

# NORTH CAROLINA

## REGISTER

## IN THIS ISSUE



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This issue contains documents officially filed through September 10, 2004.

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<http://oahnt.oah.state.nc.us/register/CI.pdf>

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**NORTH CAROLINA ADMINISTRATIVE CODE CLASSIFICATION SYSTEM**

*The North Carolina Administrative Code (NCAC) has four major classifications of rules. Three of these, titles, chapters, and sections are mandatory. The major classification 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. Subchapters are optional classifications to be used by agencies when appropriate.*

<b>NCAC TITLES</b>		<b>TITLE 21 LICENSING BOARDS</b>	<b>TITLE 24 INDEPENDENT AGENCIES</b>
1	ADMINISTRATION	1 Acupuncture	1 Housing Finance
2	AGRICULTURE & CONSUMER SERVICES	2 Architecture	2 Agricultural Finance Authority
3	AUDITOR	3 Athletic Trainer Examiners	3 Safety & Health Review Board
4	COMMERCE	4 Auctioneers	4 Reserved
5	CORRECTION	6 Barber Examiners	5 State Health Plan Purchasing Alliance Board
6	COUNCIL OF STATE	8 Certified Public Accountant Examiners	
7	CULTURAL RESOURCES	10 Chiropractic Examiners	
8	ELECTIONS	11 Employee Assistance Professionals	
9	GOVERNOR	12 General Contractors	
10A	HEALTH AND HUMAN SERVICES	14 Cosmetic Art Examiners	
11	INSURANCE	16 Dental Examiners	
12	JUSTICE	17 Dietetics/Nutrition	
13	LABOR	18 Electrical Contractors	
14A	CRIME CONTROL & PUBLIC SAFETY	19 Electrolysis	
15A	ENVIRONMENT & NATURAL RESOURCES	20 Foresters	
16	PUBLIC EDUCATION	21 Geologists	
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**Note:** Title 21 contains the chapters of the various occupational licensing boards and Title 24 contains the chapters of independent agencies.

**NORTH CAROLINA REGISTER**  
 Publication Schedule for January 2004 – December 2004

FILING DEADLINES			NOTICE OF TEXT		PERMANENT RULE			TEMPORARY RULES
Volume & issue number	Issue date	Last day for filing	Earliest date for public hearing	End of required comment period	Deadline to submit to RRC for review at next meeting	Earliest Eff. Date of Permanent Rule	Delayed Eff. Date of Permanent Rule (first legislative day of the next regular session)	270 <sup>th</sup> day from publication in the Register
18:13	01/02/04	12/08/03	01/17/04	03/02/04	03/22/04	05/01/04	05/10/04	09/28/04
18:14	01/15/04	12/19/03	01/30/04	03/15/04	03/22/04	05/01/04	05/10/04	10/11/04
18:15	02/02/04	01/09/04	02/17/04	04/02/04	04/20/04	06/01/04	01/26/05	10/29/04
18:16	02/16/04	01/26/04	03/02/04	04/16/04	04/20/04	06/01/04	01/26/05	11/12/04
18:17	03/01/04	02/09/04	03/16/04	04/30/04	05/20/04	07/01/04	01/26/05	11/26/04
18:18	03/15/04	02/23/04	03/30/04	05/14/04	05/20/04	07/01/04	01/26/05	12/10/04
18:19	04/01/04	03/11/04	04/16/04	06/01/04	06/21/04	08/01/04	01/26/05	12/27/04
18:20	04/15/04	03/24/04	04/30/04	06/14/04	06/21/04	08/01/04	01/26/05	01/10/05
18:21	05/03/04	04/12/04	05/18/04	07/02/04	07/20/04	09/01/04	01/26/05	01/28/05
18:22	05/17/04	04/26/04	06/01/04	07/16/04	07/20/04	09/01/04	01/26/05	02/11/05
18:23	06/01/04	05/10/04	06/16/04	08/02/04	08/20/04	10/01/04	01/26/05	02/26/05
18:24	06/15/04	05/24/04	06/30/04	08/16/04	08/20/04	10/01/04	01/26/05	03/12/05
19:01	07/01/04	06/10/04	07/16/04	08/30/04	09/20/04	11/01/04	01/26/05	03/28/05
19:02	07/15/04	06/23/04	07/30/04	09/13/04	09/20/04	11/01/04	01/26/05	04/11/05
19:03	08/02/04	07/12/04	08/17/04	10/01/04	10/20/04	12/01/04	01/26/05	04/29/05
19:04	08/16/04	07/26/04	08/31/04	10/15/04	10/20/04	12/01/04	01/26/05	05/13/05
19:05	09/01/04	08/11/04	09/16/04	11/01/04	11/22/04	01/01/05	01/26/05	05/29/05
19:06	09/15/04	08/24/04	09/30/04	11/15/04	11/22/04	01/01/05	01/26/05	06/12/05
19:07	10/01/04	09/10/04	10/16/04	11/30/04	12/20/04	02/01/05	05/00/06	06/28/05
19:08	10/15/04	09/24/04	10/30/04	12/14/04	12/20/04	02/01/05	05/00/06	07/12/05
19:09	11/01/04	10/11/04	11/16/04	12/31/04	01/20/05	03/01/05	05/00/06	07/29/05
19:10	11/15/04	10/22/04	11/30/04	01/14/05	01/20/05	03/01/05	05/00/06	08/12/05
19:11	12/01/04	11/05/04	12/16/04	01/31/05	02/21/05	04/01/05	05/00/06	08/28/05
19:12	12/15/04	11/22/04	12/30/04	02/14/05	02/21/05	04/01/05	05/00/06	09/11/05

## EXPLANATION OF THE PUBLICATION SCHEDULE

This Publication Schedule is prepared by the Office of Administrative Hearings 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 2C .0302 and the Rules of Civil Procedure, Rule 6.

### GENERAL

The North Carolina Register shall be published twice a month and contains the following information submitted for publication by a state agency:

- (1) temporary rules;
- (2) notices of rule-making proceedings;
- (3) text of proposed rules;
- (4) text of permanent rules approved by the Rules Review Commission;
- (5) notices of receipt of a petition for municipal incorporation, as required by G.S. 120-165;
- (6) Executive Orders of the Governor;
- (7) final decision letters from the U.S. Attorney General concerning changes in laws affecting voting in a jurisdiction subject of Section 5 of the Voting Rights Act of 1965, as required by G.S. 120-30.9H;
- (8) orders of the Tax Review Board issued under G.S. 105-241.2; and
- (9) other information the Codifier of Rules determines to be helpful to the public.

**COMPUTING TIME:** In computing time in the schedule, the day of publication of the North Carolina Register is not included. The last day of the period so computed is included, unless it is a Saturday, Sunday, or State holiday, in which event the period runs until the preceding day which is not a Saturday, Sunday, or State holiday.

### FILING DEADLINES

**ISSUE DATE:** The Register is published on the first and fifteen of each month if the first or fifteenth of the month is not a Saturday, Sunday, or State holiday for employees mandated by the State Personnel Commission. If the first or fifteenth of any month is a Saturday, Sunday, or a holiday for State employees, the North Carolina Register issue for that day will be published on the day of that month after the first or fifteenth that is not a Saturday, Sunday, or holiday for State employees.

**LAST DAY FOR FILING:** The last day for filing for any issue is 15 days before the issue date excluding Saturdays, Sundays, and holidays for State employees.

### NOTICE OF TEXT

**EARLIEST DATE FOR PUBLIC HEARING:** The hearing date shall be at least 15 days after the date a notice of the hearing is published.

**END OF REQUIRED COMMENT PERIOD:** An agency shall accept comments on the text of a proposed rule for at least 60 days after the text is published or until the date of any public hearings held on the proposed rule, whichever is longer.

**DEADLINE TO SUBMIT TO THE RULES REVIEW COMMISSION:** The Commission shall review a rule submitted to it on or before the twentieth of a month by the last day of the next month.

**FIRST LEGISLATIVE DAY OF THE NEXT REGULAR SESSION OF THE GENERAL ASSEMBLY:** This date is the first legislative day of the next regular session of the General Assembly following approval of the rule by the Rules Review Commission. See G.S. 150B-21.3, Effective date of rules.

**EXECUTIVE ORDER NO. 65  
PROCLAMATION OF STATE OF EMERGENCY  
BY THE GOVERNOR OF THE STATE OF NORTH CAROLINA**

Section 1. I have determined that a state of emergency, as defined in N.C.G.S. § 14-288.1(10), exists in the State of North Carolina, due to Hurricane Frances, which began on September 1, 2004, and has caused flooding and tornadoes throughout regions of the State.

Section 2. Pursuant to N.C.G.S. § 14-288.15, I, therefore, proclaim the existence of a state of emergency in the State.

Section 3. I hereby order all state and local government entities and agencies to cooperate in the implementation of the provisions of this proclamation and the provisions of the North Carolina Emergency Operations Plan.

Section 4. I hereby delegate to Bryan E. Beatty, Secretary of Crime Control and Public Safety, and/or his designee, all power and authority granted to me and required of me by Chapter 166A, and Article 36A of Chapter 14 of the General Statutes for the purpose of implementing the said Emergency Operations Plan and to take such further action as is necessary to promote and secure the safety and protection of the populace in the State.

Section 5. Further, Bryan E. Beatty, Secretary of Crime Control and Public Safety, as chief coordinating officer for the State of North Carolina, shall exercise the powers prescribed in N.C.G.S. § 143B-476.

Section 6. I hereby order this proclamation: (a) to be distributed to the news media and other organizations calculated to bring its contents to the attention of the general public; (b) unless the circumstances of the state of emergency prevent or impede, to be promptly filed with the Secretary of Crime Control and Public Safety, the Secretary of State, and the clerks of superior court in the counties to which it applies; and; (c) to be distributed to others as necessary to assure proper implementation of this proclamation.

Section 7. This proclamation shall become effective immediately and shall continue until it is terminated in writing.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Great Seal of the State of North Carolina at the Capitol in Raleigh this 7th day of September in the year of our Lord two thousand and four, and of the Independence of the United States of America the two hundred and twenty-eighth.

\_\_\_\_\_  
MICHAEL F. EASLEY  
GOVERNOR

ATTEST:

\_\_\_\_\_  
ELAINE MARSHALL  
SECRETARY OF STATE

**EXECUTIVE ORDER NO. 66  
PROCLAMATION OF STATE OF DISASTER  
BY THE GOVERNOR OF THE STATE OF NORTH CAROLINA**

Section 1. I have determined that a state of disaster, as defined in N.C.G.S. § 166A-4(3), exists in the State of North Carolina, due to Hurricane Frances, which began on September 1, 2004, and has caused flooding and tornadoes throughout regions of the State.

Section 2. Pursuant to N.C.G.S. § 166A-6, I, therefore, proclaim the existence of a state of disaster in the State.

Section 3. I hereby order all state and local government entities and agencies to cooperate in the implementation of the provisions of this proclamation and the provisions of the North Carolina Emergency Operations Plan.

Section 4. I hereby delegate to Bryan E. Beatty, Secretary of Crime Control and Public Safety, and/or his designee, all power and authority granted to me and required of me by Chapter 166A, and Article 36A of Chapter 14 of the General Statutes for the purpose of implementing the said Emergency Operations Plan and to take such further action as is necessary to promote and secure the safety and protection of the populace in the State.

Section 5. Further, Bryan E. Beatty, Secretary of Crime Control and Public Safety, as chief coordinating officer for the State of North Carolina, shall exercise the powers prescribed in N.C.G.S. § 143B-476.

Section 6. I hereby order this proclamation: (a) to be distributed to the news media and other organizations calculated to bring its contents to the attention of the general public; (b) unless the circumstances of the state of disaster prevent or impede, to be promptly filed with the Secretary of Crime Control and Public Safety, the Secretary of State, and the clerks of superior court in the counties to which it applies; and; (c) to be distributed to others as necessary to assure proper implementation of this proclamation.

Section 7. This proclamation shall become effective immediately and shall continue until it is terminated in writing.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Great Seal of the State of North Carolina at the Capitol in Raleigh this 9th day of September in the year of our Lord two thousand and four, and of the Independence of the United States of America the two hundred and twenty-eighth.

\_\_\_\_\_  
MICHAEL F. EASLEY  
GOVERNOR

ATTEST:

\_\_\_\_\_  
ELAINE MARSHALL  
SECRETARY OF STATE

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

**U.S. Department of Justice**

**Civil Rights Division**

JDR:TCH:CEI:maf  
DJ 166-012-3  
2004-3160

*Voting Section – NWB.  
950 Pennsylvania Ave., NW  
Washington, D.C. 20530*

August 26, 2004

Mr. Gary O. Bartlett  
Executive Director  
North Carolina State Board of Elections  
P.O. Box 27255  
Raleigh, North Carolina 27611-7255

Dear Mr. Bartlett:

This refers to North Carolina Session Law 2004-125, which adopts new rules for electioneering communications, including rules regarding definitions, disclosures, disbursements, coordination, mass mailings, telephone banks, and penalties; revises rules regarding non-cash contributions; repeals N.C.G.S. 163-278.12A regarding disclosure of spending for material that names candidates; and repeals N.C.G.S. 163-278.8(c) regarding out-of-state contribution, submitted to the Attorney General, pursuant to Section 5 of the Voting Rights Act, 42 U.S.C 1973c. We received your submission on July 20, 2004.

The Attorney General does not interpose any objection to the specified changes. However, we note that Section 5 expressly provides that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the changes. In addition, as authorized by Section 5, we reserve the right to reexamine this submission if additional information that would otherwise require an objection comes to our attention during the remainder of the sixty-day review period. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41 and 51.43).

Sincerely,

Joseph D. Rich  
Chief, Voting Section

**SUMMARY OF NOTICE OF  
INTENT TO REDEVELOP A BROWNFIELDS PROPERTY**

**Providence Road Land Partners, LLC**

Pursuant to N.C.G.S. § 130A-310.34, Providence Road Land Partners, LLC has filed with the North Carolina Department of Environment and Natural Resources (“DENR”) a Notice of Intent to Redevelop a Brownfields Property (“Property”) in Charlotte, Mecklenburg County, North Carolina. The Property consists of 0.87 acres and is located at 1601, 1609 and 1615 Elizabeth Avenue, in Charlotte, North Carolina. Environmental contamination exists on the Property in groundwater. Providence Road Land Partners, LLC has committed itself to redevelopment of the Property for no uses other than commercial, residential, recreational and common open space purposes. The Notice of Intent to Redevelop a Brownfields Property includes: (1) a proposed Brownfields Agreement between DENR and Providence Road Land Partners, LLC, which in turn includes (a) a map showing the location of the Property, (b) a description of the contaminants involved and their concentrations in the media of the Property, (c) the above-stated description of the intended future use of the Property, and (d) proposed investigation and remediation; and (2) a proposed Notice of Brownfields Property prepared in accordance with G.S. 130A-310.35. The full Notice of Intent to Redevelop a Brownfields Property may be reviewed at the Economic Development offices of the City of Charlotte, located at 600 East Trade Street, Charlotte, NC 28202, by contacting Carolyn Minnich at that address, at [cminnich@ci.charlotte.nc.us](mailto:cminnich@ci.charlotte.nc.us), or at (704) 336-3499; or at 401 Oberlin Rd., Raleigh, NC 27605 by contacting Shirley Liggins at that address, at [shirley.liggins@ncmail.net](mailto:shirley.liggins@ncmail.net), or at (919) 733-2801, ext. 336, where DENR will provide auxiliary aids and services for persons with disabilities who wish to review the documents. Written public comments may be submitted to DENR within 60 days after the date this Notice is published in a newspaper of general circulation serving the area in which the brownfields property is located, or in the North Carolina Register, whichever is later. Written requests for a public meeting may be submitted to DENR within 30 days after the period for written public comments begins. All such comments and requests should be addressed as follows:

Mr. Bruce Nicholson  
Brownfields Program Manager  
Division of Waste Management  
NC Department of Environment and Natural Resources  
401 Oberlin Road, Suite 150  
Raleigh, North Carolina 27605



**SUMMARY OF NOTICE OF  
INTENT TO REDEVELOP A BROWNFIELDS PROPERTY**

**1427 East Fourth Street, LLC**

Pursuant to N.C.G.S. § 130A-310.34, 1427 East Fourth Street, LLC has filed with the North Carolina Department of Environment and Natural Resources (“DENR”) a Notice of Intent to Redevelop a Brownfields Property (“Property”) in Charlotte, Mecklenburg County, North Carolina. The Property consists of approximately 0.8 acres and is located at 1423 and 1427 East Fourth Street. Environmental contamination exists on the Property in groundwater. 1427 East Fourth Street, LLC has committed itself to make no use of the Property other than for a parking structure, and possibly for retail, commercial and residential purposes. The Notice of Intent to Redevelop a Brownfields Property includes: (1) a proposed Brownfields Agreement between DENR and 1427 East Fourth Street, LLC, which in turn includes (a) a map showing the location of the Property, (b) a description of the contaminants involved and their concentrations in the media of the Property, (c) the above-stated description of the intended future use of the Property, and (d) proposed investigation and remediation; and (2) a proposed Notice of Brownfields Property prepared in accordance with G.S. 130A-310.35. The full Notice of Intent to Redevelop a Brownfields Property may be reviewed at the Economic Development offices of the City of Charlotte, located at 600 East Trade Street, Charlotte, NC 28202, by contacting Carolyn Minnich at that address, at [cminnich@ci.charlotte.nc.us](mailto:cminnich@ci.charlotte.nc.us), or at (704) 336-3499; or at 401 Oberlin Rd., Raleigh, NC 27605 by contacting Shirley Liggins at that address, at [shirley.liggins@ncmail.net](mailto:shirley.liggins@ncmail.net), or at (919) 733-2801, ext. 336, where DENR will provide auxiliary aids and services for persons with disabilities who wish to review the documents. Written public comments may be submitted to DENR within 60 days after the date this Notice is published in a newspaper of general circulation serving the area in which the brownfields property is located, or in the North Carolina Register, whichever is later. Written requests for a public meeting may be submitted to DENR within 30 days after the period for written public comments begins. All such comments and requests should be addressed as follows:

Mr. Bruce Nicholson  
Brownfields Program Manager  
Division of Waste Management  
NC Department of Environment and Natural Resources  
401 Oberlin Road, Suite 150  
Raleigh, North Carolina 27605

**DEPARTMENT OF ADMINISTRATION**

**OFFICE OF HISTORICALLY UNDERUTILIZED BUSINESSES**

The Department of Administration Office for Historically Underutilized Businesses published notice of proposed adoption of rules regarding Minority Business Use in the North Carolina Register on July 1, 2004 in Volume 19, Issue 1, pages 38-43. The agency held a public hearing to receive public comment Wednesday, August 25, 2004 from 2 p.m. to 4 p.m. in the NC Archives Auditorium at 109 East Jones Street, Raleigh NC in accordance with G.S. 150B. The agency has decided to extend the comment period for the rules from August 30, 2004 until October 15, 2004. The Proposed Rules are available on line at: <http://oahnt.oah.state.nc.us/register/Volume19Issue01.pdf>. Persons wishing to comment on the proposed rules may do so by writing to Bridget L. Wall, Director, Office for Historically Underutilized Businesses, MSC 1336, Raleigh, NC 27699-2330, or email at [bridget.wall@ncmail.net](mailto:bridget.wall@ncmail.net) until 5:00 p.m. October 15, 2004.

STATE OF NORTH CAROLINA  
ENVIRONMENTAL MANAGEMENT COMMISSION  
1617 MAIL SERVICE CENTER  
RALEIGH, NORTH CAROLINA 27699-1617

PUBLIC NOTICE OF INTENT TO ISSUE STATE  
GENERAL NPDES PERMIT

Public notice of intent to reissue expiring State National Pollutant Discharge Elimination System (NPDES) General Permit for Point Source Discharges of Stormwater and Wastewater for the following types of discharges:

NPDES General Permit No. NCG020000 for stormwater point source discharges and process wastewater discharges associated with activities classified as establishments primarily engaged in mining and quarrying of nonmetallic minerals (except fuels) [Standard Industrial Classification Code (SIC) 14]. Also included in this General Permit are stormwater discharges from land disturbing activities and those areas at the facilities described above which are used for vehicle maintenance activities. Mine dewatering discharge outfalls, wastewater discharge outfalls from sand and/or gravel operations, nondischarging closed loop recycle systems, and process recycle wastewater discharges are also covered by this permit.

On the basis of preliminary staff review and application of Article 21 of Chapter 143 of the General Statutes of North Carolina, Public Law 92-500 and other lawful standards and regulations, the North Carolina Environmental Management Commission proposes to reissue State NPDES General Permits for the discharges as described above.

INFORMATION: Copies of the draft NPDES General Permits and Fact Sheets concerning the draft Permits are available by writing or calling:

Aisha Lau  
NC Div of Water Quality  
1617 Mail Service Center  
Raleigh, NC 27699-1617 919-733-5083, ext 578

Persons wishing to comment upon or object to the proposed determinations are invited to submit their comments in writing to the above address no later than October 31, 2004. All comments received prior to that date will be considered in the final determination regarding permit issuance. A public meeting may be held where the Director of the Division of Water Quality finds a significant degree of public interest in any proposed permit issuance. The draft Permits, Fact Sheets and other information are on file at the Division of Water Quality, 512 N. Salisbury Street, Room 925, Archdale Building, Raleigh, North Carolina. They may be inspected during normal office hours. Copies of the information of file are available upon request and payment of the costs of reproduction. All such comments and requests regarding these matters should make reference to the draft Permit Number, NCG020000.

Date: \_\_\_\_\_

\_\_\_\_\_  
Alan Klimek, PE, Director  
N.C. Division of Water Quality

**Note from the Codifier:** The notices published in this Section of the NC Register include the text of proposed rules. The agency must accept comments on the proposed rule(s) for at least 60 days from the publication date, or until the public hearing, or a later date if specified in the notice by the agency. If the agency adopts a rule that differs substantially from a prior published notice, the agency must publish the text of the proposed different rule and accept comment on the proposed different rule for 60 days.  
 Statutory reference: G.S. 150B-21.2.

**TITLE 21 – OCCUPATIONAL LICENSING BOARDS**

**CHAPTER 26 – BOARD OF LANDSCAPE ARCHITECTS**

*Notice is hereby given in accordance with G.S. 150B-21.2 that the N.C. Board of Landscape Architects intends to amend the rule cited as 21 NCAC 26 .0207.*

**Proposed Effective Date:** February 1, 2005

**Public Hearing:**

**Date:** October 16, 2004

**Time:** 9:00 a.m.

**Location:** 434 Fayetteville Street Mall, Suite 2010, Conference Room 1, Raleigh, NC

**Reason for Proposed Action:** *Because of changes in technology, the Board has determined that electronic signatures and seals should be allowed on certain documents; therefore, this Rule implements procedures to allow licensed landscape architects to use electronic signatures and seals.*

**Procedure by which a person can object to the agency on a proposed rule:** *Written comments may be submitted to the Board's Director, Robert Upton, Board of Landscape Architects, P.O. Box 41225, Raleigh, NC 27629. Written comments should be submitted no later than November 30, 2004.*

**Written comments may be submitted to:** *Robert Upton, Board of Landscape Architects, P.O. Box 41225, Raleigh, NC 27629.*

**Comment period ends:** November 30, 2004

**Procedure for Subjecting a Proposed Rule to Legislative Review:** If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission. If the Rules Review Commission receives written and signed objections in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-733-2721.

**Fiscal Impact**

- State
- Local
- Substantive (≥\$3,000,000)
- None

**SECTION .0200 - PRACTICE OF REGISTERED LANDSCAPE ARCHITECTS**

**21 NCAC 26 .0207 APPLICATION OF PROFESSIONAL SEAL**

(a) Use of Seal. The seal(s) of the landscape architect(s) responsible for the work and the landscape architectural corporation seal, if appropriate, shall be applied to the following documents:

- (1) Drawings and specifications prepared for public agency approval.
- (2) Drawings and specifications issued for the purpose of bidding, negotiation or construction.
- (3) Reports of technical nature.
- (4) Letters and certificates of professional opinion.

(b) Standard Design Documents are defined as drawings and specifications prepared by another and obtained by the Landscape Architect for review and certification by the Landscape Architect. Such drawings may be sealed by the landscape architect registered in North Carolina provided:

- (1) the origin of the "standard design documents" appears on each drawing or sheet of the documents sealed by the landscape architect;
- (2) the North Carolina landscape architect clearly identifies all modifications of the standard design documents.

(c) The seal of the North Carolina landscape architect placed on each sheet identified as "standard design documents" is prima facie evidence that the landscape architect whose seal is affixed assumes responsibility for the adequacy of the standard design for its specific application in North Carolina, including conformance with applicable codes and ordinances.

(d) The seal(s) shall be applied only to documents prepared personally or under the immediate supervision of the landscape architect whose seal is affixed.

(e) Signature and Date. The individual's seal or facsimile thereof shall have the landscape architect's original signature across its face and the effective date shall be indicated below or elsewhere on the document.

(f) Co-authorship. When a document requiring seals has been co-authored by the landscape architect and another licensed design professional of another discipline, the landscape architect shall indicate by notation each portion for which he or she is responsible.

(g) Failure to use the professional seal according to this Rule shall be deemed by the Board to be "unprofessional conduct" within the meaning of G.S. 89A-7.

(h) Electronically transmitted documents and electronic seals shall be allowed. Documents, including drawings, specifications and reports, that are transmitted electronically to a client or a governmental agency shall have the computer-generated seal removed from the original file, unless signed with a digital signature as defined in Paragraph (i) of this Rule. After removal of the seal, the electronic media shall have the following inserted in lieu of the signature and date: This document originally issued and sealed by (name of sealer), (license number), on (Date of sealing). This medium shall not be considered a certified document. Hardcopy documents containing the original seal, signature and date of the licensee may be duplicated by photocopy or electronic scanning processes and distributed either in hardcopy or electronic medium. The scanned digital files of properly certified documents are not subject to the requirements of this Paragraph. The electronic transmission of CAD, vector or other similar files subject to easy editing are subject to the requirements of this Paragraph. Easy editing is based on the file consisting of separate elements that can be individually modified or deleted.

(i) Documents to be electronically transmitted that are signed using a digital signature shall contain the authentication procedure in a secure mode and a list of the hardware, software and parameters used to prepare the document(s). Secure mode means that the authentication procedure has protective measures to prevent alteration or overriding of the authentication procedure. The term "digital signature" shall be an electronic authentication process that is attached to or logically associated with an electronic document. The digital signature shall be:

- (1) Unique to the licensee using it;
- (2) Capable of verification;
- (3) Under the sole control of the licensee; and
- (4) Linked to a document in such a manner that the digital signature is invalidated if any data in the document is changed.

Authority G.S. 89A-3(c); 89A-7.

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**CHAPTER 32 - BOARD OF MEDICAL EXAMINERS**

*Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Medical Board intends to adopt the rule cited as 21 NCAC 32U .0101.*

**Proposed Effective Date:** February 1, 2005

**Instructions on How to Demand a Public Hearing:** *(must be requested in writing within 15 days of notice): Requests for public hearing may be directed to David Henderson, NC Medical Board, 1203 Front Street, Raleigh, NC 27609. Requests must be made within 15 days of the date of this publication.*

**Reason for Proposed Action:** *To set out requirements under which pharmacists may administer vaccines in order to ensure that the public is protected.*

**Procedure by which a person can object to the agency on a proposed rule:** *Persons may submit objections regarding the proposed rule to David Henderson, NC Medical Board, 1203 Front Street, Raleigh, NC 27609.*

**Written comments may be submitted to:** *David Henderson, NC Medical Board, 1203 Front Street, Raleigh, NC 27609.*

**Comment period ends:** November 30, 2004

**Procedure for Subjecting a Proposed Rule to Legislative Review:** If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission. If the Rules Review Commission receives written and signed objections in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-733-2721.

**Fiscal Impact**

- State
- Local
- Substantive (≥\$3,000,000)
- None

**SUBCHAPTER 32U – PHARMACISTS VACCINATIONS**

**SECTION .0100 – PHARMACISTS VACCINATIONS**

**21 NCAC 32U.0101 ADMINISTRATION OF VACCINES BY PHARMACISTS**

(a) Purpose. The purpose of this Section is to provide standards for pharmacists engaged in the administration of vaccines as authorized in G.S. 90-85.3(r) of the North Carolina Pharmacy Practice Act.

(b) Definitions. The following words and terms, when used in this Section, shall have the following meanings, unless the context clearly indicates otherwise.

- (1) "ACPE" means Accreditation Council for Pharmacy Education.
- (2) "Administer" means the direct application of a drug to the body of a patient by injection, inhalation, ingestion, or other means by:
  - (A) a pharmacist, an authorized agent under his/her supervision, or other person authorized by law; or
  - (B) the patient at the direction of a practitioner.

- (3) "Antibody" means a protein in the blood that is produced in response to stimulation by a specific antigen. Antibodies help destroy the antigen that produced them. Antibodies against an antigen usually equate to immunity to that antigen.
- (4) "Antigen" means a substance recognized by the body as being foreign; it results in the production of specific antibodies directed against it.
- (5) "Board" means the North Carolina Board of Pharmacy.
- (6) "Confidential record" means any health-related record that contains information that identifies an individual and that is maintained by a pharmacy or pharmacist such as a patient medication record, prescription drug order, or medication order.
- (7) "Immunization" means the act of inducing antibody formation, thus leading to immunity.
- (8) "Medical Practice Act" means the North Carolina Medical Practice Act.
- (9) "Physician" means a currently licensed M.D. or D.O. in good standing with the North Carolina Medical Board who is responsible for the on-going, continuous supervision of the pharmacist pursuant to written protocols between the pharmacist and the physician.
- (10) "Vaccination" means the act of administering any antigen in order to induce immunity; is not synonymous with immunization since vaccination does not imply success.
- (11) "Vaccine" means a specially prepared antigen, which upon administration to a person will result in immunity.
- (12) Written Protocol--A physician's order, standing medical order, or other order or protocol. A written protocol must be prepared, signed and dated by the physician and pharmacist and contain the following:
  - (A) the name of the individual physician authorized to prescribe drugs and responsible for authorizing the written protocol;
  - (B) the name of the individual pharmacist authorized to administer vaccines;
  - (C) the immunizations or vaccinations that may be administered by the pharmacist;
  - (D) procedures to follow, including any drugs required by the pharmacist for treatment of the patient, in the event of an emergency or severe adverse reaction following vaccine administration;
  - (E) the reporting requirements by the pharmacist to the physician issuing the written protocol, including content and time frame;

- (F) locations at which the pharmacist may administer immunizations or vaccinations; and
- (G) the requirement for annual review of the protocols by the physician and pharmacist.

(c) Policies and Procedures

- (1) Pharmacists must follow a written protocol as specified in Subparagraph (b)(12) of this Rule for administration of vaccines and the treatment of severe adverse events following administration.
- (2) The pharmacist administering vaccines must maintain written policies and procedures for handling and disposal of used or contaminated equipment and supplies.
- (3) The pharmacist or pharmacist's agent must give the appropriate vaccine information to the patient or legal representative with each dose of vaccine. The pharmacist must ensure that the patient or legal representative is available and has read, or has had read to them, the information provided and has had their questions answered prior to administering the vaccine.
- (4) The pharmacist must report adverse events to the primary care provider as identified by the patient.
- (5) The pharmacist shall not administer vaccines to patients under 18 years of age.

(d) Pharmacist requirements. Pharmacists who enter into a written protocol with a physician to administer vaccines shall:

- (1) hold a current provider level cardiopulmonary resuscitation (CPR) certification issued by the American Heart Association or the American Red Cross or equivalent;
- (2) successfully complete a certificate program in the administration of vaccines accredited by the Centers for Disease Control, the ACPE or a similar health authority or professional body approved by the Board;
- (3) maintain documentation of:
  - (A) completion of the initial course specified in Subparagraph (2) of this Paragraph;
  - (B) three hours of continuing education every two years beginning January 1, 2006, which are designed to maintain competency in the disease states, drugs, and administration of vaccines;
  - (C) current certification specified in Subparagraph (1) of this Paragraph;
  - (D) original written physician protocol;
  - (E) annual review and revision of original written protocol with physician;
  - (F) any problems or complications reported; and
  - (G) items specified in Paragraph (g) of this Rule.

(e) Supervising Physician responsibilities. Physicians who enter into a written protocol with a pharmacist to administer vaccines shall:

- (1) be responsible for the formulation or approval and periodic review of the written protocols;
- (2) ~~to~~ be easily accessible to the pharmacist administering the vaccines or be available through direct telecommunication for consultation, assistance, direction, and provide adequate back-up coverage; and
- (3) review written protocol with pharmacist at least annually and revise if necessary.

(f) Supervision. Pharmacists involved in the administration of immunizations or vaccinations shall be under the supervision of a physician. Physician supervision shall be considered adequate if the delegating physician:

- (1) is responsible for the formulation or approval of the physician's order, standing medical order, standing delegation order, or other order or protocol and periodically reviews the order or protocol and the services provided to a patient under the order or protocol;
- (2) is geographically located so as to be easily accessible to the pharmacist administering the immunization or vaccination;
- (3) receives, as appropriate, a periodic status report on the patient, including any problem or complication encountered; and
- (4) is available through direct telecommunication for consultation, assistance, and direction.

(g) Drugs. The following requirements pertain to drugs administered by a pharmacist:

- (1) Drugs administered by a pharmacist under the provisions of this Section shall be in the legal possession of:
  - (A) a pharmacy, which shall be the pharmacy responsible for drug accountability, including the maintenance of records of administration of the immunization or vaccination; or
  - (B) a physician, who shall be responsible for drug accountability, including the maintenance of records of administration of the immunization or vaccination;
- (2) Drugs shall be transported and stored at the proper temperatures indicated for each drug;
- (3) Pharmacists while actively engaged in the administration of vaccines under written protocol, may have in their custody and control the vaccines identified in the written protocol and any other drugs listed in the written protocol to treat adverse reactions; and
- (4) After administering vaccines at a location other than a pharmacy, the pharmacist shall return all unused prescription medications to the pharmacy or physician responsible for the drugs.

(h) Record Keeping and Reporting

- (1) A pharmacist who administers any vaccine shall maintain the following information, readily retrievable, in the pharmacy records regarding each administration:
  - (A) The name, address, and date of birth of the patient;
  - (B) The date of the administration;
  - (C) The administration site of injection (e.g., right arm, left leg, right upper arm);
  - (D) route of administration of the vaccine;
  - (E) The name, manufacturer, lot number, and expiration date of the vaccine;
  - (F) Dose administered;
  - (G) The name and address of the patient's primary health care provider, as identified by the patient; and
  - (H) The name or identifiable initials of the administering pharmacist.
- (2) A pharmacist who administers vaccines shall document annual review with physician of written protocol in the records of the pharmacy that is in possession of the vaccines administered.

(i) Confidentiality

- (1) The pharmacist shall comply with the privacy provisions of the federal Health Insurance Portability and Accountability Act of 1996 and any rules adopted pursuant to this act.
- (2) Any other confidentiality provisions of federal or state laws.
- (3) Violations of these Rules by a pharmacist and/or supervising physician shall constitute grounds by the licensee's respective Board to initiate disciplinary action against that licensee's license.

*Authority G.S. 90-85.3.*

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## TITLE 23 – COMMUNITY COLLEGES

*Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Community College System intends to amend the rule cited as 23 NCAC 02C .0210.*

**Proposed Effective Date:** *February 1, 2005*

**Public Hearing:**

**Date:** *October 19, 2004*

**Time:** *1:00 p.m.*

**Location:** *NCCCS, State Board Room, 200 W. Jones Street, Raleigh, NC*

**Reason for Proposed Action:** *To require community colleges to establish and implement personnel policies relating to secondary employment and shared leave.*

**Procedure by which a person can object to the agency on a proposed rule:** *Written objections may be addressed to President, NC Community College System Office, 5001 MSC Raleigh, NC 27699-5001 within the comment period, and must be post marked by 11:59 p.m. on the last day of the comment period.*

**Written comments may be submitted to:** *President, NC Community College System Office, 5001 MSC Raleigh, NC 27699-5001*

**Comment period ends:** *November 30, 2004*

**Procedure for Subjecting a Proposed Rule to Legislative Review:** If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission. If the Rules Review Commission receives written and signed objections in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-733-2721.

**Fiscal Impact**

- State
- Local
- Substantive (≥\$3,000,000)
- None

**CHAPTER 02 - COMMUNITY COLLEGES**

**SUBCHAPTER 02C - COLLEGES: ORGANIZATION AND OPERATIONS**

**SECTION .0200 – PERSONNEL**

**23 NCAC 02C .0210 LOCAL COLLEGE PERSONNEL POLICIES**

(a) Each local board of trustees shall ~~adopt-adopt, and publish~~ publish, and implement personnel policies-policies, consistent with all applicable statutes, rules, and regulations, addressing the following issues:

- (1) Adverse weather;
- (2) Annual leave (vacation);
- (3) Drug and alcohol use;
- (4) Civil leave;
- (5) Communicable disease;
- (6) Compensatory leave;
- (7) Definitions of the employment categories and benefits for each:
  - (A) Full-time permanent,
  - (B) Part-time permanent,

- (C) Full-time temporary, and
- (D) Part-time temporary;
- (8) Disciplinary action addressing suspension and dismissal;
- (9) Educational leave (reference 23 NCAC 02D .0103);
- (10) Employee evaluation process;
- (11) Employee grievance procedures;
- (12) Employee personnel file;
- (13) Hiring procedures (written and describing procedures used for employment of both full- and part-time employees);
- (14) Leave transfer;
- (15) Leave without pay;
- (16) Longevity pay plan (reference 23 NCAC 02D .0109);
- (17) Military leave (reference 23 NCAC 02D .0104);
- (18) Nepotism (reference 23 NCAC 02C .0204);
- (19) Non-reappointment;
- (20) Other employee benefits;
- (21) Political activities of employees (reference 23 NCAC 02C .0208);
- (22) Professional development;
- (23) Reduction in force;
- (24) Salary determination methods for full- and part-time ~~employees; employees that address at least the following:~~
  - (A) Provisions and criteria for salary determination.
  - (B) Requirements for annual salary review, and
  - (C) Establishment of salary formulas, ranges, or schedules;
- (25) Sexual harassment; ~~and~~
- (26) Tuition exemption (reference 23 NCAC ~~2D .0202~~-.02 .0202);

~~(b) The salary determination policy shall address at least the following:~~

- ~~(1) provisions and criteria for salary determination;~~
- ~~(2) requirements for annual salary review; and~~
- ~~(3) establishment of salary formulas, ranges, or schedules.~~
- (27) Sick leave consistent with provisions of the State Retirement system;
- (28) Secondary Employment that addresses conflict with the employee's primary job responsibilities and institutional resources (the local board of trustees shall approve or disapprove and secondary employment of the president; the president shall approve or disapprove secondary employment of all full-time employees); and
- (29) Shared leave consistent with provisions of the State Office of Personnel (reference 25 NCAC 01E .1301 through 25 NCAC 01E .1307).



~~(c) Each local board of trustees shall adopt and publish sick leave policies consistent with provisions of the State Retirement System.~~

(b) Each local board of trustees shall submit copies of these policies, including amendments, to the System President's Office upon adoption.

Authority G.S. 115D-5; 115D-20; 115D-25.3.

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Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Community College System intends to adopt the rule cited as 23 NCAC 02E .0306.

Proposed Effective Date: February 1, 2005

Public Hearing:

Date: October 19, 2004

Time: 1:00 p.m.

Location: NCCCS, State Board Room, 200 W. Jones Street, Raleigh, NC

Reason for Proposed Action: To establish minimum guidelines for the continuation of the Human Resources Development Program.

Procedure by which a person can object to the agency on a proposed rule: Written objections may be addressed to President, NC Community College System Office, 5001 MSC, Raleigh, NC 27699-5001 within the comment period, and must be post marked by 11:59 p.m. on the last day of the comment period.

Written comments may be submitted to: President, NC Community College System Office, 5001 MSC Raleigh, NC 27699-5001

Comment period ends: November 30, 2004

Procedure for Subjecting a Proposed Rule to Legislative Review: If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission. If the Rules Review Commission receives written and signed objections in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-733-2721.

Fiscal Impact

- State
- Local
- Substantive (≥\$3,000,000)
- None

CHAPTER 02 – COMMUNITY COLLEGES

SUBCHAPTER 02E - EDUCATIONAL PROGRAMS

SECTION .0300 - GENERAL ADULT: SPECIAL EXTENSION: AND COMMUNITY SERVICE

23 NCAC 02E .0306 HUMAN RESOURCES DEVELOPMENT PROGRAM CONTINUATION

Each college shall maintain and operate Human Resources Development (HRD) program(s). At a minimum, each college shall annually fund the equivalent number of positions that is consistent with the time the college received state categorical funding for positions related to HRD programs.

Authority G.S. 115D-5.

**Note from the Codifier:** *The rules published in this Section of the NC Register are emergency rules reviewed by the Codifier of Rules and entered in the North Carolina Administrative Code. The agency must subsequently publish a proposed temporary rule on the OAH website ([www.ncoah.com/rules](http://www.ncoah.com/rules)) and submit that adopted temporary rule to the Rules Review Commission within 60 days from publication of the emergency rule or the emergency rule will expire on the 60<sup>th</sup> day from publication.*  
*This section of the Register may also include, from time to time, a listing of emergency rules that have expired. See G.S. 150B-21.1A and 26 NCAC 02C .0600 for adoption and filing requirements.*

**TITLE 21 - OCCUPATIONAL LICENSING BOARDS**

**CHAPTER 32 – NORTH CAROLINA MEDICAL BOARD**

**Rule-making Agency:** *North Carolina Medical Board*

**Rule Citation:** *21 NCAC 32U .0101*

**Effective Date:** *September 10, 2004*

**Findings Reviewed and Approved by the Codifier:** *Beecher R. Gray*

**Reason for Action:** *Immediate adoption is required to allow pharmacists to administer influenza vaccinations during the flu season in order to be prepared to meet potential increased demand for influenza vaccinations in the coming fall and winter.*

**SUBCHAPTER 32U – PHARMACISTS VACCINATIONS**

**SECTION .0100 – PHARMACISTS VACCINATIONS**

**21 NCAC 32U .0101 ADMINISTRATION OF VACCINES BY PHARMACISTS**

(a) Purpose. The purpose of this Section is to provide standards for pharmacists engaged in the administration of influenza vaccines as authorized in G.S. 90-85.3(r) of the North Carolina Pharmacy Practice Act.

(b) Definitions. The following words and terms, when used in this Section, shall have the following meanings, unless the context clearly indicates otherwise.

- (1) "ACPE" means Accreditation Council for Pharmacy Education.
- (2) "Administer" means the direct application of a drug to the body of a patient by injection, inhalation, ingestion, or other means by:
  - (A) a pharmacist, an authorized agent under his/her supervision, or other person authorized by law; or
  - (B) the patient at the direction of a practitioner.
- (3) "Antibody" means a protein in the blood that is produced in response to stimulation by a specific antigen. Antibodies help destroy the antigen that produced them. Antibodies against an antigen usually equate to immunity to that antigen.
- (4) "Antigen" means a substance recognized by the body as being foreign; it results in the production of specific antibodies directed against it.

- (5) "Board" means the North Carolina Board of Pharmacy.
- (6) "Confidential record" means any health-related record that contains information that identifies an individual and that is maintained by a pharmacy or pharmacist such as a patient medication record, prescription drug order, or medication order.
- (7) "Immunization" means the act of inducing antibody formation, thus leading to immunity.
- (8) "Medical Practice Act" means the North Carolina Medical Practice Act.
- (9) "Physician" means a currently licensed M.D. or D.O. in good standing with the North Carolina Medical Board who is responsible for the on-going, continuous supervision of the pharmacist pursuant to written protocols between the pharmacist and the physician.
- (10) "Vaccination" means the act of administering any antigen in order to induce immunity; is not synonymous with immunization since vaccination does not imply success.
- (11) "Vaccine" means a specially prepared antigen, which upon administration to a person will result in immunity.
- (12) Written Protocol--A physician's order, standing medical order, or other order or protocol. A written protocol must be prepared, signed and dated by the physician and pharmacist and contain the following:
  - (A) the name of the individual physician authorized to prescribe drugs and responsible for authorizing the written protocol;
  - (B) the name of the individual pharmacist authorized to administer vaccines;
  - (C) the immunizations or vaccinations that may be administered by the pharmacist;
  - (D) procedures to follow, including any drugs required by the pharmacist for treatment of the patient, in the event of an emergency or severe adverse reaction following vaccine administration;
  - (E) the reporting requirements by the pharmacist to the physician issuing the written protocol, including content and time frame;
  - (F) locations at which the pharmacist may administer immunizations or vaccinations; and

(G) the requirement for annual review of the protocols by the physician and pharmacist.

(c) Policies and Procedures

- (1) Pharmacists must follow a written protocol as specified in Subparagraph (b)(12) of this Rule for administration of influenza vaccines and the treatment of severe adverse events following administration.
- (2) The pharmacist administering vaccines must maintain written policies and procedures for handling and disposal of used or contaminated equipment and supplies.
- (3) The pharmacist or pharmacist's agent must give the appropriate influenza vaccine information to the patient or legal representative with each dose of vaccine. The pharmacist must ensure that the patient or legal representative is available and has read, or has had read to them, the information provided and has had their questions answered prior to administering the vaccine.
- (4) The pharmacist must report adverse events to the primary care provider as identified by the patient.
- (5) The pharmacist shall not administer influenza vaccines to patients under 18 years of age.

(d) Pharmacist requirements. Pharmacists who enter into a written protocol with a physician to administer influenza vaccines shall:

- (1) hold a current provider level cardiopulmonary resuscitation (CPR) certification issued by the American Heart Association or the American Red Cross or equivalent;
- (2) successfully complete a certificate program in the administration of vaccines accredited by the Centers for Disease Control, the ACPE or a similar health authority or professional body approved by the Board;
- (3) maintain documentation of:
  - (A) completion of the initial course specified in Subparagraph (2) of this Paragraph;
  - (B) three hours of continuing education every two years beginning January 1, 2006, which are designed to maintain competency in the disease states, drugs, and administration of vaccines;
  - (C) current certification specified in Subparagraph (1) of this Paragraph;
  - (D) original written physician protocol;
  - (E) annual review and revision of original written protocol with physician;
  - (F) any problems or complications reported; and
  - (G) items specified in Paragraph (g) of this Rule.

(e) Supervising Physician responsibilities. Physicians who enter into a written protocol with a pharmacist to administer influenza vaccines shall:

- (1) be responsible for the formulation or approval and periodic review of the written protocols;
- (2) be easily accessible to the pharmacist administering the vaccines or be available through direct telecommunication for consultation, assistance, direction, and provide adequate back-up coverage; and
- (3) review written protocol with pharmacist at least annually and revise if necessary.

(f) Supervision. Pharmacists involved in the administration of immunizations or vaccinations shall be under the supervision of a physician. Physician supervision shall be considered adequate if the delegating physician:

- (1) is responsible for the formulation or approval of the physician's order, standing medical order, standing delegation order, or other order or protocol and periodically reviews the order or protocol and the services provided to a patient under the order or protocol;
- (2) is geographically located so as to be easily accessible to the pharmacist administering the immunization or vaccination;
- (3) receives, as appropriate, a periodic status report on the patient, including any problem or complication encountered; and
- (4) is available through direct telecommunication for consultation, assistance, and direction.

(g) Drugs. The following requirements pertain to drugs administered by a pharmacist:

- (1) Drugs administered by a pharmacist under the provisions of this Section shall be in the legal possession of:
  - (A) a pharmacy, which shall be the pharmacy responsible for drug accountability, including the maintenance of records of administration of the immunization or vaccination; or
  - (B) a physician, who shall be responsible for drug accountability, including the maintenance of records of administration of the immunization or vaccination;
- (2) Drugs shall be transported and stored at the proper temperatures indicated for each drug;
- (3) Pharmacists while actively engaged in the administration of vaccines under written protocol, may have in their custody and control the vaccines identified in the written protocol and any other drugs listed in the written protocol to treat adverse reactions; and
- (4) After administering vaccines at a location other than a pharmacy, the pharmacist shall return all unused prescription medications to the pharmacy or physician responsible for the drugs.

(h) Record Keeping and Reporting

- (1) A pharmacist who administers any influenza vaccine shall maintain the following information, readily retrievable, in the pharmacy records regarding each administration:
  - (A) The name, address, and date of birth of the patient;
  - (B) The date of the administration;
  - (C) The administration site of injection (e.g., right arm, left leg, right upper arm);
  - (D) route of administration of the vaccine;
  - (E) The name, manufacturer, lot number, and expiration date of the vaccine;
  - (F) Dose administered;
  - (G) The name and address of the patient's primary health care provider, as identified by the patient; and
  - (H) The name or identifiable initials of the administering pharmacist.
- (2) A pharmacist who administers influenza vaccines shall document annual review with physician of written protocol in the records of the pharmacy that is in possession of the vaccines administered.

(i) Confidentiality.

- (1) The pharmacist shall comply with the privacy provisions of the federal Health Insurance Portability and Accountability Act of 1996 and any rules adopted pursuant to this act.
- (2) Any other confidentiality provisions of federal or state laws.
- (3) Violations of these Rules by a pharmacist and/or supervising physician shall constitute grounds by the licensee's respective Board to initiate disciplinary action against that licensee's license.

History Note: Authority G.S. 90-85.3; Emergency Adoption Eff. September 10, 2004.

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CHAPTER 36 – BOARD OF NURSING

Rule-making Agency: North Carolina Board of Nursing

Rule Citation: 21 NCAC 36 .0221

Effective Date: September 10, 2004

Findings Reviewed and Approved by the Codifier: Beecher R. Gray

Reason for Action: Immediate adoption is required to allow pharmacists to administer influenza vaccinations in order to be

prepared to meet increased demand for influenza vaccinations during the coming fall and winter.

SECTION .0200 – LICENSURE

21 NCAC 36 .0221 LICENSE REQUIRED

- (a) No cap, pin, uniform, insignia or title shall be used to represent to the public, that an unlicensed person is a registered nurse or a licensed practical nurse as defined in G.S. 90-171.43.
- (b) The repetitive performance of a common task or procedure which does not require the professional judgment of a registered nurse or licensed practical nurse shall not be considered the practice of nursing for which a license is required. Tasks that may be delegated to the Nurse Aide I and Nurse Aide II shall be established by the Board of Nursing pursuant to 21 NCAC 36 .0403. Tasks may be delegated to an unlicensed person which:
  - (1) frequently recur in the daily care of a client or group of clients;
  - (2) are performed according to an established sequence of steps;
  - (3) involve little or no modification from one client-care situation to another;
  - (4) may be performed with a predictable outcome; and
  - (5) do not inherently involve ongoing assessment, interpretation, or decision-making which cannot be logically separated from the procedure(s) itself.

Client-care services which do not meet all of these criteria shall be performed by a licensed nurse.

(c) The registered nurse or licensed practical nurse shall not delegate the professional judgment required to implement any treatment or pharmaceutical regimen which is likely to produce side effects, toxic effects, allergic reactions, or other unusual effects; or which may rapidly endanger a client's life or well-being and which is prescribed by a person authorized by state law to prescribe such a regimen. The nurse who assumes responsibility for implementing a treatment or pharmaceutical regimen shall be 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 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) making judgments and decisions concerning actions to take in the event such untoward effects occur.

(d) When health care needs of an individual are incidental to the personal care needs of the individual, nurses shall not be accountable for care performed by clients themselves, their families or significant others, or by caretakers who provide personal care to the individual.

(e) Pharmacists may administer drugs in accordance with 21 NCAC 46 .2507.

**EMERGENCY RULES**

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*History Note: Authority G.S. 90-85.3; 90-171.23(b);  
90-171.43; 90-171.83;  
Eff. May 1, 1982;  
Amended Eff. July 1, 2004; April 1, 2002; December 1, 2000;*

*July 1, 2000; January 1, 1996; February 1, 1994; April 1, 1989;  
January 1, 1984;  
Emergency Amendment Eff. September 10, 2004.*

## CONTESTED CASE DECISIONS

*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. Also, the Contested Case Decisions are available on the Internet at <http://www.ncoah.com/hearings>.*

### OFFICE OF ADMINISTRATIVE HEARINGS

*Chief Administrative Law Judge  
JULIAN MANN, III*

*Senior Administrative Law Judge  
FRED G. MORRISON JR.*

### ADMINISTRATIVE LAW JUDGES

*Sammie Chess Jr.  
Beecher R. Gray  
Melissa Owens Lassiter*

*James L. Conner, II  
Beryl E. Wade  
A. B. Elkins II*

### RULES DECLARED VOID

04 NCAC 02S .0212 CONSUMPTION: INTOXICATION BY PERMITTEE PROHIBITED  
Pursuant to G.S. 150B-33(b)(9), Administrative Law Judge James L. Conner, II declared 04 NCAC 02S .0212(b) void as applied in NC Alcoholic Beverage Control Commission v. Midnight Sun Investments, Inc. t/a Tiki Cabaret (03 ABC 1732).

20 NCAC 02B .0508 FAILURE TO RESPOND  
Pursuant to G.S. 150B-33(b)(9), Administrative Law Judge Melissa Owens Lassiter declared 20 NCAC 02B .0508 void as applied in Burton L. Russell v. Department of State Treasurer, Retirement Systems Division (03 DST 1715).

<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>ALJ</u>	<u>DATE OF DECISION</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
<b><u>ABC COMMISSION</u></b>				
ABC Commission v. Richard Martin Falls, Jr., T/A Falls Quick Stop	04 ABC 0341	Mann	07/16/04	
ABC Commission v. Red Lion Manestream, Inc., T/A Red Lion Manestream	04 ABC 0695	Wade	07/20/04	
<b><u>VICTIMS COMPENSATION</u></b>				
Lonnie Jones v. Dept. Crime Control & Public Safety, Victims Comp.	03 CPS 2320	Conner	07/23/04	
Angelique M. Jones on behalf of a juvenile victim, her son, Jaquial Jones v. Victims Compensation Commission	03 CPS 2353	Conner	07/12/04	
<b><u>DEPARTMENT OF AGRICULTURE</u></b>				
NC Spring Water Assoc, Inc., Wiley Fogleman (President) v. DOA, David McLeod and Table Rock Spring Water Co.	04 DAG 0110	Gray	07/21/04	
<b><u>DEPARTMENT OF ADMINISTRATION</u></b>				
Larry Yancey v. GACPD, DOA	04 DOA 0896	Morrison	07/28/04	
<b><u>HEALTH AND HUMAN SERVICES</u></b>				
Margaret Bollo v. DHHS, Broughton Hospital	03 DHR 0444	Gray	07/21/04	
Walter Ray Nelson, Jr., Karen Marie Nelson v. DHHS	03 DHR 0884	Lassiter	05/18/04	
Olufemi Augustine Ohome v. DHHS, Div. of Facility Services	03 DHR 1062	Lassiter	05/24/04	
Charles Crawford Cox v. DHHS	03 DHR 1546	Lassiter	07/07/04	
Bio-Medical Applications of North Carolina, Inc v. DHHS, Div of Facility Services, CON Section and Total Renal Care of NC, LLC	03 DHR 1553	Chess	06/02/04	
Lativia L. Gibbs v. DHHS, Div. of Child Development	03 DHR 1746	Smith	07/23/04	
Rebecca Stephens Short v. DHHS, Div of Facility Services	03 DHR 1806	Conner	06/11/04	
Loretta Kaye Dulakis v. DHHS, Div. of Facility Services	03 DHR 1848	Wade	08/20/04	
Pamela Narron (Legal Guardian for) Benjamin Chad Pierce v. DHHS, Div of Mental Health – DD-SA	03 DHR 2377	Conner	07/19/04	
Mooreville Hospital Management Assoc, Inc d/b/a Lake Norman Reg. Medical Center v. DHHS, Div of Facility Services, CON Section and Novant Health, Inc. (Lessor) and Forsyth Memorial Hospital (Lessee) d/b/a Forsyth Medical Center	03 DHR 2404	Conner	06/08/04	
Louvenia Jones, Sheryl Willie – General Power of Attorney v. DHHS, Div of Child Development	03 DHR 2445	Gray	06/15/04	

**CONTESTED CASE DECISIONS**

John Michael Thompson v. DHHS, DFS	04 DHR 0046	Lassiter	07/27/04
Alisa Hodges Yarborough v. DHHS, DFS	04 DHR 0176	Elkins	07/19/04
LaDunna K. Brewington v. DHHS, Div of Medical Assistance	04 DHR 0192	Mann	06/09/04
Martha Williams, Kidtz Town v Div of Child Development	04 DHR 0200	Elkins	06/11/04
Mary P. Daniels v. DHHS	04 DHR 0232	Gray	08/09/04
Eula P. Street v. DHHS, DFS	04 DHR 0332	Elkins	07/14/04
Donnell Williams v. Harnet County DSS	04 DHR 0334	Conner	06/28/04
Terry William Waddell v. Medicaid/NC Health Choice	04 DHR 0335	Mann	06/04/04
Nathan E. Lang vs DHHS	04 DHR 0439	Conner	06/23/04
Phyllis S. Weaver v. DHHS	04 DHR 0457	Conner	07/19/04
Bervin D. Pearson Sr. v. DHHS, Broughton Hospital	04 DHR 0476	Morrison	09/09/04
Ray J. Bobbitt v. Nash County Dept. of Social Services	04 DHR 0529	Elkins	07/13/04
Connie Watt Redice v. DHHS	04 DHR 0546	Lassiter	06/29/04
Emelie Kashangura v. DHHS, DFS	04 DHR 0602	Elkins	07/14/04
Sabrina Betts v. NC Health Personnel Registry	04 DHR 0644	Lassiter	06/02/04
Amy Hensley v. DHHS	04 DHR 0696	Elkins	09/01/04
Tanisha Mitchell v. DHHS, Div. of Facility Services	04 DHR 0787	Mann	06/23/04
Stacey Curtis v. Dorothea Dix Hospital	04 DHR 0791	Lassiter	09/01/04
Fox's Tot, Inc., Connie Fox v. DHHS	04 DHR 0881	Elkins	07/20/04
Kids Kingdon Christian Learning Center, Inc., v. Div. of Child Development, Regulatory Services Section	04 DHR 0974	Conner	08/10/04
New Beginnings Childcare v. Div. of Child Dev. & Lee Co. DSS	04 DHR 1112	Lassiter	08/18/04
Michael J. Shelton, Pinnacle Homes #2 v. DHHS, Div. of Medical Assistance	04 DHR 1166	Gray	09/03/04

A list of Child Support Decisions may be obtained by accessing the OAH Website: [www.ncoah.com/decisions](http://www.ncoah.com/decisions).

**DEPARTMENT OF JUSTICE**

Larry Mitchel Batton, Jr. v. Crimianl Justice Educ. & Training Stds. Comm	03 DOJ 1067	Lassiter	06/15/04
Steve A. Matthews v. Sheriff's Educ. & Traning Stds. Comm	03 DOJ 1702	Conner	05/10/04
Tony M. Evans and Kristopher D. Harris v. Criminal Justice Educ. & Trng Standards Commission	03 DOJ 2354	Mann	07/19/04
Tony M. Evans and Kristopher D. Harris v. Criminal Justice Educ. & Trng Standards Commission	03 DOJ 2355	Mann	07/19/04
Addie Joanne Foreman v. Private Protective Services Board	03 DOJ 2405	Elkins	08/26/04
Charles Robert Branham v. Criminal Justice Educ & Training Stds. Comm.	03 DOJ 2431	Conner	06/22/04
Robert R. Johnson, Jr. v. Sheriff's Education & Training Standards Comm.	04 DOJ 0062	Chess	08/23/04
Bernard Cotton v. DOJ	04 DOJ 0063	Chess	06/03/04
Linnell Davis, Jr. v. Private Protective Services Board	04 DOJ 0299	Elkins	08/26/04
Jason Oneil Rice v. Sheriffs' Education & Training Standards Commission	04 DOJ 0318	Mann	06/24/04
Guy Wesley Prevette v. Criminal Justice Educ. & Training Standards Comm.	04 DOJ 0511	Chess	07/08/04
Connelly Allen Locklear v. Criminal Justice Educ. & Training Stds. Comm	04 DOJ 0514	Gray	07/15/04
Maureen Cleary Williams v. Sheriffs' Education & Training Stds Comm	04 DOJ 0829	Mann	07/28/04
Tommy Dwight Hunt v. Sheriffs' Educ & Training Stds. Comm	04 DOJ 0830	Elkins	08/24/04

**DEPARTMENT OF TREASURER**

Mary Pender v. DOT, Retirement Systems Division	04 DST 0027	Conner	07/23/04
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**DEPARTMENT OF PUBLIC INSTRUCTION**

Alice Bins Rainey, Michele R Rotosky and Madeline Davis Tucker	02 EDC 2310	Lassiter	06/01/04	19:01 NCR	153
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**ENVIRONMENT AND NATURAL RESOURCES**

Beltex Corporation, a Debtor-in Possession v. DENR, Div of Air Quality	00 EHR 1706	Gray	06/18/04
J.L. Marsh Smith Farms, Inc v. DENR, Div of Air Quality	00 EHR 2116	Gray	06/04/04
Raymond Wallace, The Golden Mirror vs. Div of Radiation Protection	01 EHR 1558	Mann	06/17/04
Friends of the Green Swamp, et al, v. DENR, Div. of Water Quality and Riegel Ridge, LLC, and Waste Management of Carolinas, Inc	03 EHR 0058	Conner	08/26/04
Old Beau Golf Club v. DENR	03 EHR 1260	Conner	07/28/04
Sandy Mush Properties, Inc v. DENR, Div of Air Quality	03 EHR 1411	Conner	06/28/04
Ronald Frye v DENR	03 EHR 1636	Gray	06/23/04
Robert I. Swinson Sr. v. DENR, Div of Marine Fisheries	03 EHR 2248	Chess	06/10/04
Winston N. Cahoon v. DENR	03 EHR 2305	Lassiter	07/01/04
Jimmy Mathis, Mathis Pump & Well v. DENR	03 EHR 2336	Wade	05/25/04
James D & Jane Lathan Ray; James D. & Brenda W Moser, Jr.; John G. & Sheila A Conner v. DENR, Div. of Coastal Resources and R. Carter Pate	04 EHR 0073 <sup>1</sup>	Wade	08/13/04
R. Carter Pate v. DENR, Div. of Coastal Resources & Steve Bond	04 EHR 0150 <sup>1</sup>	Wade	08/13/04
Big Beaver Drilling Rig v. UST Trust Fund Section Final Agency Decision	04 EHR 0612	Wade	05/25/04
Brookside Montessori School, Inc v. DENR, Div. of Env. Health	04 EHR 1219	Gray	08/27/04

**DEPARTMENT OF INSURANCE**

Speros J. Fleggas vs. DOI	04 INS 0251	Elikins	06/10/04
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**MISCELLENOUS**

Alesia Braswell Al Wahshi v. Deborah Mcintyre, Wayne Co, Dept. of Social Services	04 MIS 0146	Gray	06/18/04
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**CONTESTED CASE DECISIONS**

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O'marr S. Reid v. Gaston Co. Judicial System and Defendants 1,2,3,4,5,6,7,8,9,10	04 MIS 0682	Elkins	06/22/04
Larry Yancey v. State Bar Grievance Com., Dept of Justice	04 MIS 0891	Morrison	07/27/04
Larry Yancey v. State Bar Grievance Com., Dept of Justice	04 MIS 0892	Morrison	07/27/04
Larry Yancey v. Durham Housing Authority, City of Durham, State of NC	04 MIS 0893	Morrison	07/27/04
Larry Yancey v. Independent Living Rehab Prog., Div of VRS State of NC	04 MIS 0894	Morrison	07/27/04
Larry Yancey v. Durham Dept. of Social Services, State of NC	04 MIS 0895	Morrison	07/27/04

**OFFICE OF STATE PERSONNEL**

Kathy M Sledge v. DOC	02 OSP 2117	Conner	08/03/04
Pearl A. Wilkins v. NCSU	03 OSP 0400	Gray	07/26/04
James A. Ray v. Mr. Don Shore, Human Resources, UNC Greensboro	03 OSP 2451	Elkins	06/01/04
James A. Ray v. Sherry Stevens and Facility Services Management., UNC Greensboro	03 OSP 2452	Elkins	06/01/04
James A. Ray v. Hoyte Phifer and Facility Services Management, UNC Greensboro	03 OSP 2453	Elkins	06/01/04
Terry H. Mitchell v. Elizabeth City State University	04 OSP 0015	Conner	07/23/04
Miracle L. Smith v. NC State Highway Patrol	04 OSP 0039	Gray	07/14/04
Samuel Williams v. DOC, Div of Alcoholism, Chemical Dependency Programs	04 OSP 0194	Mann	06/09/04
Jerry William Wiley v. Div of Public Health and DHHS	04 OSP 0210	Elkins	06/23/04
Barbara Hoffner v. DOC, Div of Prisons, Central Prison	04 OSP 0415	Chess	06/17/04
Jeff Nichols v. DOC	04 OSP 0419	Conner	06/29/04
Phyllis Holt v. UNC Chapel Hill	04 OSP 0486	Chess	06/01/04
John V. Smith v. NCSU	04 OSP 0505	Chess	06/17/04
David Earl Beasley v. NCSU	04 OSP 0513	Gray	08/27/04
Mark A. Boyce v. Dept. of Commerce	04 OSP 0543	Gray	07/06/04
Eldredia B. Mizelle v. Craven Correctional Institution, Dept. of Corrections, David W. Chester, Capt. Kathryn Brown	04 OSP 0582	Wade	06/24/04
Bernadine Ralph v. O'Berry Center	04 OSP 0706	Lassiter	06/29/04
James A. Ray v. UNC at Greensboro, Facility Services	04 OSP 0751	Elkins	07/14/04
Gwendolyn Robertson Horton v. DHHS	04 OSP 0792	Morrison	07/26/04
Lekisha Branch Thorpe v. The Whitaker School	04 OSP 0923	Morrison	09/09/04
Katrina Pittman v. Kenny Gibbs, Div of Vocational Rehab	04 OSP 0930	Lassiter	08/06/04
Veronica J. Johnson v. SOS	04 OSP 0961	Morrison	07/23/04
Gregory Tabron v. John Umstead Hospital	04 OSP 1014	Lassiter	07/26/04

**UNC HOSPITALS**

Carrie Ann Sykes v. Chapel Hill Hospital	04 UNC 0245	Elkins	06/25/04
Danielle Catoe v. UNC Hospitals	04 UNC 0291	Elkins	06/25/04
Rex A. Coughenour v. UNC Hospitals	04 UNC 0306	Elkins	06/22/04
P. Nettles v. UNC Hospitals	04 UNC 0393	Morrison	07/23/04
P. Nettles v. UNC Hospitals	04 UNC 0393	Morrison	07/23/04
Vanessa Bailey v. UNC Hospitals	04 UNC 0440	Conner	08/09/04
Dennis McCuller v. UNC Hospitals	04 UNC 0458	Chess	08/02/04
Joe Hatcher v. UNC Hospitals	04 UNC 0480	Morrison	07/23/04
Cattrual Heggins v. UNC Hospitals	04 UNC 0496	Chess	08/09/04
Tammy Bottoms v. UNC Hospitals	04 UNC 0502	Elkins	07/21/04
Sandra Lee Petty v. UNC Hospitals	04 UNC 0522	Chess	07/23/04
Thomas Sherman Tate v. UNC Hospitals	04 UNC 0538	Chess	06/15/04
Tracy Lane v. UNC Hospitals	04 UNC 0601	Gray	07/23/04
Chris Oduok v. UNC Hospitals	04 UNC 0760	Morrison	07/26/04
Pamela L. Chevalier v. UNC Hospitals	04 UNC 0773	Morrison	07/26/04

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1 Combined Cases