)(10).

18. Physical Plant employees who are determined to be medically fit receive training in respirator use and are fitted with a respirator appropriate to the types of hazards they are likely to encounter. Employees with facial hair use a special type of negative pressure respirator called a RACAL unit, which does not need to be individually fitted.

19. Mr. Thomas testified that Physical Plant employees who are determined to be medically unfit for respirator use cannot be required to perform any tasks requiring the use of a respirator, as provided by 29 C.F.R. § 1910.134(b)(10). Accordingly, those employees would not continue to participate in the training and fit-testing aspects of the Program.

20. Bobby Davis, a Safety Compliance Officer with the Occupational Safety and Health division of the North Carolina Department of Labor, testified that he investigated Physical Plant's Program as the result of an anonymous complaint lodged with his office in January of 1995. Mr Davis testified that the complaint alleged that the Program did not provide adequate training and information about possible hazardous exposures, and that the Program was not providing the required medical fitness examinations. Mr. Davis testified that, on the basis of his investigation, he determined that the Program as designed and implemented presently and in 1994 was in full compliance with applicable occupational health and safety law.

21. Mr. Bradley designated the Petitioner, along with other tradespersons under his supervision, to participate in the Program. On February 23, 1994, Physical Plant published a schedule listing the date on which each designated employee was to attend his or her medical examination. (Petitioner's Exhibit 3) The schedule showed that Petitioner's medical appointment was March 18, 1994 at 9:00 a.m. The schedule also identified Petitioner, who wears a beard, as a RACAL user and indicated that Petitioner and other RACAL users were to receive training on March 25, 1994.

22. Pat Grantham issued an individual memorandum addressed to Petitioner, informing him that his medical examination was scheduled for March 18, 1994 at 9:00 a.m. (Petitioner's Exhibit 6) In early 1994, Ms. Grantham coordinated Physical Plant safety and technical training under the supervision of Lisa Sasser.

23. On March 10, 1994, Garden Freeman issued a memorandum to Pat Grantham, stating that Petitioner and another designated employee, Frankie Griffin, did not wish to participate in the Program on the basis of their belief that they would not need a respirator in their job classification. (Petitioner's Exhibit 5) Mr. Freeman then left on a week's vacation.

24. Mr. Bradley later became aware of Mr. Freeman's memorandum and met on March 17, 1994 with Petitioner, Mr. Griffin, and another employee, Tim Albright. Mr. Bradley informed these employees that he was overriding Mr. Freeman's memorandum, and that they would be required to participate in the Program including attending their scheduled medical

examinations.

25. Mr. Griffin testified that he and Mr. Albright told Mr. Bradley that they would attend their medical examinations as scheduled. Petitioner, however, told Mr. Bradley that he would not go to his medical examination.

26. Petitioner testified that he told Mr. Bradley that he needed more information about the Program. Mr. Bradley testified that Petitioner did not specify what information was wanted, but that he told Petitioner he would have information ready for him when he returned from the examination. Mr. Bradley instructed Petitioner that if he failed to attend the examination scheduled for him the following morning he would be considered insubordinate and could expect disciplinary action.

27. On March 18, 1994, Mr. Bradley learned that Petitioner had not attended the scheduled medical examination. On the same date, Mr. Bradley issued to Petitioner written notice of a pre-suspension conference to be held Monday, March 21, 1994, citing Petitioner's insubordination in refusing to attend the required medical examination. (Petitioner's Exhibit 7)

28. At the pre-suspension conference held March 21, 1994, Mr. Bradley informed Petitioner that he would be suspended for three days without pay for insubordination in refusing to attend the required medical examination. Mr. Bradley informed Petitioner that he would be scheduled to attend a medical examination at 10:45 a.m. on the morning of his return to work, March 24, 1994, and that he would be dismissed if he failed to attend the rescheduled examination. Petitioner's written notice of suspension, sent to him via certified mail, included the same information Mr. Bradley conveyed to Petitioner orally. (Petitioner's Exhibit 7 at p. 48)

29. Petitioner returned to work on March 24, 1994, but he did not attend the medical examination scheduled for that day. Mr. Bradley issued Petitioner a written notice of a pre-dismissal conference to be held March 25, 1994 as the result of Petitioner's failure to attend the medical examination scheduled for March 24, 1994. (Petitioner's Exhibit 8)

30. In the pre-dismissal conference, Mr. Bradley gave Petitioner an opportunity to provide additional information to support his position. Petitioner again stated that he wanted more information and added that he did not want a strange physician probing his body. Mr. Bradley testified that Petitioner did not request an alternate arrangement for his examination or object to the scope of the examination. Petitioner told Mr. Bradley that he was not going to the examination.

31. On March 25, 1994, Mr. Bradley also issued Mr. Freeman a written warning, on the grounds that Mr. Freeman had sent the memorandum of March 10, 1994 to Pat Grantham without prior consultation with Mr. Bradley.

32. On March 28, 1994, Mr. Bradley met with Petitioner and informed him that, after consideration of his actions and the information he had presented, Mr. Bradley had determined that Petitioner should be dismissed on grounds of improper personal conduct for his repeated refusal to take the required medical examination. Mr. Bradley gave Petitioner a letter of dismissal including a summary of the grounds for dismissal and a statement of his appeal rights. (Petitioner's Exhibit 9)

33. Mr. Vespi testified that all other Physical Plant employees designated to participate in the Program, except for Petitioner, took their scheduled medical examinations.

34. Petitioner filed a grievance of his suspension and dismissal as provided by NCSU's Grievance and Appeal Procedure (Appeal Procedure). The disciplinary actions were upheld at the Step 2 level of the Appeal Procedure. At Step 3 of the Appeal Procedure, a hearing was held before a Grievance Panel consisting of three NCSU SPA employees in accordance with the Appeal Procedure.

35. The Grievance Panel prepared its recommendations on or about September 7, 1994. (Respondent's Exhibit 8) The Grievance Panel found that Petitioner's dismissal for insubordination was justified. Citing management's lack of responsiveness to Petitioner's request for information, however, the Grievance Panel recommended, with respect to Petitioner, that Petitioner be reinstated without demotion or reduction in salary or benefits, but without back pay or benefits during the period of his suspension and dismissal, and with the further condition that Petitioner's failure to take the required medical examination within one month and otherwise to fully comply with the Program's requirements would be considered grounds for automatic dismissal.

36. In accordance with the Appeal Procedure, the Grievance Panel submitted its recommendations to George Worsley, NCSU Vice Chancellor for Finance and Business, for the rendering of a final decision on Petitioner's grievance. On September 23, 1994, Mr. Worsley issued his final decision in the form of a letter to Petitioner. (Petitioner's Exhibit 10-A,B)

37. Mr. Worsley found that Petitioner had been insubordinate. Mr. Worsley accepted the Grievance Panel's recommendation that Petitioner nevertheless be offered reinstatement without demotion or reduction in salary or benefits, but without back pay or benefits for the period of suspension and dismissal, on condition that Petitioner agree to take the required medical examination and complete other Program requirements within thirty calendar days of reinstatement.

38. Petitioner did not respond to Mr. Worsley's letter of September 23, 1994.

CONCLUSIONS OF LAW

1. N.C.G.S. § 126-35 provides, in relevant part, that no permanent State employee may be discharged except for just cause.

2. N.C.G.S. § 126-35(a) and 25 N.C.A.C. 01J .0608 provide, in relevant part, that permanent State employees may be discharged without prior oral or written warning for reasons related to improper personal conduct. Written notification to the employee and a pre-dismissal conference are required.

3. 25 N.C.A.C. 01J .0604(d) defines personal misconduct as follows:

- (1) conduct for which no reasonable person should expect to receive prior warnings;
- (2) job-related conduct which constitutes a violation of state or federal laws;
- (3) conviction of a felony or an offense involving moral turpitude;
- (4) the willful violation of known or written work rules; or
- (5) conduct unbecoming a state employee that is detrimental to state service.

4. 25 N.C.A.C. 01J .0604(a) provides, in relevant part, that the degree and type of disciplinary action taken is to be based upon the sound and considered judgment of the appointing authority [i.e., the employer].

5. 25 N.C.A.C. 01J .0606(2) requires the supervisor to give advance notice of and conduct a pre-dismissal conference with the employee; to give the employee oral or written notice of the recommendation for dismissal, including specific reasons and a summary of the information supporting the recommendation; and to give the employee an opportunity to respond, refute offered information, and offer arguments or information to support his or her position.

6. 25 N.C.A.C. 01J .0606(3) requires the employer to provide a written letter of dismissal containing the specific reasons for dismissal, the effective date, and the employee's appeal rights.

7. In administering its Respiratory Protection Program, Physical Plant is governed by the requirements of federal occupational health and safety laws, in particular 29 C.F.R. § 1910.134, which requires inter alia that employees be determined to be medically fit for respirator use before they may be assigned to a task that may require respirator use.

8. N.C.G.S. § 126-36 provides that a State employee may appeal to the Office of Administrative Hearings certain adverse employment actions, including termination of employment, that he has reason to believe occurred in retaliation for opposition to alleged discrimination or because of, inter alia, his race or color.

9. The ultimate purpose of N.C.G.S. § 126-36 is the same as the purpose of Title VII of the Civil Rights Act of 1964 (42 U.S.C. § 2003 *et seq.*): the elimination of discriminatory practices in employment. Therefore, the law governing Title VII claims also governs claims under G.S. 126-36. North Carolina Dept. of Correction v. Gibson, 308 N.C. 131, 136-37, 310 S.E.2d 78, rev'd on other grounds, 308 N.C. 131, 301 S.E.2d 78 (1983).

10. The law interpreting Title VII provides that the employee has the ultimate burden of proof to show, by the preponderance of the evidence, that the employer intentionally discriminated or retaliated against him in discharging him from employment. Gibson, 308 N.C. at 138; North Carolina Dept. of Correction v. Hodge, 99 N.C. App. 602, 606, 394 S.E.2d 285 (1990); Gadson v. North Carolina Mem. Hospital, 99 N.C. App. 169, 171, 392 S.E.2d 618 (1990).

11. The employee's threshold burden in establishing a prima facie case of racial discrimination is to provide sufficient evidence to raise an inference of racial discrimination in the dismissal, by showing that (1) he is a member of a protected class, i.e., a racial minority; (2) he was discharged; and (3) a similarly situated employee who was not a member of the protected class was retained under apparently similar circumstances. Gibson, 308 N.C. at 137; Hodge, 99 N.C. App. at 611. If the employee can make out this prima facie case, the employer must articulate some legitimate nondiscriminatory reason for the discharge. Upon that

showing, the employee then assumes the burden to prove, by the preponderance of the evidence, that the employer's proffered reason is actually a pretext for intentional discrimination. Gibson, 308 N.C. at 137-38.

12. An employee alleging retaliatory discharge must establish, by the preponderance of the evidence, a prima facie case showing that (1) he engaged in protected activity; (2) he was dismissed; and (3) a causal connection existed between the protected activity and the dismissal. Ross v. Communications Satellite Corp., 759 F.2d 355, 365 (4th Cir. 1985). If the employee can make out a prima facie case, the employer must articulate a nonretaliatory reason for the discharge. The burden is then on the employee to show, by the preponderance of the evidence, that the employer's asserted reason was pretextual, i.e., that the dismissal would not have occurred but for the protected conduct. Ross, 759 F.2d at 365-66.

13. It is concluded that the evidence is sufficient to show that Petitioner twice refused to obey his supervisor's reasonable order to attend a medical examination required of Petitioner in connection with NCSU's Respiratory Protection Program, and that Petitioner's conduct constitutes personal misconduct.

14. It is concluded that NCSU had just cause to suspend and subsequently dismiss Petitioner for personal misconduct.

15. It is concluded that Petitioner's evidence is insufficient to establish a prima facie case showing that NCSU unlawfully discriminated against Petitioner on the basis of his race in suspending and dismissing him for his refusal to attend a required medical examination.

16. It is concluded that Petitioner's evidence is insufficient to show that, in suspending and dismissing Petitioner, NCSU unlawfully retaliated against him for his involvement in the NCSU Physical Plant Employees Association or for his having filed a prior grievance and EEOC Charge on another employment-related matter.

17. It is concluded that the procedural aspects of Petitioner's suspension and dismissal conformed in all respects to the requirements of the State Personnel Act and interpreting regulations.

RECOMMENDATION

NCSU had just cause to suspend and dismiss Petitioner. Petitioner has not shown that NCSU exceeded its authority or jurisdiction, acted erroneously, failed to use proper procedure, failed to act as required by law or rule, or acted arbitrarily or capriciously. Petitioner has not shown that NCSU unlawfully discriminated or retaliated against him in his suspension and dismissal. Therefore, Petitioner is entitled to none of the requested relief. NCSU's final agency decision should be upheld. Within fifteen calendar days of NCSU's receipt of notice of the State Personnel Commission's final decision, Petitioner should be offered, in writing, reinstatement to comparable employment under the conditions as specified in George Worsley's letter of September 23, 1994 (Petitioner's Exhibit 10-A,B), with the added condition that Petitioner must indicate acceptance of that offer and conditions in writing to Mr. Worsley within fifteen calendar days of the date of receipt of the renewed offer. Without timely receipt by Mr. Worsley of such written acceptance, Petitioner's dismissal will remain effective.

ORDER

It is hereby ordered that the agency serve a copy of the Final Decision on the Office of Administrative Hearings, P.O. Drawer 27447, Raleigh, NC 27611-7447, in accordance with N.C. Gen. Stat. § 150B-36(b).

NOTICE

Before the State Personnel Commission makes the Final Decision, it is required by N.C. Gen. Stat. § 150B-36(a) to give each party an opportunity to file exceptions to this recommended decision, and to present written arguments to those in the agency who will make the Final Decision.

The State Personnel Commission is required by N.C. Gen. Stat. § 150B-36(b) to serve a copy of the Final Decision on all parties and to furnish a copy to the parties' attorney of record.

This the 30th day of June, 1995.

Robert R. Reilly
Administrative Law Judge

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

TITLE/MAJOR DIVISIONS OF THE NORTH CAROLINA ADMINISTRATIVE CODE

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

CUMULATIVE INDEX

Agency/Rule Citation	Proposed in Register	Proposed Effective Date	Fiscal Note		Effective Date	Other Information
			State	Local		
ACUPUNCTURE LICENSING BOARD						
21 NCAC 01 .0101	10:02 NCR 150	07/01/95				
.0201	10:07 NCR 585	10/01/95				
.0401 - .0402	10:02 NCR 150	07/01/95				
.0501	10:07 NCR 585	10/01/95				
.0701	10:07 NCR 585	10/01/95				
AGRICULTURE						
2 NCAC 34 .0904	10:04 NCR 228	08/01/95			N/A	Renoticed in 10:7
.0904	10:07 NCR 430	11/01/95				
CERTIFIED PUBLIC ACCOUNTANT EXAMINERS						
21 NCAC 08F .0105	10:04 NCR 255	08/01/95				
.0113	10:04 NCR 255	08/01/95				
08G .0401	10:04 NCR 255	08/01/95				
08J .0005	10:04 NCR 255	08/01/95				
.0008	10:04 NCR 255	08/01/95				
08M .0102	10:04 NCR 255	08/01/95				
.0104	10:04 NCR 255	08/01/95				
.0306	10:04 NCR 255	08/01/95				
.0401	10:04 NCR 255	08/01/95				
08N .0203	10:04 NCR 255	08/01/95				
.0302	10:04 NCR 255	08/01/95				
.0307	10:04 NCR 255	08/01/95				
CHIROPRACTIC EXAMINERS						
21 NCAC 10 .0203	10:04 NCR 261	08/01/95				
COMMUNITY COLLEGES						
23 NCAC 02C .0108	10:03 NCR 208	09/01/95				
.0210	10:07 NCR 587	01/01/96				
.0211	10:03 NCR 208	09/01/95				
.0301	10:07 NCR 587	01/01/96				
.0306	10:03 NCR 208	09/01/95				
02E .0403	10:07 NCR 587	01/01/96				
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4 NCAC 06C .0203	10:05 NCR 300	09/01/95				
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5 NCAC 05 .0001	10:01 NCR 12	07/01/95			07/01/95	
CULTURAL RESOURCES						
7 NCAC 02F .0002	10:01 NCR 12	07/01/95				
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15A NCAC 02B .0101	10:01 NCR 13					Correction to Notice
.0104	10:01 NCR 13					Correction to Notice
.0202	10:01 NCR 13					Correction to Notice
.0211	10:01 NCR 13					Correction to Notice
.0301	10:01 NCR 13					Correction to Notice
.0303	10:08 NCR 661	11/01/95				
.0304	10:04 NCR 246	01/01/96				
.0304	10:05 NCR 301	11/01/95				
.0308 - .0310	10:08 NCR 661	11/01/95				
.0308	10:08 NCR 661	02/01/96				
.0315 - .0316	10:08 NCR 661	11/01/95				
.0315	10:08 NCR 661	02/01/96				
.0316	10:04 NCR 246	01/01/96				
02D .0520	10:01 NCR 13	07/01/95	x	x		
.0531	10:01 NCR 13	07/01/95	x	x	07/01/95	

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			State	Local		
	.0902	10:01 NCR 13	07/01/95	x	x	07/01/95
	.0909	10:01 NCR 13	07/01/95	x	x	07/01/95
	.0952	10:01 NCR 13	07/01/95	x	x	07/01/95
	.1402	10:01 NCR 13	07/01/95	x	x	07/01/95
	.1406	10:01 NCR 13	07/01/95	x	x	
	.1409	10:01 NCR 13	07/01/95	x	x	
	.1701 - .1702	10:01 NCR 13	07/01/95	x	x	
	.1801 - .1803	10:01 NCR 13	07/01/95	x	x	
NPDES Permit		10:02 NCR 56				
04A	.0001	10:07 NCR 579	10/01/95			
	.0005	10:07 NCR 579	10/01/95			
04B	.0016	10:07 NCR 579	10/01/95			
	.0020	10:07 NCR 579	10/01/95			
	.0028	10:02 NCR 149	07/01/95			
	.0029 - .0030	10:07 NCR 579	10/01/95			
04C	.0007 - .0008	10:07 NCR 579	10/01/95			
	.0010	10:07 NCR 579	10/01/95			
04D	.0002 - .0003	10:07 NCR 579	10/01/95			
07H	.0208	10:03 NCR 197	12/01/95			
	.2201 - .2202	10:03 NCR 204	12/01/95			
	.2203	10:03 NCR 204	12/01/95	x		
	.2204 - .2205	10:03 NCR 204	12/01/95			
10B	.0115	10:06 NCR 338	10/01/95			
	.0202 - .0203	10:01 NCR 26	07/01/95			07/01/95
	.0202	10:04 NCR 249	08/01/95			
	.0214	10:01 NCR 26	07/01/95			07/01/95
10C	.0404	10:06 NCR 338	12/01/95			
	.0407	10:06 NCR 338	12/01/95			
10D	.0002 - .0003	10:01 NCR 26	07/01/95			07/01/95
	.0003	10:04 NCR 250	08/01/95			
	.0003	10:06 NCR 338	09/01/95			
10F	.0313	10:06 NCR 338	10/01/95			
	.0317	10:01 NCR 26	07/01/95			07/01/95
Wildlife Proclamation/Striped Bass		10:02 NCR 57	04/10/95			
		10:03 NCR 195	04/15/95			
13B	.0101	10:06 NCR 350	10/01/95			
	.0103	10:06 NCR 350	10/01/95			
	.0503	10:06 NCR 350	10/01/95			
	.0802 - .0829	10:06 NCR 350	10/01/95			
	.1627	10:06 NCR 350	10/01/95			
16A	.1001	10:07 NCR 582	01/01/96	x		
	.1002 - .1006	10:07 NCR 582	01/01/96			
18A	.2508	10:06 NCR 350	01/01/96			
	.2511	10:06 NCR 350	01/01/96			
	.2516 - .2519	10:06 NCR 350	01/01/96			
	.2521 - .2524	10:06 NCR 350	01/01/96			
	.2526	10:06 NCR 350	01/01/96			
	.2528 - .2535	10:06 NCR 350	01/01/96			
	.2537	10:06 NCR 350	01/01/96			
	.2540 - .2543	10:06 NCR 350	01/01/96			
19A	.0401	10:06 NCR 350	10/01/95			
	.0406	10:06 NCR 350	10/01/95			
	.0502	10:06 NCR 350	10/01/95			
19C	.0206	10:05 NCR 305	10/01/95	x		
19H	.0702	10:07 NCR 582	10/01/95	x		
24A	.0404	10:06 NCR 350	10/01/95	x		
FINAL DECISION LETTERS						
Voting Rights Act		10:01 NCR 02				
		10:03 NCR 194				
		10:05 NCR 298				
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Number 73	10:02 NCR	54			03/15/95	
Number 74	10:02 NCR	54			03/27/95	
Number 75	10:03 NCR	191			03/30/95	
Number 76	10:03 NCR	191			04/03/95	
Number 77	10:05 NCR	297			05/02/95	
Number 78	10:06 NCR	336			05/23/95	
Number 79	10:07 NCR	427			06/07/95	
Number 80	10:07 NCR	427			06/13/95	
Number 81	10:08 NCR	639			06/27/95	

HUMAN RESOURCES

10 NCAC 03D .1401	10:08 NCR	641	11/01/95	
03H .0108 - .0109	10:02 NCR	58	09/01/95	
.0206 - .0220	10:02 NCR	58	09/01/95	
.0306 - .0318	10:02 NCR	58	09/01/95	
.0407 - .0409	10:02 NCR	58	09/01/95	
.0505 - .0507	10:02 NCR	58	09/01/95	
.0510 - .0517	10:02 NCR	58	09/01/95	
.0605 - .0609	10:02 NCR	58	09/01/95	
.0705 - .0712	10:02 NCR	58	09/01/95	
.0810 - .0812	10:02 NCR	58	09/01/95	
.0903 - .0911	10:02 NCR	58	09/01/95	
.1003 - .1008	10:02 NCR	58	09/01/95	
.1105 - .1109	10:02 NCR	58	09/01/95	
.1130 - .1136	10:02 NCR	58	09/01/95	
.1150 - .1163	10:02 NCR	58	09/01/95	
.1204 - .1208	10:02 NCR	58	09/01/95	
.1210	10:02 NCR	58	09/01/95	
.1306 - .1308	10:02 NCR	58	09/01/95	
.1405 - .1406	10:02 NCR	58	09/01/95	
.1408 - .1410	10:02 NCR	58	09/01/95	
.1501 - .1503	10:02 NCR	58	09/01/95	
.1612 - .1613	10:02 NCR	58	09/01/95	
.1703 - .1704	10:02 NCR	58	09/01/95	
.1804 - .1807	10:02 NCR	58	09/01/95	
.2001	10:02 NCR	58	09/01/95	
.2101 - .2110	10:02 NCR	58	09/01/95	
.2201 - .2212	10:02 NCR	58	09/01/95	
.2301 - .2308	10:02 NCR	58	09/01/95	
.2401 - .2402	10:02 NCR	58	09/01/95	
.2501 - .2506	10:02 NCR	58	09/01/95	
.2601 - .2607	10:02 NCR	58	09/01/95	
.2701	10:02 NCR	58	09/01/95	
.2801 - .2802	10:02 NCR	58	09/01/95	
.2901 - .2902	10:02 NCR	58	09/01/95	
.3001 - .3005	10:02 NCR	58	09/01/95	
.3011 - .3016	10:02 NCR	58	09/01/95	
.3021 - .3032	10:02 NCR	58	09/01/95	
.3101 - .3104	10:02 NCR	58	09/01/95	
.3201 - .3202	10:02 NCR	58	09/01/95	
.3301 - .3302	10:02 NCR	58	09/01/95	
.3401 - .3404	10:02 NCR	58	09/01/95	
03L .0901 - .0907	10:08 NCR	641	02/01/96	
.1001 - .1007	10:08 NCR	641	02/01/96	
.1101 - .1112	10:08 NCR	641	02/01/96	
.1201 - .1202	10:08 NCR	641	02/01/96	
.1301 - .1303	10:08 NCR	641	02/01/96	
.1401 - .1402	10:08 NCR	641	02/01/96	
03M .0202 - .0205	10:08 NCR	641	02/01/96	
.0207	10:08 NCR	641	02/01/96	
14B .0501 - .0503	10:07 NCR	430	05/01/96	
.0505 - .0509	10:07 NCR	430	05/01/96	

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14K .0101 - .0103	10:07 NCR 430	05/01/96				
.0201 - .0219	10:07 NCR 430	05/01/96				
.0301 - .0310	10:07 NCR 430	05/01/96				
.0312 - .0315	10:07 NCR 430	05/01/96				
.0317 - .0324	10:07 NCR 430	05/01/96				
.0326 - .0329	10:07 NCR 430	05/01/96				
.0333 - .0348	10:07 NCR 430	05/01/96				
.0350 - .0365	10:07 NCR 430	05/01/96				
.0401 - .0408	10:07 NCR 430	05/01/96				
14L .0101 - .0106	10:07 NCR 430	05/01/96				
.0201 - .0203	10:07 NCR 430	05/01/96				
.0301 - .0308	10:07 NCR 430	05/01/96				
.0310	10:07 NCR 430	05/01/96				
.0401 - .0407	10:07 NCR 430	05/01/96				
.0601 - .0606	10:07 NCR 430	05/01/96				
.0609	10:07 NCR 430	05/01/96				
.0611 - .0615	10:07 NCR 430	05/01/96				
.0701 - .0709	10:07 NCR 430	05/01/96				
.0711 - .0712	10:07 NCR 430	05/01/96				
14M .0101 - .0113	10:07 NCR 430	05/01/96				
.0501 - .0511	10:07 NCR 430	05/01/96				
.0601 - .0602	10:07 NCR 430	05/01/96				
.0604	10:07 NCR 430	05/01/96				
.0606	10:07 NCR 430	05/01/96				
.0608 - .0612	10:07 NCR 430	05/01/96				
.0614 - .0615	10:07 NCR 430	05/01/96				
.0617 - .0621	10:07 NCR 430	05/01/96				
.0701 - .0716	10:07 NCR 430	05/01/96				
14N .0101 - .0107	10:07 NCR 430	05/01/96				
.0201 - .0207	10:07 NCR 430	05/01/96				
.0301 - .0307	10:07 NCR 430	05/01/96				
.0401 - .0406	10:07 NCR 430	05/01/96				
.0501 - .0507	10:07 NCR 430	05/01/96				
.0701	10:07 NCR 430	05/01/96				
.0703 - .0705	10:07 NCR 430	05/01/96				
.0801 - .0811	10:07 NCR 430	05/01/96				
.0901 - .0905	10:08 NCR 656	05/01/96				
14O .0301 - .0314	10:07 NCR 430	05/01/96				
.0401 - .0409	10:07 NCR 430	05/01/96				
.0411 - .0416	10:07 NCR 430	05/01/96				
.0501 - .0505	10:07 NCR 430	05/01/96				
.0601 - .0609	10:07 NCR 430	05/01/96				
.0611 - .0615	10:07 NCR 430	05/01/96				
.0617 - .0618	10:07 NCR 430	05/01/96				
.0701 - .0710	10:07 NCR 430	05/01/96				
14V .0101 - .0104	10:07 NCR 430	05/01/96				
.0201 - .0208	10:07 NCR 430	05/01/96				
.0301 - .0304	10:07 NCR 430	05/01/96				
.0401 - .0405	10:07 NCR 430	05/01/96				
.0501 - .0505	10:07 NCR 430	05/01/96				
.0601 - .0604	10:07 NCR 430	05/01/96				
.0701 - .0712	10:07 NCR 430	05/01/96				
.0801 - .0805	10:07 NCR 430	05/01/96				
.1101 - .1103	10:07 NCR 430	05/01/96				
.1201 - .1203	10:07 NCR 430	05/01/96				
.1301 - .1303	10:07 NCR 430	05/01/96				
.1401 - .1403	10:07 NCR 430	05/01/96				
.1501 - .1504	10:07 NCR 430	05/01/96				
.2101 - .2104	10:07 NCR 430	05/01/96				
.2201 - .2204	10:07 NCR 430	05/01/96				
.2301 - .2306	10:07 NCR 430	05/01/96				
.2401 - .2404	10:07 NCR 430	05/01/96				
.2501 - .2505	10:07 NCR 430	05/01/96				

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.3201 - .3203	10:07 NCR 430	05/01/96				
.3301 - .3303	10:07 NCR 430	05/01/96				
.3401 - .3403	10:07 NCR 430	05/01/96				
.3501 - .3503	10:07 NCR 430	05/01/96				
.3601 - .3604	10:07 NCR 430	05/01/96				
.3701 - .3703	10:07 NCR 430	05/01/96				
.3801 - .3803	10:07 NCR 430	05/01/96				
.3901 - .3903	10:07 NCR 430	05/01/96				
.4001 - .4003	10:07 NCR 430	05/01/96				
.4101 - .4104	10:07 NCR 430	05/01/96				
.5001 - .5002	10:07 NCR 430	05/01/96				
.5101 - .5104	10:07 NCR 430	05/01/96				
.5201 - .5204	10:07 NCR 430	05/01/96				
.5301 - .5303	10:07 NCR 430	05/01/96				
.5401 - .5403	10:07 NCR 430	05/01/96				
.5501 - .5503	10:07 NCR 430	05/01/96				
.5601 - .5603	10:07 NCR 430	05/01/96				
.5701 - .5703	10:07 NCR 430	05/01/96				
.5801 - .5804	10:07 NCR 430	05/01/96				
.5901 - .5903	10:07 NCR 430	05/01/96				
.6001 - .6003	10:07 NCR 430	05/01/96				
.6101 - .6103	10:07 NCR 430	05/01/96				
.6201 - .6202	10:07 NCR 430	05/01/96				
.6301 - .6303	10:07 NCR 430	05/01/96				
.6401 - .6403	10:07 NCR 430	05/01/96				
.6501 - .6503	10:07 NCR 430	05/01/96				
.6601 - .6603	10:07 NCR 430	05/01/96				
.6701 - .6702	10:07 NCR 430	05/01/96				
.6801 - .6802	10:07 NCR 430	05/01/96				
.6901 - .6903	10:07 NCR 430	05/01/96				
18A .0124 - .0128	10:07 NCR 430	05/01/96				
.0130	10:07 NCR 430	05/01/96				
.0132 - .0133	10:07 NCR 430	05/01/96				
.0135 - .0136	10:07 NCR 430	05/01/96				
18I .0114 - .0120	10:07 NCR 430	05/01/96				
18J .0110 - .0119	10:07 NCR 430	05/01/96				
.0212 - .0213	10:07 NCR 430	05/01/96				
.0304 - .0311	10:07 NCR 430	05/01/96				
.0507 - .0511	10:08 NCR 656	05/01/96				
.0601 - .0604	10:07 NCR 430	05/01/96				
.0701 - .0715	10:07 NCR 430	05/01/96				
.0801 - .0805	10:07 NCR 430	05/01/96				
.0803	10:02 NCR 118	07/01/95			07/01/95	
18K .0109 - .0116	10:07 NCR 430	05/01/96				
.0262 - .0263	10:08 NCR 656	05/01/96				
18L .0107 - .0108	10:07 NCR 430	05/01/96				
.0223 - .0224	10:07 NCR 430	05/01/96				
.0331 - .0336	10:07 NCR 430	05/01/96				
.0338 - .0339	10:07 NCR 430	05/01/96				
.0428 - .0434	10:07 NCR 430	05/01/96				
.0504	10:07 NCR 430	05/01/96				
.0511	10:07 NCR 430	05/01/96				
.0513	10:07 NCR 430	05/01/96				
.0601 - .0607	10:08 NCR 656	05/01/96				
.0701 - .0705	10:07 NCR 430	05/01/96				
.0707	10:07 NCR 430	05/01/96				
.0801	10:07 NCR 430	05/01/96				
.0803 - .0809	10:07 NCR 430	05/01/96				
.0901 - .0904	10:07 NCR 430	05/01/96				
.1001 - .1006	10:07 NCR 430	05/01/96				
.1101 - .1103	10:07 NCR 430	05/01/96				
.1105 - .1107	10:07 NCR 430	05/01/96				

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.1301 - .1309	10:07 NCR 430	05/01/96				
.1401 - .1403	10:07 NCR 430	05/01/96				
.1501 - .1525	10:07 NCR 430	05/01/96				
18M .0107 - .0110	10:07 NCR 430	05/01/96				
.0206 - .0213	10:07 NCR 430	05/01/96				
.0304 - .0307	10:07 NCR 430	05/01/96				
.0406 - .0409	10:07 NCR 430	05/01/96				
.0505 - .0506	10:07 NCR 430	05/01/96				
.0607 - .0608	10:07 NCR 430	05/01/96				
.0701	10:07 NCR 430	05/01/96				
.0703 - .0706	10:07 NCR 430	05/01/96				
.0708 - .0714	10:07 NCR 430	05/01/96				
.0801 - .0803	10:07 NCR 430	05/01/96				
.0817 - .0819	10:07 NCR 430	05/01/96				
.0824 - .0838	10:07 NCR 430	05/01/96				
.0901 - .0908	10:07 NCR 430	05/01/96				
.1001 - .1009	10:07 NCR 430	05/01/96				
.1101 - .1106	10:07 NCR 430	05/01/96				
.1203 - .1204	10:07 NCR 430	05/01/96				
.1302 - .1305	10:07 NCR 430	05/01/96				
.1401 - .1403	10:07 NCR 430	05/01/96				
.1405 - .1410	10:07 NCR 430	05/01/96				
18N .0105 - .0110	10:07 NCR 430	05/01/96				
.0204 - .0212	10:07 NCR 430	05/01/96				
.0305 - .0306	10:07 NCR 430	05/01/96				
.0601 - .0605	10:08 NCR 656	05/01/96				
.0701 - .0709	10:08 NCR 656	05/01/96				
18O .0517 - .0524	10:08 NCR 656	05/01/96				
18P .0901 - .0903	10:07 NCR 430	05/01/96				
.1001 - .1004	10:07 NCR 430	05/01/96				
18Q .0284	10:07 NCR 430	05/01/96				
.0286 - .0287	10:07 NCR 430	05/01/96				
.0520 - .0521	10:07 NCR 430	05/01/96				
.0538 - .0552	10:07 NCR 430	05/01/96				
26B .0110	10:08 NCR 660	10/01/95				
.0124	10:02 NCR 118	07/01/95	x		07/01/95	
26H .0302	10:04 NCR 228	08/01/95	x			
.0304 - .0305	10:04 NCR 228	08/01/95	x			
.0308 - .0309	10:04 NCR 228	08/01/95	x			
26H .0213	10:02 NCR 118	07/01/95			07/01/95	
41F .0706	10:03 NCR 196	08/01/95				
.0812	10:03 NCR 196	08/01/95				
INSURANCE						
11 NCAC 06A .0812	10:04 NCR 246	08/01/95				
JUSTICE						
12 NCAC 04E .0104	10:07 NCR 573	10/01/95				
07D .0201	10:07 NCR 575	10/01/95				
.0301	10:07 NCR 575	10/01/95				
.0401	10:07 NCR 575	10/01/95				
.0701	10:07 NCR 575	10/01/95				
.0706	10:07 NCR 575	10/01/95				
.0801	10:07 NCR 575	10/01/95				
.0806	10:07 NCR 575	10/01/95				
.0902	10:07 NCR 575	10/01/95				
.0904	10:07 NCR 575	10/01/95				
09A .0204	10:02 NCR 122	08/01/95				
09B .0113	10:02 NCR 122	08/01/95				
.0201 - .0202	10:02 NCR 122	08/01/95				
.0205 - .0206	10:02 NCR 122	08/01/95				
.0210	10:02 NCR 122	08/01/95				

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	.0226 - .0228	10:02 NCR 122	08/01/95	
	.0232 - .0233	10:02 NCR 122	08/01/95	
09C	.0401	10:02 NCR 122	08/01/95	
	.0601	10:02 NCR 122	08/01/95	
09D	.0102	10:02 NCR 122	08/01/95	
	.0104 - .0106	10:02 NCR 122	08/01/95	
11	.0210	10:05 NCR 301	09/01/95	

LABOR

13	NCAC	10:01 NCR 10	01/01/96		Notice on Subject Matter
		10:01 NCR 12	01/01/96		Notice on Subject Matter
		10:02 NCR 149	10/01/95		Notice on Subject Matter
		10:02 NCR 149	01/01/96		Notice on Subject Matter
		10:02 NCR 149	01/01/96		Notice on Subject Matter
		10:02 NCR 149	02/01/96		Notice on Subject Matter
		10:03 NCR 196	01/01/96		Notice on Subject Matter
		10:03 NCR 197	01/01/96		Notice on Subject Matter
12	.0101	10:02 NCR 142	08/01/95		
	.0303 - .0315	10:02 NCR 142	08/01/95		
	.0501 - .0502	10:02 NCR 142	08/01/95		
	.0803 - .0808	10:02 NCR 142	08/01/95		

LIST OF RULES CODIFIED

10:02 NCR 167	Rules Filed 03/95
10:04 NCR 272	Rules Filed 04/95

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21	NCAC 32H	.0102	10:02 NCR 151	07/01/96
		.0201	10:02 NCR 151	07/01/96
		.0203	10:02 NCR 151	07/01/96
		.0408	10:02 NCR 151	07/01/96
		.0506	10:02 NCR 151	07/01/96
		.0601	10:02 NCR 151	07/01/95
		.0602	10:02 NCR 151	07/01/96
		.0801	10:02 NCR 151	07/01/96
		.1001	10:02 NCR 151	07/01/96
32I	.0003 - .0004	10:02 NCR 151	07/01/95	

NURSING HOME ADMINISTRATORS

21	NCAC 37	.0101	10:04 NCR 262	08/01/95
		.0302	10:03 NCR 206	08/01/95
		.0404	10:03 NCR 206	08/01/95
		.0502	10:03 NCR 206	08/01/95
		.0603	10:03 NCR 206	08/01/95
		.0904	10:04 NCR 262	08/01/95
		.0912	10:03 NCR 206	08/01/95
		.0914	10:03 NCR 206	08/01/95

PHYSICAL THERAPY EXAMINERS

21	NCAC 48C	.0103	10:08 NCR 671	10/01/95
	48D	.0006	10:08 NCR 671	10/01/95
		.0008	10:08 NCR 671	10/01/95
		.0011	10:08 NCR 671	10/01/95
	48E	.0110	10:08 NCR 671	10/01/95
	48F	.0002	10:08 NCR 671	10/01/95
	48G	.0501 - .0516	10:08 NCR 671	10/01/95
		.0601	10:08 NCR 671	10/01/95
	48H	.0104	10:08 NCR 671	10/01/95
		.0701 - .0704	10:08 NCR 671	10/01/95

PLUMBING, HEATING & FIRE SPRINKLER CONTRACTORS

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Agency/Rule Citation	Proposed in Register	Proposed Effective Date	Fiscal Note		Effective Date	Other Information
			State	Local		
21 NCAC 50 .0402	10:01 NCR 39	09/01/95				
.0505	10:01 NCR 39	09/01/95				
PROFESSIONAL COUNSELORS						
21 NCAC 53 .0204 - .0211	10:01 NCR 40	07/01/95			07/01/95	
.0301	10:01 NCR 40	07/01/95			07/01/95	
.0305 - .0309	10:01 NCR 40	07/01/95			07/01/95	
.0310	10:01 NCR 40	07/01/95				
.0403 - .0405	10:01 NCR 40	07/01/95			07/01/95	
.0601 - .0604	10:01 NCR 40	07/01/95			07/01/95	
PUBLIC EDUCATION						
16 NCAC 06D .0106	10:07 NCR 584	11/01/95				
REAL ESTATE COMMISSION						
21 NCAC 58A .0110	10:02 NCR 157	07/01/95			07/01/95	
.0403	10:04 NCR 263	08/01/95				
.0503	10:04 NCR 263	08/01/95				
.0504 - .0506	10:02 NCR 157	07/01/95			07/01/95	
.0505	10:04 NCR 263	08/01/95				
.1703	10:02 NCR 157	07/01/95			07/01/95	
.1707 - .1708	10:02 NCR 157	07/01/95			07/01/95	
.1710 - .1711	10:02 NCR 157	07/01/95			07/01/95	
58E .0103	10:02 NCR 157	07/01/95			07/01/95	
.0203 - .0204	10:02 NCR 157	07/01/95			07/01/95	
.0303 - .0305	10:02 NCR 157	07/01/95			07/01/95	
.0406 - .0407	10:02 NCR 157	07/01/95			07/01/95	
.0506	10:02 NCR 157	07/01/95			07/01/95	
.0515	10:02 NCR 157	07/01/95			07/01/95	
REFRIGERATION EXAMINERS						
21 NCAC 60 .0102	10:04 NCR 264	08/01/95				
.0204	10:04 NCR 264	08/01/95				
.0314	10:04 NCR 264	08/01/95				
.1102	10:04 NCR 264	08/01/95				
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Tax Review Board	10:01 NCR 03					
Tax Review Board	10:07 NCR 428					
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18 NCAC 06 .1205 - .1206	10:05 NCR 306	09/01/95				
.1208	10:05 NCR 306	09/01/95				
.1302 - .1305	10:05 NCR 306	09/01/95				
.1313	10:05 NCR 306	09/01/95				
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25 NCAC 01C .0207	10:04 NCR 264	08/01/95				
.0402 - .0408	10:04 NCR 264	08/01/95				
01D .0201	10:04 NCR 264	08/01/95				
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.0207	10:04 NCR 264	08/01/95				
.0211	10:04 NCR 264	08/01/95				
.0509	10:07 NCR 588	10/01/95				
.0808	10:04 NCR 264	08/01/95				
.1001	10:04 NCR 264	08/01/95				
.1009	10:04 NCR 264	08/01/95				
.1201	10:04 NCR 264	08/01/95				
.1204	10:04 NCR 264	08/01/95				
.1401	10:04 NCR 264	08/01/95				
.1801 - .1802	10:04 NCR 264	08/01/95				
.2001	10:04 NCR 264	08/01/95				

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Agency/Rule Citation	Proposed in Register	Proposed Effective Date	Fiscal Note		Effective Date	Other Information
			State	Local		

01E .0804	10:04 NCR 264	08/01/95				
.1402 - .1409	10:07 NCR 588	10/01/95				
.1410 - .1411	10:07 NCR 588	10/01/95				
01J .0604 - .0606	10:07 NCR 588	10/01/95				
.0608	10:07 NCR 588	10/01/95				
.0610 - .0612	10:07 NCR 588	10/01/95				
.0613 - .0615	10:07 NCR 588	10/01/95				
01K .0312	10:04 NCR 264	08/01/95				

TRANSPORTATION

19A NCAC 02D .0801	10:04 NCR 254	09/01/95				
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BARCLAYS OFFICIAL NORTH CAROLINA ADMINISTRATIVE CODE - 1995

DESCRIPTION	CODE	ONE-TIME PURCHASE PRICE	ANNUAL SUBSCRIPTION PRICE
Title 1 - Dept. of Administration - Full Title	201 00 00	\$63.00	\$90.00
Division of Purchase & Contract	201 10 05	\$21.00	\$30.00
Federal Block Grant Funds	201 10 33	\$17.50	\$25.00
Title 2 - Dept. of Agriculture - Full Title	202 00 00	\$98.00	\$140.00
Food & Drug Protection Division	202 15 09	\$28.00	\$40.00
Structural Pest Control Committee	202 15 34	\$21.00	\$30.00
Agricultural Markets	202 15 43	\$21.00	\$30.00
Plant Industry	202 15 48	\$21.00	\$30.00
Animal Industry	202 15 52	\$21.00	\$30.00
Title 3 - Dept. of State Auditor - Full Title	203 00 00	\$7.00	\$10.00
Title 4 - Dept. of Commerce - Full Title	204 00 00	\$87.50	\$125.00
Alcoholic Beverage Control Commission	204 15 02	\$12.00	\$40.00
Banking Commission	204 15 03	\$24.50	\$35.00
Credit Union Division	204 15 06	\$14.00	\$20.00
Savings & Loan Division	204 15 09	\$14.00	\$20.00
Industrial Commission/Workers Compensation	204 15 10	\$14.00	\$20.00
Savings Institutions Division	204 15 16	\$24.50	\$35.00
Title 5 - Dept. of Corrections - Full Title	205 00 00	\$56.00	\$80.00
Division of Prisons	205 15 02	\$24.50	\$35.00
Title 6 - Council of State - Full Title	206 00 00	\$21.00	\$30.00
Title 7 - Dept. of Cultural Resources - Full Title	207 00 00	\$21.00	\$30.00
Title 8 - State Board of Elections - Full Title	208 00 00	\$7.00	\$10.00
Title 9 - Offices of the Governor & Lt. Governor - Full Title	209 00 00	\$31.50	\$45.00
Title 10 - Dept. of Human Resources - Full Title	210 00 00	\$346.50	\$495.00
Licensing of Health Facilities	210 20 10	\$45.50	\$65.00
Detention Facilities	210 20 20	\$31.50	\$45.00
Mental Health & Rehabilitation Services	210 20 30	\$77.00	\$110.00
Social Services	210 20 40	\$119.00	\$170.00
Children Services/Day Care	210 20 41	\$31.50	\$45.00
Services for the Aging	210 20 42	\$31.50	\$45.00
Services for the Blind	210 20 43	\$28.00	\$40.00
Services for the Deaf & Hard of Hearing	210 20 44	\$17.50	\$25.00
Employment Opportunities	210 20 45	\$35.00	\$50.00
Title 11 - Dept. of Insurance - Full Title	211 00 00	\$63.00	\$90.00
Insurance	211 10 01	\$56.00	\$80.00
Consumer Services	211 10 04	\$24.50	\$35.00
Fire & Rescue Services	211 10 05	\$17.50	\$25.00
Agent Services	211 10 06	\$28.00	\$40.00
Engineering & Building Codes	211 10 08	\$21.00	\$30.00
Title 12 - Dept. of Justice - Full Title	212 00 00	\$63.00	\$90.00
Private Protective Services	212 10 07	\$21.00	\$30.00
Police & Sheriff's Education & Training Standards	212 10 09	\$31.50	\$45.00
NC Alarm Systems Licensing Board	212 10 11	\$17.50	\$25.00
Title 13 - Dept. of Labor - Full Title	213 00 00	\$77.00	\$110.00
Mine & Quarry Safety	213 15 06	\$14.00	\$20.00
General Safety/OSHA	213 20 00	\$31.50	\$45.00
Wage & Hour Rules	213 15 12	\$14.00	\$20.00
Boiler & Pressure Vessel Safety	213 15 13	\$14.00	\$20.00
Apprenticeship & Training	213 15 14	\$14.00	\$20.00
Elevator & Amusement Device Safety	213 15 15	\$14.00	\$20.00
Title 14A - Dept. of Crime Control & Public Safety - Full Title	214 00 00	\$31.50	\$45.00
Alcohol Law Enforcement	214 00 08	\$17.50	\$25.00
Victims Compensation Fund	214 00 11	\$14.00	\$20.00
Title 15A - Dept. of Environ., Health, & Nat. Resources - Full Title	215 00 00	\$276.50	\$395.00
Environmental Management	215 15 00	\$115.50	\$165.00
Air Quality	215 15 10	\$49.00	\$70.00
Water Quality	215 15 20	\$49.00	\$70.00
Land & Waste Management	215 15 30	\$56.00	\$80.00
Solid Waste Management	215 15 31	\$35.00	\$50.00
Underground Storage Tanks	215 15 32	\$17.50	\$25.00

DESCRIPTION	CODE	ONE-TIME PURCHASE PRICE	ANNUAL SUBSCRIPTION PRICE
Coastal Management	215 15 40	\$31.50	\$45.00
Environmental Health	215 25 00	\$105.00	\$150.00
Radiation/Nuclear Waste	215 25 10	\$42.00	\$60.00
Sanitation	215 25 20	\$35.00	\$50.00
Public Health	215 25 30	\$59.50	\$85.00
Intoxilizer & Breathalyser	215 25 31	\$17.50	\$25.00
Title 16 - Dept. of Public Instruction - Full Title	216 00 00	\$21.00	\$30.00
Elementary & Secondary Education	216 10 06	\$21.00	\$30.00
Title 17 - Dept. of Revenue - Full Title	217 00 00	\$91.00	\$130.00
Taxes on Individuals	217 15 10	\$31.50	\$45.00
Taxes on Business	217 15 20	\$56.00	\$80.00
Sales & Use Tax Division	217 15 27	\$31.50	\$45.00
Motor Fuels Tax Division	217 15 29	\$21.00	\$30.00
Title 18 - Secretary of State - Full Title	218 00 00	\$21.00	\$30.00
Securities Division	218 10 06	\$21.00	\$30.00
Title 19A - Dept. of Transportation - Full Title	219 00 00	\$63.00	\$90.00
Division of Highways	219 10 02	\$28.00	\$40.00
Division of Motor Vehicles	219 10 03	\$35.00	\$50.00
Title 20 - Dept. of the State Treasurer - Full Title	220 00 00	\$31.50	\$45.00
Title 21 - Occupational Licensing Boards - Full Title	221 00 00	\$143.50	\$205.00
Title 22 - Administrative Procedures Act - Repealed	222 00 00	\$0.00	\$0.00
Title 23 - Dept. of Community Colleges - Full Title	223 00 00	\$7.00	\$10.00
Title 24 - Independent Agencies - Full Title	224 00 00	\$7.00	\$10.00
Title 25 - Office of State Personnel - Full Title	225 00 00	\$42.00	\$60.00
Title 26 - Office of Administrative Hearings - Full Title	226 00 00	\$7.00	\$10.00
Title 27 - North Carolina State Bar - Full Title	227 00 00	\$42.00	\$60.00
North Carolina Administrative Code - Full Code (Add \$85.00 Shipping and Handling)	299 99 98	\$375.00	\$750.00
CD-ROM North Carolina Administrative Code	266 00 00	- -	\$750.00
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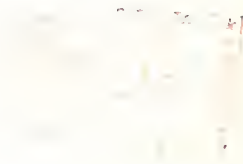
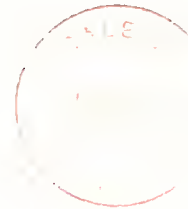
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