

NORTH CAROLINA REGISTER

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Contact List for Rulemaking Questions or Concerns

For questions or concerns regarding the Administrative Procedure Act or any of its components, consult with the agencies below. The bolded headings are typical issues which the given agency can address, but are not inclusive.

Rule Notices, Filings, Register, Deadlines, Copies of Proposed Rules, etc.

Office of Administrative Hearings
Rules Division
Capehart-Crocker House (919) 733-2678
424 North Blount Street (919) 733-3462 FAX
Raleigh, North Carolina 27601-2817

contact: Molly Masich, Codifier of Rules molly.masich@ncmail.net (919) 733-3367
Dana Sholes, Publications Coordinator dana.sholes@ncmail.net (919) 733-2679
Julie Edwards, Editorial Assistant julie.edwards@ncmail.net (919) 733-3980
Felicia Williams, Editorial Assistant felicia.s.williams@ncmail.net (919) 733-3361

Rule Review and Legal Issues

Rules Review Commission
1307 Glenwood Ave., Suite 159 (919) 733-2721
Raleigh, North Carolina 27605 (919) 733-9415 FAX

contact: Joe DeLuca Jr., Staff Attorney joe.deluca@ncmail.net (919) 715-8655
Bobby Bryan, Staff Attorney bobby.bryan@ncmail.net (919) 733-0928
Lisa Johnson, Administrative Assistant lisa.Johnson@ncmail.net (919) 733-3962

Fiscal Notes & Economic Analysis

Office of State Budget and Management
116 West Jones Street (919) 807-4700
Raleigh, North Carolina 27603-8005 (919) 733-0640 FAX

contact: Nathan Knuffman, Economist III nathan.Knuffman@ncmail.net (919)807-4728
Jonathan Womer, Asst. State Budget Officer jonathan.womer@ncmail.net (919)807-4737

Governor's Review

Reuben Young reuben.young@ncmail.net
Legal Counsel to the Governor (919) 733-5811
116 West Jones Street(919)
Raleigh, North Carolina 27603

Legislative Process Concerning Rule-making

Joint Legislative Administrative Procedure Oversight Committee
545 Legislative Office Building
300 North Salisbury Street (919) 733-2578
Raleigh, North Carolina 27611 (919) 715-5460 FAX

contact: Karen Cochrane-Brown, Staff Attorney karen@ncleg.net
Jeff Hudson, Staff Attorney jeffreyh@ncleg.net

County and Municipality Government Questions or Notification

NC Association of County Commissioners
215 North Dawson Street (919) 715-2893
Raleigh, North Carolina 27603

contact: Jim Blackburn jim.blackburn@ncacc.org
Rebecca Troutman rebecca.troutman@ncacc.org

NC League of Municipalities (919) 715-4000
215 North Dawson Street
Raleigh, North Carolina 27603

contact: Anita Watkins awatkins@ncmlm.org

NORTH CAROLINA REGISTER
 Publication Schedule for January 2007 – December 2007

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 th day from publication in the Register
21:13	01/02/07	12/07/06	01/17/07	03/05/07	03/20/07	05/01/07	05/08	09/29/07
21:14	01/16/07	12/20/06	01/31/07	03/19/07	03/20/07	05/01/07	05/08	10/13/07
21:15	02/01/07	01/10/07	02/16/07	04/02/07	04/20/07	06/01/07	05/08	10/29/07
21:16	02/15/07	01/25/07	03/02/07	04/16/07	04/20/07	06/01/07	05/08	11/12/07
21:17	03/01/07	02/08/07	03/16/07	04/30/07	05/21/07	07/01/07	05/08	11/26/07
21:18	03/15/07	02/22/07	03/30/07	05/14/07	05/21/07	07/01/07	05/08	12/10/07
21:19	04/02/07	03/12/07	04/17/07	06/01/07	06/20/07	08/01/07	05/08	12/28/07
21:20	04/16/07	03/23/07	05/01/07	06/15/07	06/20/07	08/01/07	05/08	01/11/08
21:21	05/01/07	04/10/07	05/16/07	07/02/07	07/20/07	09/01/07	05/08	01/26/08
21:22	05/15/07	04/24/07	05/30/07	07/16/07	07/20/07	09/01/07	05/08	02/09/08
21:23	06/01/07	05/10/07	06/16/07	07/31/07	08/20/07	10/01/07	05/08	02/26/08
21:24	06/15/07	05/24/07	06/30/07	08/14/07	08/20/07	10/01/07	05/08	03/11/08
22:01	07/02/07	06/11/07	07/17/07	08/31/07	09/20/07	11/01/07	05/08	03/28/08
22:02	07/16/07	06/22/07	07/31/07	09/14/07	09/20/07	11/01/07	05/08	04/11/08
22:03	08/01/07	07/11/07	08/16/07	10/01/07	10/22/07	12/01/07	05/08	04/27/08
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22:05	09/04/07	08/13/07	09/19/07	11/05/07	11/20/07	01/01/08	05/08	05/31/08
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22:08	10/15/07	09/24/07	10/30/07	12/14/07	12/20/07	02/01/08	05/08	07/11/08
22:09	11/01/07	10/11/07	11/16/07	12/31/07	01/21/08	03/01/08	05/08	07/28/08
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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.

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.

RULES REVIEW COMMISSION

The N.C. Rules Review Commission will hold a public hearing on Thursday, May 17, 2007 at 10:00 a.m. in the Assembly Room of the Methodist Building at 1307 Glenwood Ave., Raleigh, NC, 27608, the Commission's usual meeting place. The hearing is for the purpose of soliciting comments on the Commission's current rules, policies, and procedures and requests for any additional rules members of the public and state agencies believe are necessary. The Commission will also consider written comments. Written comments may be delivered at the hearing or mailed to:

Joseph J. DeLuca, Commission Counsel
OAH - N.C. Rules Review Commission
6714 Mail Service Center
Raleigh, NC 27699-6714

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 AND COMMISSIONS

CHAPTER 30 - NC BOARD OF MASSAGE AND BODYWORK THERAPY

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Board of Massage and Bodywork Therapy intends to adopt the rules cited as 21 NCAC 30 .0607 - .0635 and amend the rules cited as 21 NCAC 30 .0601 - .0603.

Proposed Effective Date: October 1, 2007

Public Hearing:

Date: June 21, 2007

Time: 11:00 a.m.

Location: Wachovia Capitol Center, 13th Floor Conference Room, 150 Fayetteville Street, Raleigh, NC 27601

Reason for Proposed Action: *These amendments to existing rules and additional new rules are being submitted to describe the process to be followed and standards to be met for the approval of massage and bodywork therapy schools as required by NCGS 90-631.*

Procedure by which a person can object to the agency on a proposed rule: *Any person may object to any of these proposed amendments or adoptions by submitting a written statement to Charles P. Wilkins at P.O. Box 2539, Raleigh, NC 27602, postmarked on or before August 5, 2007.*

Comments may be submitted to: *Charles P. Wilkins, P.O. Box 2539, Raleigh, NC 27602, phone (919) 833-2752, fax (919) 833-1059, email cwilkins@bws-law.com*

Comment period ends: August 5, 2007

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 .0600 - MASSAGE AND BODYWORK THERAPY SCHOOLS

21 NCAC 30 .0601 BOARD APPROVAL

(a) Any school, whether in this State or another ~~state, territory or country, state or territory~~ that offers a certificate, diploma or degree program in massage and bodywork therapy may make application for Board approval on a form provided by the Board. Every school must submit an application to be considered for approval, whether or not such school has been licensed, approved or accredited by another regulatory agency, state board, accreditation commission or trade association. A school ~~which~~ that operates in more than one location shall submit a separate application for each location.

(b) The Board shall grant approval to schools that meet the standards set forth in this ~~section~~ Section. The approval shall be for a period of one year unless increased pursuant to Paragraph (c) of this Rule. The Board shall maintain a list of approved schools.

(c) In order to maintain approval status, each school shall submit ~~an annual report~~ a report by April 1 of the year the school's approval expires. This report shall be on a form provided by the Board, ~~which may include~~ that shall require documentation of continued state licensure, where such licenses are required, authority to operate pursuant to Rule .0608 of this Section, if granted by any entity other than this Board, student enrollments, and any changes in curriculum, instructional staff or administrative staff. If a school has remained in compliance with all Board rules for a period of five consecutive years and has no disciplinary action taken against it by the Board for a period of five consecutive years, the Board shall increase the period of approval for that school from one to two years.

(d) An approved school shall notify the Board in writing within 30 days of any change in the school's location address, ownership, ~~or controlling interest~~ interest, administration, facilities, instructional staff, or curriculum.

~~(e) Board may utilize disciplinary sanctions for schools set forth in Rules Section .0905(b) if the applicant for approval, or holder of such approval:~~

- (1) ~~Fails to maintain, at any time, the minimum requirements for approval set forth in this Section;~~
- (2) ~~Fails to require its students to complete the minimum standards in order to graduate;~~
- (3) ~~Submits documents to the Board which contain false or misleading information;~~
- (4) ~~Fails to allow authorized representatives of the Board to conduct inspections of the school, or refuses to make available to them at any time full information pertaining to the requirements for approval set forth in this Section;~~
- (5) ~~Violates any statute or rule required for licensure or approval of that school by its educational licensing authority; or~~
- (6) ~~Violates any applicable rule of this Section.~~

(e) The school approval term begins on July 1 and ends on June 30. For the purposes of this Section, this term shall be considered the Fiscal year.

(f) If a Board-approved school has not met the requirements for renewal by June 30 preceding the new Fiscal year, its approval status shall be deemed expired.

(g) Approval shall be reinstated by the Board if a school whose approval has expired pursuant to Paragraph (f) of this Rule completes its renewal process by July 31 of the Fiscal year. A school that has had its approval reinstated by July 31 shall be considered to have maintained its approval status on a continuous basis, pursuant to Paragraph (i) of this Rule.

(h) The Board shall not renew the approval of a school that has not met the approval standards by July 31 of the year in which the school is scheduled to renew.

(i) Pursuant to G.S. 90-629(4), "successful completion of a course of study at a Board-approved school" means that the applicant graduated from a school that maintained its approval status with the Board on a continuous basis during the applicant's time of enrollment.

Authority G.S. 90-626(9); 90-631.

21 NCAC 30 .0602 DEFINITIONS

~~(a)~~ The following definitions shall apply to this Section:

- (1) Accreditation; accredited – Status granted to a post-secondary institution of higher learning that has met standards set by an accrediting agency recognized by the Secretary of the United States Department of Education.
- (2) Additional location. -- A facility not part of, nor adjoining the facility of an approved school, where an approved school intends to offer a program. Each such location is considered a separate school, requiring a new Application for School Approval to be submitted to the Board.
- (3) Additional program. -- A program that is of a different title, subject matter, or that increases or decreases by more than 10 percent the number of hours of instruction than the program under which the school received its initial approval from the Board. An approved

school that intends to offer an additional program shall submit an Application for Additional Program Approval.

~~(3)(4)~~ Instructor. -- A person who meets the qualifications set forth in Paragraph (e)(1) or (e)(2), of this Rule, Rule .0610 of this section who is responsible for delivering course content according to curricula established by the school, and who is responsible for managing the classroom environment.

~~(5)~~ Key administrative staff. -- The school's program director, director of education, and other administrative staff members who direct key areas such as operations, admissions, financial aid, placement, or student services.

~~(2)(6)~~ Massage and bodywork therapy school. -- Any educational institution that conducts a program, as defined in this Rule, for a tuition charge. Such institutions may be organized as proprietary schools, which that are privately owned and operated by a sole proprietor, partnership, corporation, association, or other entity; or may be post-secondary colleges or universities, whether publicly or privately owned.

~~(5)(7)~~ One classroom hour of supervised instruction. -- At least 50 minutes of any one clock hour during which the student participates in a learning activity in the physical presence of a member of the school's instructional staff.

~~(8)~~ One year of professional experience. -- In determining the qualifications of administrative or instructional staff members, at least 500 hours of documentable work in the professional job responsibility or subject area in a given year.

~~(4)(9)~~ Program. -- A course of study or curriculum consisting of a specified number hours of instruction consistent with the standards set forth in Paragraph (m) herein, Rule .0618 of this Section, which that is intended to teach adults the skills and knowledge necessary for the professional practice of massage and bodywork therapy, as defined in G.S. 90-622(3). Each program of a specified number of instructional hours shall be considered a separate program for the purposes of Board approval, and shall require a separate application for approval.

~~(10)~~ Student enrollment. -- The total number of students at an approved school in a designated Fiscal year who have begun a program for which they have registered and paid a fee in said Fiscal year, and who have completed more than 15 percent of such program.

~~(4)(11)~~ Teaching assistant. -- A person who meets the qualifications set forth in Paragraph (e)(3) or (e)(4), of this Rule, Rule .0610 of this Section, who is in the classroom to support the role of

the instructor, and who may ~~only~~ provide instruction to students ~~only in the presence of~~ and under the direct supervision of the instructor.

~~(b) Authority to operate.~~

- ~~(1) A proprietary school shall provide documentation that it is licensed or approved by the educational regulatory authority in the state, territory or country in which it operates; or shall be exempt from licensure or approval by statute.~~
- ~~(2) A regionally accredited post-secondary institution within the State which offers a certificate, diploma, or degree program in the field of massage and bodywork therapy shall have approval to conduct such program from the State Board of Community Colleges or the University of North Carolina.~~
- ~~(3) A regionally accredited post-secondary institution outside the State which offers a certificate, diploma, or degree program in the field of massage and bodywork therapy shall have approval from the regulatory authority in the state, territory or country in which it operates.~~

~~(c) Program director. One person shall be designated as the program director, and shall be qualified in accordance with the requirements listed in Paragraph (d)(2) of this Rule. This person may be titled as director, or in the case of programs at post-secondary institutions, department chair or program coordinator. The director is the person directly responsible for all facets of the program's operation, including: curriculum, methods of instruction, employment, training and evaluation of administrative and instructional staff, maintenance of proper administrative records, financial management, recruitment of students, and maintenance of school plant and equipment.~~

~~(d) Administrative staff and qualifications.~~

- ~~(1) The school shall have administrative staff to support the number of students enrolled.~~
- ~~(2) The program director or department chair shall have the following qualifications:~~
 - ~~(A) Be a graduate of a regionally accredited college or university and hold a baccalaureate degree, or have at least five years of professional experience in the field of massage and bodywork therapy; and~~
 - ~~(B) Have at least two years experience as an instructor in one or more of the major courses which are presented in the school's curriculum, or have at least two years experience in education administration.~~

~~Persons who possess qualifications which are equivalent to the requirements prescribed in (a) and (b) above may be approved individually by the Board.~~

- ~~(3) Other administrative staff who oversee such areas as operations, education, admissions,~~

~~financial aid, or student services, shall have the following qualifications:~~

- ~~(A) Be a high school graduate or its equivalent; and~~
- ~~(B) Have at least one year of professional experience in their area of their job responsibility, or have received training from the school sufficient to perform their defined job responsibilities.~~

~~(e) Instructional staff qualifications. The requirements herein shall apply to instructors and teaching assistants who provide more than six instructional hours in the program. Instruction is provided by persons with appropriate education and experience as follows:~~

- ~~(1) Instructors who teach courses related to the theory and practice of massage and bodywork therapy shall have the following qualifications:~~
 - ~~(A) Have a minimum of two years of professional practice experience in, and have received training and certification in the subject area they teach; and~~
 - ~~(B) Have received training in teaching methods, which shall include:~~
 - ~~(i) Presentation skills;~~
 - ~~(ii) Development and implementation of lesson plans;~~
 - ~~(iii) Dynamics of the teacher/student relationship;~~
 - ~~(iv) Management of the classroom environment;~~
 - ~~(v) Evaluation of student performance;~~
 - ~~(vi) Orientation to the school's administrative policies; and~~
 - ~~(C) Have one of the following credentials:~~
 - ~~(i) Be licensed under the Practice Act; or~~
 - ~~(ii) For schools and instructors outside the State, hold a similar credential in massage and bodywork therapy; if no such credential is available, hold a valid certification from a certifying agency which is approved by the National Commission of Certifying Agencies; or~~
 - ~~(iii) Be a licensed physician, dentist, chiropractor, osteopath, registered nurse, physical therapist, occupational therapist, or acupuncturist.~~

- ~~(2) Instructors in all other courses in the curriculum shall have received training in~~

teaching methods as defined in Subparagraph (e)(1)(b) of this Rule, and shall have one of the following qualifications:

(A) Have a minimum of two years of professional practice experience in, or have received training and certification in the subject area they teach; or

(B) Have a minimum of 12 semester credit hours of academic course work in the subject area they teach from a regionally accredited post-secondary institution.

(3) Teaching assistants in courses related to the theory and practice of massage and bodywork therapy shall have one of the credentials listed in Subparagraph (1)(c), of this Rule.

(4) Teaching assistants in all other courses in the curriculum shall have one of the following qualifications:

(A) Have a minimum of one year of professional practice experience in, or have received training and certification in the subject area they teach; or

(B) Have a minimum of 6 semester credit hours of academic course work in the subject area they teach from a regionally accredited post-secondary institution.

(f) Job descriptions and contracts.

(1) The school shall have written job descriptions with performance standards for each administrative and instructional position on its staff.

(2) The school shall execute an employment agreement with each staff member, whether such staff member works in a full time or part-time capacity, or is an employee or an independent contractor.

(g) School plant and equipment.

(1) The school plant, premises, and facilities shall be safe and sanitary and shall be in compliance with the statutory provisions and the rules and regulations of all local ordinances pertaining to fire, safety, health, and sanitation. Classrooms shall have sufficient lighting, ventilation, and temperature control to provide a comfortable learning environment for students.

(2) The equipment, supplies, and instructional materials of the school shall be adequate in type, quality, and amount for each course offered by the school. These shall also meet all requirements of statutory provisions, and rules and regulations of all local ordinances pertaining to fire, safety, health, and sanitation.

(3) The school shall have an annual inspection from the city or county agencies which determine compliance with requirements for

fire, safety, health, and sanitation in its jurisdiction.

(4) For classes conducted in the practice of massage and bodywork therapy, the school shall provide a minimum of 70 square feet of classroom space per treatment table, exclusive of fixed items in the classroom. There shall be one therapy treatment table, adjustable in height, for every two students in such classes.

(h) Financial management systems and economic stability.

(1) Schools shall maintain financial management systems which assure safety, accountability and effective use of financial resources, and which provide accurate information for assessing the financial condition of the institution. This includes regular profit and loss statements, balance sheets, and an annual budget. The following standards shall be met:

(A) Generally accepted accounting principles are followed in the preparation of financial statements; and

(B) Accuracy and security of records is maintained.

(2) Schools shall be financed to ensure long term stability. The following standards shall be met:

(A) Income and reserves are sufficient to complete instruction of currently enrolled students while still meeting all requirements for Board approval;

(B) A ratio of assets to liabilities of at least 1:1 is maintained; and

(C) An annual independent review or audit of the school's financial statements is conducted by a Certified Public Accountant.

(3) The Board may request a credit report on a school.

(4) The school shall maintain professional liability insurance to guarantee the fiscal viability of the school in the case of a claim of malpractice related to massage and bodywork therapy performed as a part of the school's instructional program.

(i) Admissions:

(1) The school shall maintain admission policies and procedures which are fully disclosed and which are administered consistently.

(2) Admissions standards are designed to ensure that only those students who have the ability to successfully complete the program will be admitted.

(3) The school shall maintain written documentation of the basis for admission of the student. Such records shall include copies of high school diploma or transcripts, proof of age, and other specific admission requirements of the school.

- (4) Documentation is maintained, for a minimum of three years, of the reasons for the denial of admission of any student.
- (5) A school is not precluded from enrolling students in individual courses not leading to a credential.
- (j) Tuition, refunds and financial aid.
 - (1) The school shall fully and clearly disclose tuition and all related program costs to prospective students.
 - (2) Tuition policies shall be published in the school catalog or bulletin. Such policies shall address adjustment of charges in the case of:
 - (A) Cancellation of enrollment within seventy-two (72) hours of signing an student enrollment agreement;
 - (B) Student withdrawal before the program start date;
 - (C) Student withdrawal after the program start date;
 - (D) Student dismissal; and
 - (E) Cancellation of program by the school.
 - (3) All students who enroll in the same program shall be charged the same amount for tuition. This does not preclude the school from raising tuition, from granting scholarships, from granting cash discounts to students for advance payment of tuition, or in the case of public institutions, from charging differential rates to residents and non residents.
 - (4) The school shall maintain a refund policy as follows:
 - (A) Proprietary schools shall base refunds on a percentage of the program actually completed by the student. At a minimum, such policy shall grant refunds up to and including the twenty five percent (25%) point of the program. Refunds shall be calculated from the last date of attendance and made within thirty (30) days of the date of withdrawal or dismissal.
 - (B) Programs offered by post-secondary colleges or universities shall follow the refund policy set forth by the applicable governing body or regulatory agency.
 - (5) The school catalog or bulletin shall accurately describe any financial aid programs in which the school participates, and shall distinguish in meaning between the terms "scholarship," "grant," "loan," and "financial aid." Schools which administer Title IV funds shall also include in its catalog and all advertising an eligibility phrase such as, "Financial aid available for those who qualify." Schools that do not administer Title IV funds shall not use the term "financial aid."
- (k) Student records and academic progress.
 - (1) The school shall maintain current, complete, and accurate records on each student. Such records shall show attendance, academic progress, grades, date entered, dates attended, courses studied, program completed, and date of graduation.
 - (2) Records shall be maintained in perpetuity, shall be stored in such a manner as to ensure their confidentiality, and shall be safe from theft, fire, or other possible loss.
 - (3) Students and graduates shall be allowed access to their records. Transcripts shall be released upon written request from students and graduates.
 - (4) All school policies, including those relating to satisfactory attendance, academic progress, and conduct shall be enforced. Students shall be notified when completion standards are not being met.
- (l) Educational credential issued to graduates; reporting of graduates' pass rate on national certification examination.
 - (1) Upon completion of the program, the student is given a certificate, diploma, or degree stating that the educational requirements have been met and the program has been satisfactorily completed.
 - (2) Such credentials are only granted to students who have completed the entire program for which the student enrolled.
 - (3) The school shall authorize agencies which conduct national certification examinations which are accepted by the Board as meeting the requirement of G.S. 90-629(5) to report directly to the Board the pass rate of the school's graduates on such examinations.
- (m) Pursuant to G.S. 90-631(1), programs shall meet the following standards:
 - (1) The school shall develop a set of educational objectives which describe the intended skills, knowledge, and attitudes which the program is designed to develop in the student by the completion of such program.
 - (2) The school shall offer a program consisting of a minimum of five hundred (500) classroom hours of supervised instruction. Such program shall contain the following hours of specific course work which are consistent with the school's mission and educational objectives:
 - (A) 200 hours in the fundamental theory and practice of massage and bodywork therapy, which shall include a minimum of one hundred (100) hours in application of hands-on methods; the balance of such hours shall include client assessment skills, indications and

- contraindications for treatment, body mechanics, draping procedures, standard practices for hygiene and control of infectious diseases, and the history of massage and bodywork therapy;
- (B) 100 hours in anatomy and physiology, which shall include the structure and function of the human body and common pathologies;
- (C) 50 hours in the following areas:
- (i) 15 hours in professional ethics, and North Carolina laws and rules for the practice of massage and bodywork therapy;
- (ii) 15 hours in business practices related to the field of massage and bodywork therapy; and
- (iii) 20 hours in somatic psychology, including dynamics of the therapist/client relationship; communication skills; and boundary functions;
- (D) 150 hours in other courses related to the practice of massage and bodywork therapy; such courses may include additional hands-on techniques, specific applications, adjunctive modalities, in-depth anatomy and physiology, kinesiology, psychology, movement education, or supervised clinical practice. First Aid or CPR may not be included in this category.
- (3) For programs which include a student clinic or fieldwork experiential component, such hours do not exceed 100 hours of the minimum requirement set forth in Subparagraph (2)(d) of this Rule. All such work is directly supervised and evaluated by an instructional staff member.
- (4) For programs which include an externship component, such hours shall not be included in the minimum requirements set forth in Subparagraph (2), of this Rule, and shall not comprise more than 20% of the total program hours. All such work is supervised by a designated person at the externship site, and is evaluated by the school.
- (5) Programs shall consist of a series of courses which are organized in a logical sequence, and which are consistent with the educational objectives. Sequential organization means that within a course, each class prepares students for the next class; overall, each course gives students the skills and knowledge necessary for the next course. Material is not presented unless students have the necessary skills and/or knowledge to utilize that material safely and effectively.
- (6) Course titles match the content of the course; published course descriptions accurately reflect the specific learning objectives of each course; sufficient hours are allotted to each course to allow students to gain competence in the subject areas covered.
- (7) A course curriculum is developed for each course, which shows the basic content of each individual class in the course, in the sequence presented.
- (8) Course requirements and competencies are consistent from instructor to instructor. Teaching materials, including detailed lesson plans, are developed and maintained for each course to ensure such consistency. Teaching methods are appropriate to course content, and to diverse learning styles.
- (9) Programs shall be a minimum of six months in length, with no more than nine instructional hours in one day. There shall be no more than two hours of instruction without a break. There shall be no more than four hours of instruction without a meal break.
- (10) For a student to receive credit in a course, the school shall require students to attend no less than 75% of the instructional hours, and to make up all missed instructional hours according to the procedures established by the school.
- (11) A syllabus is developed for each course, and provided to students prior to the beginning of instruction. The syllabus shall include the following elements: course title, course description, learning objectives, total number of instructional hours, meeting dates and class times, assignments, textbooks, evaluation methods, quiz and examination dates, and performance standards.
- (12) For post-secondary institutions, courses which fulfill the minimum requirements set forth in Subparagraph (2), of this Rule, shall support the program in massage and bodywork therapy. Courses in addition to the minimum requirements may include courses from other departments or programs which are directly relevant to the practice of massage and bodywork therapy.
- (n) Student to instructor ratios:
- (1) For classes which involve hands on practice, the student to instructor ratio shall not exceed 16 to 1.
- (2) Both instructors and teaching assistants, as defined in Paragraph (a) of this Rule, shall be considered in calculating these ratios.

~~(o) Learning resources. The school shall provide sufficient learning resources to students and instructional staff to support the educational objectives of the program as follows:~~

- ~~(1) The school shall maintain a library or resource center which contains books, periodicals, and other informational materials in the field of massage and bodywork therapy. As an alternative, the school may have a contractual agreement with another facility to provide access to such resources.~~
- ~~(2) All other resources, such as charts, models, or videotapes, shall be maintained in good condition.~~

~~(p) Standards of professional behavior.~~

- ~~(1) Conduct by instructional staff and students shall follow the Standards of Practice set forth by the National Certification Board for Therapeutic Massage and Bodywork, and those standards set forth in Rules Section .0500 of this Chapter.~~
- ~~(2) Nudity is not permitted where massage and bodywork therapy is taught or practiced. For the purpose of this section, "nudity" is defined as exposure of the genital or anal area for men or women, or the breast area for women. The only exception shall be for treatment to the breast area while utilizing therapeutic techniques.~~
- ~~(3) The school shall provide a private area where persons receiving therapeutic treatments may dress or undress, whether for in-class practice or treatments performed in a student clinic. As an alternative, the school may provide instruction to persons receiving therapeutic treatments in the procedure of undressing while on the treatment table under a full sheet covering.~~
- ~~(4) The above requirements shall apply to all classroom settings, as well as any location where instructional staff or students are demonstrating or delivering therapeutic treatments as a part of course requirements, whether at the school or another location.~~

~~(q) Student compensation prohibited. A student enrolled in a Board-approved school shall not receive a fee or other consideration for the massage and bodywork therapy they perform while completing clinical requirements for graduation, whether or not the school charges a fee for services provided in a student clinic.~~

~~(r) Transfer of Credit. A school shall not grant transfer credit from another institution unless the following standards are met:~~

- ~~(1) The school from where credit is being transferred shall be licensed or approved by the educational licensing authority in the state in which it operates, or be exempt by statute;~~
- ~~(2) The school from where credit is being transferred shall provide an official transcript;~~

~~(3) Courses for which credit is granted shall be parallel in content and intensity to the courses presently offered by the school; and~~

~~(4) Documentation of previous training shall be included in each student's permanent file.~~

~~(s) Advanced placement. A school may only grant advanced placement to a student, or exempt the student from curriculum requirements, based on the student's performance on an examination which the school administers to determine competency in that subject area. Such advanced placement or exemption shall not exceed thirty five percent (35%) of the total number of hours in the program.~~

~~(t) Ethical requirements in advertising. The following requirements pertain to all advertising and promotional activities conducted by, or on behalf of the school, including such media utilized as print, broadcast, verbal presentations, data transfer technologies, videotape, or audiotape:~~

~~(1) Educational programs and services offered shall be the primary emphasis of all advertisements, publications, promotional literature, and recruitment activities, whether distributed to prospective students or the general public.~~

~~(2) All statements and representations made shall be clearly worded, factually accurate, and current. Supporting information shall be kept on file and available for review. All advertising and promotional materials shall include the correct name and location of the school.~~

~~(3) The school shall not falsely represent its facilities in photographs, illustrations, or through other means.~~

~~(4) The school catalog or bulletin shall contain all information required in Paragraph (v) herein.~~

~~(5) All advertising and promotional activities shall clearly indicate that massage and bodywork training and not employment is being offered. No overt or implied claim of individual employment shall be made. No false or deceptive statements regarding employment opportunities or earning potential in the field of massage and bodywork as a result of the completion of the course of study shall be used to solicit students.~~

~~(6) Letters of endorsement, commendation, or recommendation in favor of a school shall be used for advertising or promotion only with the written consent of the author without any offer of financial compensation, and only when such letters portray current conditions or facts. Letters shall contain the date they were received, shall be kept on file and be subject to inspection.~~

~~(7) Programs that use placement information in advertisements, catalogs or other printed documentation shall corroborate the data.~~

~~(8) School literature and advertisements shall not quote "high top" or "up to" salaries unless they~~

also indicate the normal range or starting salaries for graduates.

- (9) ~~Schools offering programs which are not approved by the Board shall clearly identify which programs are Board approved.~~
- (10) ~~Schools shall accurately describe requirements for state licensure.~~
- (11) ~~The school shall not defame competitors by falsely imputing to them dishonorable conduct, inability to perform on contracts, or by the false disparagement of the character, nature, quality, values, or scope of their educational services, or in any other material respect.~~
- (u) ~~The school shall execute a Student Enrollment Agreement for training with every student. A copy of the executed agreement shall be provided to the student. At a minimum, such agreement shall contain the following:~~
 - (1) ~~Name and telephone number of the school; location of where the student will attend classes.~~
 - (2) ~~Student's name, address, telephone number, social security number.~~
 - (3) ~~Name of the program in which student is enrolling; number of clock or credit hours of the program; beginning and ending dates; length of program in weeks or months; expected graduation date.~~
 - (4) ~~Program tuition and all related costs, including application and registration fees, and estimated cost of books and supplies.~~
 - (5) ~~Refund and cancellation policies, including buyer's right to cancel.~~
 - (6) ~~Payment methods, including cash, installment payment plans, or financial aid (as applicable); interest charged; methods used to collect delinquent tuition.~~
 - (7) ~~Placement guarantee disclaimer.~~
 - (8) ~~Grounds for dismissal from the school.~~
 - (9) ~~Statement referencing the school catalog and student handbook as a legal part of the enrollment agreement.~~
 - (10) ~~Statement certifying that student has read and understands all terms of the enrollment agreement.~~
 - (11) ~~Signature lines for school official and student.~~

(v) ~~The school shall publish a catalog or bulletin which is certified by an authorized official of the school as being current, true, and correct in content and policy. The catalog shall include the following information:~~

- (1) ~~School name, location address, phone number.~~
- (2) ~~Volume number and date of publication.~~
- (3) ~~Ownership structure, including type of legal entity and names of owners, Board of Directors members, or academic officers at public institutions.~~
- (4) ~~Names and titles of all instructional and key administrative staff.~~
- (5) ~~Statement of school mission, philosophy, and educational program objectives.~~

- (6) ~~School history and identification of all licenses, approvals or accreditations which the school maintains.~~
- (7) ~~Definition of measurement of program, whether in clock hours or credit hours.~~
- (8) ~~Detailed course descriptions, including number of hours for each course.~~
- (9) ~~Graduation requirements, including type of credential issued upon graduation.~~
- (10) ~~Requirements for licensure, certification or registration of therapists in the state, province, or country in which the school operates.~~
- (11) ~~Standards for admission and description of the school's admissions process.~~
- (12) ~~School calendar, including beginning and ending dates of all programs, all holidays and days off.~~
- (13) ~~Length of time required for completion of the program.~~
- (14) ~~Program tuition and all associated costs, including textbooks, supplies, and other expenses.~~
- (15) ~~Refund policy.~~
- (16) ~~Description of facilities and learning resources.~~
- (17) ~~Student services.~~
- (18) ~~Academic policies, including the following:~~
 - (A) ~~Grading system;~~
 - (B) ~~Standards of satisfactory academic progress;~~
 - (C) ~~Description of disciplinary procedures, including conditions for probation, suspension, dismissal or expulsion, conditions of reentrance for students dismissed for unsatisfactory academic progress;~~
 - (D) ~~Transfer of credit from other institutions;~~
 - (E) ~~Attendance requirements, make-up work, tardiness, leave of absence;~~
 - (F) ~~Standards of conduct, including a sexual harassment policy; and~~
 - (G) ~~Complaint policy, process for complaint resolution, name and address of the school regulatory agency for filing complaints when institutional process does not bring resolution.~~

(w) ~~Notification of changes. An approved school shall notify the Board in writing within thirty (30) days of any changes in administration, facilities, instructional staff, curriculum, or other changes that may effect the programs offered.~~

(x) ~~Board approval not transferable.~~

- (1) ~~In the event of the change of ownership of a school, the approval already granted to the original owner or operator thereof shall not be transferable to the new ownership or operators. Provided, however, the Board may issue temporary operating approval for a period of~~

90 days to a school upon its change of ownership if the school held a valid, current approval prior to the change, and if the Board finds that the school is likely to qualify after the change of ownership for approval under this Section.

(2) For the purposes of this Paragraph, "change of ownership" is defined as, but not limited to the following situations:

- (A) Sale of the school;
- (B) Transfer of controlling interest of stock of the school or its parent corporation;
- (C) Merger of two or more schools;
- (D) Transfer of controlling interest of stock to parent corporation;
- (E) Transfer of assets or liabilities of school to parent corporation or owners; or
- (F) Change from profit to non profit status.

(y) Initial application for Board approval. The school shall submit an application for approval on a form provided by the Board, which shall be accompanied by the following:

- (1) A certified check for the application fee set forth in Rule .0606 herein, made payable to the Board.
- (2) Completed personnel qualification forms on the school director, administrative staff, instructors, and teaching assistants, with photocopies of academic transcripts, degrees, diplomas, and professional licenses and certifications for each person.
- (3) Job descriptions for school director, administrative staff, instructors, and teaching assistants.
- (4) Examples of contracts for administrative and instructional staff.
- (5) Detail of ownership structure of the school, and organizational chart.
- (6) Facility plan, including detailed floor plans with dimensions and fixtures, uses of each room, specifications on lighting, ventilation, and temperature control.
- (7) Equipment list, including furniture, office equipment, and instructional equipment for classroom.
- (8) Copy of deed if school owns its facility, or copy of lease if school does not own its facility.
- (9) Copies of reports from city or county inspections for fire, safety, health, and sanitation, made within the three months prior to submission of application for approval.
- (10) Statement of Financial Affirmation; copies of the school's financial statements for the previous fiscal year; letter from a Certified Public Accountant affirming that the school is

in compliance with the requirements of Paragraph (h), herein.

- (11) Copy of the application for admission which is submitted by prospective students; copies of materials used to document the admission process with applicants.
 - (12) Copies of the forms used for documentation of attendance, missed class make up work, student academic progress, grades earned, notification of unsatisfactory progress and notification of disciplinary action.
 - (13) Copy of the educational credential granted to students who complete the program; example of transcript issued by the school.
 - (14) Core Program Requirements Form; copies of course curricula; copies of course syllabi; one example lesson plan for each course; school calendar for the current academic year.
 - (15) List of student to instructor ratios for each course offered.
 - (16) List of learning resources provided by the school, including numbers of books, periodicals, and other informational materials in the school library. If the school has no library, include copy of the agreement for use of another facility, with its list of resources.
 - (17) Copies of all advertisements and promotional materials from the previous year, including website addresses and tapes of broadcast advertisements.
 - (18) Copy of the Student Enrollment Agreement issued by the school.
 - (19) Catalog Certification Form; copy of the current school catalog or bulletin, with accompanying student handbook (if applicable).
 - (20) As applicable, copy of state license or approval to operate school, or citation of statutory exemption; copy of certificate of accreditation (if applicable).
- (z) Application for Board approval of additional programs. An approved school shall submit an application for approval of an additional program on a form provided by the Board, which shall be accompanied by the following:
- (1) A certified check for the application fee set forth in Rule .0606 herein, made payable to the Board.
 - (2) Core Program Requirements Form; copies of course curricula; copies of course syllabi; one example lesson plan for each course; school calendar for the current academic year.
 - (3) List of student to instructor ratios for each course offered.
 - (4) Copy of the educational credential granted to students who complete the program; example of transcript issued by the school.
 - (5) Copy of the school catalog or bulletin which describes the additional program.

- (6) ~~Complete documentation of any other requirement set forth in Paragraph (y), herein, which is different than what the school documented in its initial application for approval, or what has been documented in its most recent application for renewal of approval.~~

- (3) Initial application for approval of additional program at same location 750.00
- (4) Inspection for initial approval or renewal (one program) 1,500.00
- (5) Inspection for initial approval or renewal of additional program, same location 500.00
- (6) Renewal of approval (one program) 1,000.00
- (7) Renewal of approval (each additional program) 750.00

Authority G.S. 90-626(9); 90-631.

21 NCAC 30 .0603 DOCUMENTATION OF SUCCESSFUL COMPLETION

(a) In order to be acknowledged as having successfully completed a course of study as required by G.S. 90-629(4), an applicant for licensure must submit ~~an official~~ transcript to the Board's administrative office.

(b) Such transcript must document to the satisfaction of the Board that the applicant has completed all requirements in a course of study ~~which~~ that meets the ~~minimum curriculum~~ standards set forth in this Section, and shall indicate the following:

- (1) Passing grades in all courses;
- (2) Dates of attendance;
- (3) Date of graduation or successful completion of the entire program; ~~and~~
- (4) Total number of supervised classroom hours of ~~instruction-instruction; and~~
- (5) Credential awarded, whether a certificate, diploma, or degree.

Authority G.S. 90-626(9); 90-631.

21 NCAC 30 .0607 VERIFICATION OF COMPLIANCE

In order to verify that a school is in compliance with the standards for approval set forth in this Section, the Board may inspect a school during the application process, or after approval has been granted. Such inspection may include the school's physical facilities, equipment, learning materials, class observation, and records. Such inspection may also include interviews with members of the school's administrative staff, instructional staff, or student body. The Board may also interview or survey graduates of the school, or employers of the school's graduates.

Authority G.S. 90-626(9); 90-631.

21 NCAC 30 .0608 SCHOOL APPROVAL FEES

(a) The fees collected under this Section are intended to cover the administrative costs of the approval program. No fee for approval application, renewal or inspection shall be refunded in the event the application is rejected or the approval suspended or revoked.

(b) Fees for Board approval of schools are as follows:

- (1) Request for Application Approval Package \$ 20.00
- (2) Initial application for approval (one program) 2,000.00

(c) A school that is required to have more than one inspection in a fiscal year, in order to investigate or verify areas of noncompliance with the standards for school approval, shall pay a fee of one thousand five hundred dollars (\$1500) for each additional inspection.

(d) In addition to the inspection fee, schools shall also pay actual expenses for travel, lodging and subsistence necessary to the inspection.

Authority G.S. 90-626(8); 90-631.

21 NCAC 30 .0609 DISCIPLINARY SANCTIONS; REPORTING REQUIREMENTS

(a) The Board may utilize disciplinary sanctions for schools set forth in Rule .0905(b) of this Chapter if the applicant for approval, or holder of such approval:

- (1) fails to maintain, at any time, the requirements for approval set forth in this Section;
- (2) fails to require its students to complete the minimum standards in order to graduate;
- (3) submits documents to the Board that contain false or misleading information;
- (4) fails to allow authorized representatives of the Board to conduct inspections of the school, or refuses to make available to them at any time information pertaining to the requirements for approval set forth in this Section;
- (5) violates any statute or rule required for licensure or approval of that school by its educational licensing authority; or
- (6) violates any applicable rule of this Section.

(b) An approved school that is accredited by an agency recognized by the United States Department of Education (USDE) shall notify the Board in writing within 30 days of any notification it receives from its accrediting agency or the USDE Office of Postsecondary Education of a show cause action, probation action, or denial of accreditation.

(c) An approved school outside the State shall notify the Board in writing within 30 days of any notification it receives from its state, provincial, territorial or national licensing or approval authority of non-compliance with its regulatory standards, or disciplinary actions.

Authority G.S. 90-626(9); 90-631.

21 NCAC 30 .0610 AUTHORITY TO OPERATE

(a) A proprietary school shall provide documentation to the Board that it is licensed or approved by the regulatory authority

for schools of massage and bodywork therapy in the state or territory in which it operates, or is exempt by statute.

(b) An accredited post-secondary institution outside North Carolina that offers a certificate, diploma, or degree program in the field of massage and bodywork therapy shall have approval from the regulatory authority in the state or territory in which it operates.

Authority G.S. 90-626(9); 90-631.

21 NCAC 30 .0611 PROGRAM DIRECTOR, ADMINISTRATIVE STAFF AND QUALIFICATIONS

(a) A school shall designate one person as the program director. This person may be titled as director, or in the case of programs at post-secondary institutions, department chair or program coordinator. The director is the person directly responsible for all facets of the program's operation, including curriculum, methods of instruction, employment, training and evaluation of administrative and instructional staff, maintenance of administrative records, financial management, recruitment of students, and maintenance of school plant and equipment. The program director or department chair shall have the following qualifications:

- (1) be a graduate of an accredited college or university and hold a baccalaureate degree or have at least five years of professional experience in the field of massage and bodywork therapy; and have at least two years experience as a lead instructor in one or more of the core curriculum courses that are presented in the school's curriculum or have at least two years experience in education administration; or
- (2) possess qualifications that are equivalent to the requirements prescribed in Subparagraph (a)(1) of this Rule.

(b) If the program director does not have experience in either the professional practice of massage and bodywork therapy, or massage and bodywork therapy education, the school shall have a director of education on staff to manage the areas of curriculum and lesson plan development, instructional methods, and training and evaluation of instructional staff. The director of education shall have the following qualifications:

- (1) be a graduate of an accredited college or university and have at least five years of professional experience in the field of massage and bodywork therapy; or
- (2) have at least two years experience as a lead instructor in one or more of the school's core curriculum courses, or have at least two years experience in massage therapy education administration or teacher training.

(c) Other key administrative staff members who oversee or direct such areas as operations, admissions, financial aid, or student services shall have the following qualifications:

- (1) be a high school graduate or its equivalent; and
- (2) have at least one year of professional experience in the area of their job responsibility, or have received training from

the school sufficient to perform their defined job responsibilities.

(d) A school shall have administrative staff to support the number of students enrolled.

Authority G.S. 90-626(9); 90-631.

21 NCAC 30 .0612 INSTRUCTIONAL STAFF QUALIFICATIONS

(a) The requirements in this Rule are intended to assure that instructors, as defined in Rule .0602 of this Section, are competent in the fundamental knowledge and methodology of teaching, and possess a professional level of skills, knowledge and practical experience in every subject they teach in the program.

(b) Instructors shall be trained in teaching methods, that shall include:

- (1) Presentation skills;
- (2) Development and implementation of lesson plans;
- (3) Dynamics of the teacher/student relationship;
- (4) Management of the classroom environment;
- (5) Evaluation of student performance;
- (6) Instructional strategies for the adult learner;
- (7) Accommodations for students with special needs; and
- (8) Knowledge of the school's administrative policies and procedures.

(c) Instructors shall be trained in the subject taught, and shall have:

- (1) At least two years of professional experience in the subject area; and
- (2) Received certification to teach a trademarked modality if such certification is available.

(d) Instructors shall have one of the following professional credentials:

- (1) Be licensed under the Practice Act for at least two years; or
- (2) Have a baccalaureate degree from an accredited post-secondary institution with at least 12 semester credit hours of academic course work in the subject area they teach from such institution; or
- (3) Be a licensed physician, dentist, chiropractor, osteopath, registered nurse, physical therapist, occupational therapist, acupuncturist, or;
- (4) Hold a state license or certification from a state other than North Carolina in massage and bodywork therapy for at least two years; if no such credential is available, hold a valid certification in massage and bodywork therapy for at least two years from an agency whose certification program is accredited by the National Commission for Certifying Agencies.

(e) Teaching assistants, as defined in Rule .0602 of this Section, shall have the following qualifications:

- (1) Assistants in courses related to the theory and practice of massage and bodywork therapy shall be licensed under the Practice Act, and

shall have training in the subject area of the course.

(2) Assistants in courses other than the theory and practice of massage and bodywork therapy shall have training in the subject area of the course, in addition to one of the following qualifications:

- (A) Be licensed under the Practice Act; or
- (B) Have at least one year of professional experience in the subject area; or
- (C) Have at least six semester credit hours of academic course work in the subject area from an accredited post-secondary institution.

(f) A school shall observe, evaluate, and document the performance of every instructional staff member at least annually in each course taught to assure that competency in teaching methods and subject area is maintained.

Authority G.S. 90-626(9); 90-631.

21 NCAC 30 .0613 APPROVAL PROCESS FOR KEY ADMINISTRATIVE AND INSTRUCTIONAL STAFF

(a) Whenever key administrative staff, instructors and teaching assistants, as defined in Rules .0602 and .0609 of this Section, are hired, all application documents as described in Paragraph (c) of this Rule must be sent to the Board within 30 days of the hire date.

(b) Whenever instructors with the credentials described in Rule .0610(d)(4) of this Section are hired, the instructors must be approved by the Board before performing their job functions at a Board-approved school. The approval process may take up to 30 days from the time the Board receives all documents in Paragraph (c) of this Rule.

(c) A school shall submit an application for each key administrative staff member, instructor, and teaching assistant on a form provided by the Board, which shall be accompanied by the following documentation:

- (1) Copies of all academic diplomas or degrees;
- (2) Official school transcripts from all post-secondary institutions;
- (3) Copies of occupational licenses and certifications;
- (4) A record of work experience in the field; and
- (5) A record of training in teaching methods.

(d) A school shall demonstrate that each key administrative staff member meets the qualifications set forth in Rule .0609 of this Section, and that each instructor and teaching assistant meets the qualifications set forth in Rule .0610 of this Section.

(e) The requirements of this Rule shall not apply to instructors who provide no more than eight hours of instruction in a program.

Authority G.S. 90-626(9); 90-631.

21 NCAC 30 .0614 MANAGEMENT OF STAFF

(a) A school shall have written job descriptions with performance standards for each administrative and instructional position on its staff.

(b) A school shall execute a written employment agreement or contract with each staff member, whether such staff member works in a full-time or part-time capacity, or is an employee or an independent contractor.

(c) A school shall conduct and document an annual performance review for each staff member.

(d) A school shall maintain a file for all staff members, that shall contain their original application for Board approval with all accompanying documentation, current employment agreement or contract, and annual performance reviews. A school shall keep each file current, with copies of their most recent occupational licenses, certifications, documentation of continuing education, and academic transcripts.

Authority G.S. 90-626(9); 90-631.

21 NCAC 30 .0615 SCHOOL PLANT AND EQUIPMENT

(a) A school plant, premises, and facilities shall be safe and sanitary and shall be in compliance with the statutory provisions and the rules and regulations of all local ordinances pertaining to fire, safety, health, and sanitation. Classrooms shall have sufficient lighting, ventilation, and temperature control to provide a comfortable learning environment for students.

(b) The equipment, supplies, and instructional materials of the school shall be adequate in type, quality, and amount for each course offered by the school. These shall also meet all requirements of statutory provisions, and rules and regulations of all local ordinances pertaining to fire, safety, health, and sanitation.

(c) A school shall have an annual inspection from the city or county agencies that determine compliance with requirements for fire, safety, health, and sanitation in its jurisdiction.

(d) For classes conducted in the practice of massage and bodywork therapy, the school shall provide at least 70 square feet of classroom space per treatment table, exclusive of fixed items in the classroom. There shall be one therapy treatment table, adjustable in height, for every two students in such classes.

Authority G.S. 90-626(9); 90-631.

21 NCAC 30 .0616 FINANCIAL MANAGEMENT SYSTEMS AND ECONOMIC STABILITY

(a) The school shall maintain a sound financial structure, with resources sufficient for its ongoing operations and the discharge of its obligations to the students and staff. To demonstrate this, the school shall:

(1) Maintain financial management systems that assure reliability, accountability and effective use of financial resources, that provide accurate information for assessing the financial condition of the institution, and that assure the accuracy and security of records.

(2) Provide annually a review or audit, prepared in accordance with Generally Accepted Accounting Principles. This annual financial statement shall demonstrate that the current assets of the school exceed the current liabilities, and that there was a positive net

working capital for the prior year. If the school does not meet the requirements in this Subparagraph, the Board shall require a financial improvement plan, teach-out plan, or form of surety guaranteeing that the resources are sufficient to protect the current students. If the Board determines that the school does not have sufficient resources, it may take disciplinary actions pursuant to Rule .0905(b) of this Chapter up to and including revocation of approval.

(b) The Board may request a credit report on a school from a nationally recognized credit reporting agency.

(c) The school shall maintain professional liability insurance to guarantee the fiscal viability of the school in the case of a claim of malpractice related to massage and bodywork therapy performed as a part of the school's instructional program.

Authority G.S. 90-626(9); 90-631.

21 NCAC 30 .0617 STUDENT RECRUITMENT

(a) In its recruitment of students, an approved school shall:

- (1) Not use employment agencies to recruit prospective students, or place advertisements in help-wanted sections of classified advertisements, or otherwise lead prospective students to believe they are responding to a job opportunity;
- (2) Ensure that its recruiting agents and other personnel do not make false or misleading statements about the institution, its personnel, its programs, its services, its approval status, its accreditation, or any other pertinent information;
- (3) Inform each student accurately about financial assistance and obligations for repayment of loans;
- (4) Not make explicit or implicit promises of employment or salary expectations to prospective students;
- (5) Not permit the payment of cash or nonmonetary incentives to any student or prospective student as an inducement to enroll; nor shall it use the word "free" or its synonyms in reference to any equipment, tuition, books, or other items in conjunction with recruiting or advertising;
- (6) Conduct the recruitment process to ensure that its personnel do not discredit other institutions by:
 - (A) falsely imputing to them dishonorable conduct, inability to perform contracts, questionable credit standing, or similar negative characteristics;
 - (B) making other false representations;
 - (C) disparaging the character, nature, quality, value or scope of their

program of instruction or services; or by

(D) demeaning their students.

(b) The school shall also ensure that its personnel do not knowingly influence any student to leave another institution or encourage a student to change plans after signing an enrollment application and paying a registration fee to another institution.

Authority G.S. 90-626(9); 90-631.

21 NCAC 30 .0618 ADMISSIONS

(a) A school shall maintain admission policies and procedures that are disclosed to the public and administered consistently.

(b) A school shall conduct an orientation session for persons who have applied for admission, or who are considering application for admission. Such orientation shall include an overview of the program's educational objectives and curriculum, the academic and physical requirements of the program, existing employment opportunities in the field, the time and financial requirements of the program, and state requirements for licensure.

(c) Admissions standards shall be designed to ensure that only those applicants are admitted who have the cognitive, motor and behavioral skills and moral character necessary to successfully complete the program and to practice massage and bodywork therapy in a safe and effective manner.

(d) A school shall conduct a pre-enrollment interview with each applicant to determine the applicant's qualifications. The information gathered from this interview shall be evaluated with all written documentation submitted by the applicant before the school renders a decision on the application.

(e) A school shall maintain written documentation of the basis for admission of the student. Such records shall include copies of high school diploma or transcripts, proof of age, and other specific admission requirements of the school.

(f) Documentation of the reasons for the denial of admission of any student shall be maintained for at least three years.

(g) A school must comply with the admissions standards of this rule but may enroll students in individual courses not leading to a credential.

Authority G.S. 90-626(9); 90-631.

21 NCAC 30 .0619 TUITION, REFUNDS AND FINANCIAL AID

(a) A school shall disclose tuition, refund policy and all related program costs to prospective students.

(b) Tuition policies shall be published in the school catalog or bulletin. Such policies shall address adjustment of charges in the case of:

- (1) cancellation of enrollment within 72 hours of signing a student enrollment agreement;
- (2) student withdrawal before the program start date;
- (3) student withdrawal after the program start date;
- (4) student dismissal; and
- (5) cancellation of program by the school.

(c) All students who enroll in the same program shall be charged the same amount for tuition. This does not preclude the school from raising tuition, from granting scholarships, from granting cash discounts to students for advance payment of tuition, or in the case of public institutions, from charging differential rates to residents and non-residents.

(d) A school shall maintain a refund policy as follows:

- (1) proprietary schools shall base refunds on a percentage of the program actually completed by the student. Such policy shall grant refunds at least up to and including the 25 percent point of the program. Refunds shall be calculated from the last date of attendance and made within 30 days of the date of withdrawal or dismissal; and
- (2) programs offered by post-secondary colleges or universities shall follow the refund policy set forth by the applicable governing body or regulatory agency.

(e) The school catalog or bulletin shall accurately describe any financial aid programs in which the school participates, and shall distinguish in meaning between the terms "scholarship," "grant," "loan," and "financial aid." Schools that administer Title IV funds shall also include in their catalog and all advertising an eligibility phrase such as, "Financial aid available for those who qualify." Schools that do not administer Title IV funds shall not use the term "financial aid."

Authority G.S. 90-626(9); 90-631.

21 NCAC 30 .0620 PROGRAM REQUIREMENTS

Pursuant to G.S. 90-631(1), programs shall meet the following requirements:

- (1) A school shall develop and adhere to a set of educational objectives that describe the intended skills, knowledge, and attitudes that the program is designed to develop in the student by the completion of the program;
- (2) The program shall have a core curriculum of at least 500 classroom hours of supervised instruction. The core curriculum shall contain the following hours of specific course work that are consistent with the school's mission and educational objectives:
 - (a) 200 hours in the fundamental theory and practice of massage and bodywork therapy that is designed to produce comprehensive entry-level skills in the application of direct manipulation to the soft tissues of the human body, and is based in therapeutic methods consistent with the definition set forth in G.S. 90-622(3) such as Swedish massage, acupressure, shiatsu, deep muscle massage, trigger point therapy, and connective tissue bodywork. Of the 200 hours in this category, at least 100 hours shall be in the application

of hands-on methods. The balance of the hours shall include client assessment skills, indications and contraindications for treatment, body mechanics, draping procedures, standard practices for hygiene and control of infectious diseases, and the history of massage and bodywork therapy;

- (b) 100 hours in anatomy and physiology related to the practice of massage and bodywork therapy, that shall include the structure and function of the human body and common pathologies;
- (c) 15 hours in professional ethics, and North Carolina laws and rules for the practice of massage and bodywork therapy;
- (d) 15 hours in business management practices related to the practice of massage and bodywork therapy;
- (e) 20 hours in psychological concepts related to the practice of massage and bodywork therapy, including dynamics of the client/therapist relationship, professional communication skills, the mind-body connection, and boundary functions;
- (f) 150 hours in other courses related to the practice of massage and bodywork therapy. The courses may include additional hands-on techniques, specific applications, adjunctive modalities, in-depth anatomy and physiology, kinesiology, psychological concepts, or supervised clinical practice. First Aid or CPR shall not be included in this category. Techniques that are considered exempt from licensure pursuant to G.S. 90-624(6) or (7), and that are further defined by Rule .0203(a) of this Chapter may constitute up to 50 hours of the 150 hours in this category.
- (3) For programs that include a student clinic or fieldwork experiential component, the hours shall not exceed 100 hours of the minimum requirement set forth in Sub-item (2)(f) of this Rule. All work shall be in the presence of and directly supervised and evaluated by an instructional staff member;
- (4) For programs that include an externship component, the hours shall not be included in the requirements set forth in Item (2) of this Rule, and shall not comprise more than 20 percent of the total program hours. All work at the externship site shall be supervised by a

- person at the externship site who is acceptable to the school, and shall be monitored and evaluated by the school;
- (5) The program shall provide curriculum hours that allow its graduates to meet the minimum eligibility requirements for at least one of the competency assurance examinations that are approved by the Board as meeting the licensure requirement set forth in G.S. 90-629(5);
 - (6) Programs shall consist of a series of courses that are organized in a logical sequence, and that are consistent with the educational objectives. Sequential organization means that within a course, each class prepares students for the next class; overall, each course gives students the skills and knowledge necessary for the next course. Material is not presented unless students have the necessary skills and knowledge to utilize that material safely and effectively;
 - (7) Course titles shall match the content of the course; published course descriptions shall accurately reflect the specific learning objectives of each course; sufficient hours shall be allotted to each course to allow students to gain competence in the subject areas covered;
 - (8) A course curriculum is developed for each course that shows the basic content of each individual class in the course in the sequence presented;
 - (9) Course requirements and competencies are consistent from instructor to instructor. Teaching materials, including detailed lesson plans, are developed and maintained for each course to ensure consistency. Teaching methods are appropriate to course content, and to diverse learning styles;
 - (10) Programs shall be at least 24 weeks in length, with no more than nine instructional hours in one day. There shall be no more than two hours of instruction without a break. There shall be no more than four hours of instruction without a meal break;
 - (11) For a student to receive credit in a course, the school shall require students to attend no less than 75 percent of the instructional hours, and to make up sufficient missed instructional hours to equal no less than 98 percent of the instructional hours in the course according to the procedures established by the school;
 - (12) A syllabus shall be developed for each course and provided to students prior to the beginning of instruction. The syllabus shall include the following elements:
 - (a) course title,
 - (b) course description,
 - (c) learning objectives,

- (d) teaching methodologies,
 - (e) total number of instructional hours,
 - (f) meeting dates and class times,
 - (g) assignments,
 - (h) textbooks,
 - (i) evaluation methods,
 - (j) quiz and examination dates, and
 - (k) performance standards.
- (13) For post-secondary institutions, courses that fulfill the requirements set forth in Item (2) of this Rule shall support the program in massage and bodywork therapy. Courses in addition to these requirements may include courses from other departments or programs that are relevant to the practice of massage and bodywork therapy; and
 - (14) For classes that involve hands-on practice, the student to instructor ratio shall not exceed 16 to 1. Both instructors and teaching assistants, as defined in Rule .0602 of this Section shall be considered in calculating these ratios.

Authority G.S. 90-626(9); 90-631.

21 NCAC 30 .0621 STUDENT RECORDS AND ACADEMIC PROGRESS

- (a) A school shall maintain current, complete, and accurate records on each student. The records shall show attendance, academic progress, grades, date entered, dates attended, courses studied, program completed, and date of graduation.
- (b) Records shall be maintained in perpetuity, shall be stored in such a manner as to ensure their confidentiality, and shall be safe from theft, fire, or other possible loss.
- (c) Students and graduates shall be allowed access to their records. Transcripts shall be released upon written request from students and graduates.
- (d) All school policies, including those relating to satisfactory attendance, academic progress, and conduct shall be enforced by the school. Students shall be notified when completion standards are not being met.

Authority G.S. 90-626(9); 90-631.

21 NCAC 30 .0622 EDUCATIONAL CREDENTIAL ISSUED; GRADUATES' PASS RATE ON NATIONAL EXAMINATIONS

- (a) Upon completion of the program, the student shall be given a certificate, diploma, or degree stating that the educational requirements have been met and the program has been successfully completed.
- (b) Such credentials shall be only granted to students who have completed the entire program for which the student enrolled.
- (c) A school shall authorize agencies that conduct national certification examinations that are accepted by the Board as meeting the requirement of G.S. 90-629(5) to report directly to the Board the pass rate of the school's graduates on such examinations.

Authority G.S. 90-626(9); 90-631.

21 NCAC 30 .0623 LEARNING RESOURCES

The school shall provide sufficient learning resources to students and instructional staff to support the educational objectives of the program as follows:

- (1) The school shall maintain a library or resource center that contains books, periodicals, and other informational materials in the field of massage and bodywork therapy. As an alternative, the school may have a contractual agreement with another facility to provide access to such resources.
- (2) All other resources, such as charts, models, or electronic media, shall be maintained in good condition.

Authority G.S. 90-626(9); 90-631.

21 NCAC 30 .0624 STANDARDS OF PROFESSIONAL CONDUCT

(a) The following standards of professional conduct shall apply to instructional staff, administrative staff and students:

- (1) Conduct shall be in accordance with Standards of Conduct set forth in Section .0500 of this Chapter.
- (2) Nudity is not permitted where massage and bodywork therapy is taught or practiced. For the purpose of this section, "nudity" is defined as exposure of the genital or anal area for men or women, or the breast area for women. The only exception shall be for treatment to the breast area while utilizing therapeutic techniques.
- (3) The school shall provide a private area where persons receiving therapeutic treatments may dress or undress, whether for in-class practice or treatments performed in a student clinic. As an alternative, the school may provide instruction to persons receiving therapeutic treatments in the procedure of undressing while on the treatment table under a full sheet covering.

(b) The requirements of this Rule shall apply to all school facilities, as well as any other location where staff or students are demonstrating or delivering therapeutic treatments as a part of course requirements.

Authority G.S. 90-626(9); 90-631.

21 NCAC 30 .0625 SCHOOL COMPLAINT POLICY

An approved school shall administer an internal complaint policy for students and staff, and shall maintain a complaints file that provides the following information:

- (1) Person(s) filing complaint and date filed;
- (2) Nature of complaint and person(s) involved;
- (3) Response(s) to complaint by school; and
- (4) Resolution of complaint.

Authority G.S. 90-626(9); 90-631.

21 NCAC 30 .0626 STUDENT COMPENSATION PROHIBITED

A student enrolled in a Board-approved school shall not receive a fee or other consideration for the massage and bodywork therapy they perform while completing clinical requirements for graduation, whether or not the school charges a fee for services provided in a student clinic.

Authority G.S. 90-626(9); 90-631.

21 NCAC 30 .0627 TRANSFER OF CREDIT; ADVANCED PLACEMENT

(a) A school shall not grant transfer credit from another institution unless the following standards are met:

- (1) The school from where credit is being transferred shall be licensed or approved by the educational licensing authority in the state in which it operates, or be exempt by statute;
- (2) The school from where credit is being transferred shall provide an official transcript;
- (3) Courses for which credit is granted shall be parallel in content and intensity to the courses presently offered by the school; and
- (4) Documentation of previous training shall be included in each student's permanent file.

(b) A school may only grant advanced placement to a student, or exempt the student from curriculum requirements, based on the student's performance on an examination that the school administers to determine competency in that subject area. Advanced placement or exemption shall not exceed 35 percent of the total number of hours in the program and shall not reduce the total hours attended to less than 500 hours.

Authority G.S. 90-626(9); 90-631.

21 NCAC 30 .0628 ETHICAL REQUIREMENTS IN ADVERTISING

The following requirements pertain to all advertising and promotional activities conducted by, or on behalf of the school, including such media utilized as print, broadcast, verbal presentations, data transfer technologies, videotape, or audiotape:

- (1) Educational programs and services offered shall be the primary emphasis of all advertisements, publications, promotional literature, and recruitment activities, whether distributed to prospective students or the general public.
- (2) All statements and representations made shall be factually accurate, and current. Supporting information shall be kept on file and available for review for at least three years. All advertising and promotional materials shall include the correct name and location of the school.
- (3) A school shall not falsely represent its facilities in photographs, illustrations, or through other means.

- (4) The school catalog or bulletin shall contain all information required in Rule .0628 of this Section.
- (5) All advertising and promotional activities shall indicate that massage and bodywork training and not employment is being offered. No overt or implied claim of individual employment shall be made. No false or deceptive statements regarding employment opportunities or earning potential in the field of massage and bodywork as a result of the completion of the course of study shall be used to solicit students.
- (6) Letters of endorsement, commendation, or recommendation in favor of a school shall be used for advertising or promotion only with the written consent of the author without any offer of financial compensation, and only when such letters portray current conditions or facts. Letters shall contain the date they were received, shall be kept on file and be subject to inspection.
- (7) Programs that use placement information in advertisements, catalogs or other printed documentation shall corroborate the data.
- (8) School literature and advertisements shall not quote "high top" or "up to" salaries unless they also indicate the normal range or starting salaries for graduates.
- (9) Schools offering programs that are not approved by the Board shall identify which programs are Board approved.
- (10) Schools shall describe requirements for state licensure.
- (11) Schools shall not defame competitors by falsely imputing to them dishonorable conduct, inability to perform on contracts, or by the false disparagement of the character, nature, quality, values, or scope of their educational services, or in any other material respect.

Authority G.S. 90-626(9); 90-631.

21 NCAC 30 .0629 STUDENT ENROLLMENT AGREEMENT

(a) An approved school shall execute a Student Enrollment Agreement for training with every student. The agreement shall contain the following:

- (1) Name and telephone number of the school; location of where the student will attend classes;
- (2) Student's name, address, telephone number;
- (3) Name of the program in which student is enrolling; number of clock or credit hours of the program; beginning and ending dates; length of program in weeks or months; expected graduation date;

- (4) Program tuition and all related costs, including application and registration fees, and estimated cost of books and supplies;
- (5) Refund and cancellation policies, including student's right to cancel;
- (6) Payment methods, including cash, installment payment plans, or financial aid (as applicable); interest charged; methods used to collect delinquent tuition;
- (7) Placement guarantee disclaimer;
- (8) Grounds for dismissal from the school;
- (9) Statement referencing the school catalog and student handbook as a part of the enrollment agreement;
- (10) Statement certifying that student has read and understands all terms of the enrollment agreement; and
- (11) Signature lines for school official and student.

(b) A copy of the executed agreement shall be provided to the student, and a copy shall be placed in the student's permanent file.

Authority G.S. 90-626(9); 90-631.

21 NCAC 30 .0630 SCHOOL CATALOG

An approved school shall publish a catalog or bulletin that is certified by an official of the school as being current, true, and correct in content and policy. The catalog shall include the following information:

- (1) School name, location address, and phone number;
- (2) Volume number and date of publication;
- (3) Ownership structure, including type of legal entity and names of owners, Board of Directors members, or academic officers at public institutions;
- (4) Names and titles of all instructional and key administrative staff;
- (5) Statement of school mission, philosophy, and educational program objectives;
- (6) School history and identification of all licenses, approvals or accreditations that the school maintains;
- (7) Definition of measurement of program, whether in clock hours or credit hours;
- (8) Detailed course descriptions, including number of hours for each course;
- (9) Graduation requirements, including type of credential issued upon graduation;
- (10) Requirements for licensure, certification or registration of therapists in the state, province, or country in which the school operates;
- (11) Standards for admission, description of the school's admissions process, and requirement of a signed Student Enrollment Agreement;
- (12) School calendar, including beginning and ending dates of all programs, all holidays and days off;

- (13) Length of time required for completion of the program;
- (14) Program tuition and all associated costs, including textbooks, supplies, and other expenses.
- (15) Refund policy;
- (16) Description of facilities and learning resources;
- (17) Student services;
- (18) Policy regarding prohibition of compensation to student for performing massage and bodywork therapy; and
- (19) Academic policies, including the following:
 - (a) Grading system;
 - (b) Standards of satisfactory academic progress;
 - (c) Description of disciplinary procedures, including conditions for probation, suspension, dismissal or expulsion, conditions of reentrance for students dismissed for unsatisfactory academic progress;
 - (d) Transfer of credit from other institutions;
 - (e) Attendance requirements, make-up work, tardiness, leave of absence;
 - (f) Standards of conduct, including a sexual harassment policy; and
 - (g) Complaint policy, process for complaint resolution, name and address of the school regulatory agency for filing complaints when institutional process does not bring resolution.

Authority G.S. 90-626(9); 90-631.

21 NCAC 30 .0632 INITIAL APPLICATION FOR BOARD APPROVAL

A school seeking initial approval shall submit an application for approval on a form provided by the Board, that shall be accompanied by the following:

- (1) A certified check for the application fee set forth in Rule .0606 of this Section, made payable to the Board;
- (2) Completed personnel qualification forms on the school director, administrative staff, instructors, and teaching assistants, with photocopies of academic transcripts, degrees, diplomas, and professional licenses and certifications for each person;
- (3) Job descriptions for school director, administrative staff, instructors, and teaching assistants;
- (4) Examples of contracts for administrative and instructional staff;
- (5) Detail of ownership structure of the school, and organizational chart;
- (6) Facility plan, including detailed floor plans with dimensions and fixtures, uses of each room, specifications on lighting, ventilation, and temperature control;
- (7) Equipment list, including furniture, office equipment, and instructional equipment for classroom;
- (8) Copy of deed if school owns its facility, or copy of lease if school does not own its facility;
- (9) Copies of reports from city or county inspections for fire, safety, health, and sanitation, made within the three months prior to submission of application for approval;
- (10) Statement of Financial Affirmation including the following financial documentation:
 - (a) A plan setting forth the sources, kinds and amounts of both current and anticipated financial resources. The plan shall include a budget for the school's first year of operation, identifying sources of revenue to ensure effective operations;
 - (b) A pro forma balance sheet prepared in accordance with Generally Accepted Accounting Principles for the type of institution making application;
 - (c) If the corporation that controls the school is ongoing, the school shall provide a financial statement of the parent corporation, reviewed or audited in accordance with Generally Accepted Accounting Principles, and
 - (d) Schools that are new and do not have a history of educational operations

Authority G.S. 90-626(9); 90-631.

21 NCAC 30 .0631 BOARD APPROVAL NOT TRANSFERABLE

- (a) In the event of the change of ownership of a school, the approval already granted to the original owner or operator thereof shall not be transferable to the new ownership or operators. The Board may issue temporary operating approval for a period of up to 180 days to a school upon its change of ownership if the school held a valid, current approval prior to the change, and if the Board finds that the school is likely to qualify after the change of ownership for approval under this Section.
- (b) For the purposes of this Section, "change of ownership" includes the following situations:
 - (1) Sale of the school;
 - (2) Transfer of controlling interest of stock of the school or its parent corporation;
 - (3) Merger of two or more schools;
 - (4) Transfer of controlling interest of stock to parent corporation;
 - (5) Transfer of assets or liabilities of school to parent corporation or owners; or
 - (6) Change from profit to non-profit status.

shall provide financial statements of the controlling principals, compiled, reviewed, or audited in accordance with Generally Accepted Accounting Principles. These statements must demonstrate sufficient resources to ensure institutional development.

- (11) Copy of the application for admission that is submitted by prospective students; copies of materials used to document the admission process with applicants;
- (12) Copies of the forms used for documentation of attendance, missed class make-up work, student academic progress, grades earned, notification of unsatisfactory progress and notification of disciplinary action;
- (13) Copy of the educational credential granted to students who complete the program and a transcript issued by the school;
- (14) Documentation of program requirements, including copies of course curricula, copies of course syllabi, one example lesson plan for each course, and school calendar for the current academic year;
- (15) List of student to instructor ratios for each course offered;
- (16) List of learning resources provided by the school, including numbers of books, periodicals, and other informational materials in the school library. If the school has no library, a copy of the agreement for use of another facility, with its list of resources shall be included;
- (17) Copies of all advertisements and promotional materials from the previous year, including website addresses and tapes of broadcast advertisements;
- (18) Copy of the Student Enrollment Agreement issued by the school;
- (19) Catalog Certification Form and copy of the current school catalog or bulletin, with accompanying student handbook (if applicable);
- (20) Agenda for a student orientation program, and a personnel orientation program provided by the school; and
- (21) As applicable pursuant to Rule .0608 of this Section, copy of license or approval to operate school, and copy of certificate of accreditation.

Authority G.S. 90-626(9); 90-631.

21 NCAC 30 .0633 APPLICATION FOR BOARD APPROVAL OF ADDITIONAL PROGRAMS

An approved school shall submit an application for approval of an additional program on a form provided by the Board, which shall be accompanied by the following:

- (1) A certified check for the application fee set forth in Rule .0606 of this Section, made payable to the Board;
- (2) Documentation of program requirements, including copies of course curricula; copies of course syllabi; one example lesson plan for each course and school calendar for the current academic year;
- (3) A list of student to instructor ratios for each course offered;
- (4) A copy of the educational credential granted to students who complete the program; example of transcript issued by the school;
- (5) A copy of the school catalog or bulletin that describes the additional program; and
- (6) Complete documentation of any other requirement set forth in Rule .0629 of this Section that is different than what the school documented in its initial application for approval, or what has been documented in its most recent application for renewal of approval.

Authority G.S. 90-626(9); 90-631.

21 NCAC 30 .0634 CLOSURE OF SCHOOL; TERMINATION OF A PROGRAM

(a) An approved school which intends to cease operations completely, or which intends to terminate the offering of a program if it offers more than one approved program, shall submit to the Board a written plan for such cessation or termination at least 90 days before such action.

(b) The plan shall include the following information:

- (1) The projected date of cessation or termination;
- (2) The means by which the school will maintain standards for approval until the last student has completed their training or transferred to another institution; and
- (3) The arrangement for storage of permanent student records.

Authority G.S. 90-626(9); 90-631.

21 NCAC 30 .0635 SCHOOL STAFF MEMBERS AS STUDENTS

If a member of the administrative or instructional staff at an approved school is enrolled as a student in any course within the program, the staff member shall not have any administrative or academic authority over that course.

Authority G.S. 90-626(9); 90-631.

CHAPTER 32 – NORTH CAROLINA MEDICAL BOARD

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Medical Board intends to amend the rules cited as 21 NCAC 32B .0211 and .0314.

Proposed Effective Date: September 1, 2007

Public Hearing:

Date: July 2, 2007

Time: 10:00 a.m.

Location: North Carolina Medical Board, Board Room, 1203 Front Street, Raleigh, NC 27609

Reason for Proposed Action: To amend requirements for applying and qualifying for a license to practice medicine. Subchapter 32B, Section .0211 and Section .0314. Both regard the specific requirement that Steps 1, 2 and 3 of the USMLE be passed within a seven-year period.

Procedure by which a person can object to the agency on a proposed rule: A person may submit objections to the proposed amendment, in writing by July 2, 2007, to R. David Henderson, Executive Director, North Carolina Medical Board, 1203 Front Street, Raleigh, NC 27609.

Comments may be submitted to: R. David Henderson, North Carolina Medical Board, 1203 Front Street, Raleigh, NC 27609, phone (919) 326-1100, Fax (919) 326-1131, email david.henderson@ncmedboard.org

Comment period ends: July 2, 2007

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 32B – LICENSE TO PRACTICE MEDICINE

SECTION .0200 - LICENSE BY WRITTEN EXAMINATION

21 NCAC 32B .0211 PASSING SCORE

To pass Step 3 of the USMLE the applicant shall attain a score of at least 75. Step 3 shall be passed within seven years of passing Step 1 OR within 10 years if the reason for the delay is based on applicant obtaining an MD/PhD degree. Limited exceptions to this rule may also be granted to an applicant who experienced a situation of extreme hardship which by its severity would necessarily cause a delay to the applicant's medical study and training. Factors to be considered, verified and documented in the applicant's file in such situations shall include without limitation whether the conditions were within the control of the applicant, whether the applicant has achieved Board certification, and whether there is another option available to the applicant to satisfy the rule.

Authority G.S. 90-9; 90-12; 90-15.

SECTION .0300 – LICENSE BY ENDORSEMENT

21 NCAC 32B .0314 PASSING EXAM SCORE

USMLE – Applicants who have taken USMLE may be eligible to apply for a license by endorsement of credentials if they meet the following score requirements:

- (1) A score of at least 75 is required on Step 3; and
(2) The USMLE Step 3 shall be passed within seven years of the date of passing Step 1 OR within 10 years if the reason for the delay is based on applicant obtaining a MD/PhD degree. Limited exceptions to this rule may also be granted to an applicant who experienced a situation of extreme hardship which by its severity would necessarily cause a delay to the applicant's medical study and training. Factors to be considered, verified and documented in the applicant's file in such situations shall include without limitation whether the conditions were within the control of the applicant, whether the applicant has achieved Board certification, and whether there is another option available to the applicant to satisfy the rule.
(3) An applicant shall not be deemed to have received a passing score on any Step of the USMLE unless applicant has received a passing score on that Step within six attempts. Step 2 consists of two components: Clinical Knowledge (CK) and Clinical Skills (CS). An applicant must receive a passing score within six attempts on Step 2 (CK) and, likewise, must receive a passing score within six attempts on Step 2 (CS).
(4) The Board shall not issue a license to practice medicine to any applicant who has failed to receive a passing score on any Step, or component thereof, of the USMLE within six attempts unless it is determined, in the Board's discretion, that the applicant has successfully

completed additional training or education which is approved and accepted by the Board.

Authority G.S. 90-6; 90-10; 90-13.

CHAPTER 58 – REAL ESTATE COMMISSION

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Real Estate Commission intends to adopt the rules cited as 21 NCAC 58C .0313 and amend the rules cited as 21 NCAC 58A .0105, .0110, .0113 - .0114, .0502, .0505, .1711; 58C .0206, .0208 - .0210, .0302, .0309, .0603; 58E .0203.

Proposed Effective Date: January 1, 2008

Public Hearing:

Date: July 11, 2007

Time: 9:00 a.m.

Location: Hilton Wilmington Riverside, 301 North Water Street, Wilmington, NC 28401

Reason for Proposed Action:

21 NCAC 58A .0105, .0110, .0113 - .0114, .0502, .0505, .1711; 58C .0206, .0208 - .0210, .0302, .0309, .0603; 58E .0203 - To clarify the current rules in light of suggestions from the public, licensees, and the Commission's staff.

21 NCAC 58A .0313- To require real estate schools to provide the Real Estate Commission with advance notice of scheduled post licensing courses and to provide the Commission with timely notice of any change in course schedule.

Procedure by which a person can object to the agency on a proposed rule: Any person who objects or who has comments about the proposed rule changes may submit written comments to rule-making coordinator Sandra L. Good at the address listed below.

Comments may be submitted to: Sandra L. Good, 1312 Navaho Drive, Raleigh, NC 27619, phone (919) 875-3700

Comment period ends: July 11, 2007

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 58A - REAL ESTATE BROKERS AND SALESMEN

SECTION .0100 - GENERAL BROKERAGE

21 NCAC 58A .0105 ADVERTISING

(a) Blind Ads. A licensee shall not advertise the sale, purchase, exchange, rent or lease of real estate, for another or others, in a manner indicating the offer to sell, purchase, exchange, rent, or lease is being made by the licensee's principal only. Every such advertisement shall conspicuously indicate that it is the advertisement of a broker or brokerage firm and shall not be confined to publication of only a post office box number, telephone number, or street address, address, internet web address, or e-mail address.

(b) Registration of Assumed Name. In the event that any licensee shall advertise in any manner using a firm name or an assumed name which does not set forth the surname of the licensee, the licensee shall first file the appropriate certificate with the office of the county register of deeds in compliance with G.S. 66-68 and notify the Commission in writing of the use of such a firm name or assumed name.

(c) Authority to Advertise.

- (1) A provisional broker shall not advertise the sale, purchase, exchange, rent or lease of real estate for another or others without his or her broker's consent and without including in the advertisement the name of the broker or firm with whom the provisional broker is associated.
(2) A licensee shall not advertise or display a "for sale" or "for rent" sign on any real estate without the consent of the owner or his or her authorized agent.

(d) Business names. A licensee shall not include the name of a provisional broker or an unlicensed person in the name of a sole proprietorship, partnership or non-corporate business formed for the purpose of real estate brokerage.

(e) A person licensed as a limited nonresident commercial broker shall comply with the provisions of Rule .1809 of this Subchapter in connection with all advertising concerning or relating to his or her status as a North Carolina licensee.

Authority G.S. 55B-5; 66-68; 93A-3(c); 93A-9.

21 NCAC 58A .0110 BROKER-IN-CHARGE

(a) Every real estate firm shall designate a broker to serve as the broker-in-charge at its principal office and a broker to serve as broker-in-charge at any branch office. No broker shall be broker-in-charge of more than one office at a time. If a firm shares office space with one or more other firms, one broker may serve as broker-in-charge of each firm at that location. No

office or branch office of a firm shall have more than one designated broker-in-charge. A broker who is a sole proprietor shall designate himself or herself as a broker-in-charge if the broker engages in any transaction where the broker is required to deposit and maintain monies belonging to others in a trust account, engages in advertising or promoting his or her services as a broker in any manner, or has one or more other brokers affiliated with him or her in the real estate business. ~~Each~~ A broker-in-charge shall declare in writing his or her ~~status designation~~ as broker-in-charge of an office to the Commission on a form prescribed by the Commission within 10 days following the broker's designation as ~~broker-in-charge~~ broker in charge of any office. The broker-in-charge shall, in accordance with the requirements of G.S. 93A and the rules adopted by the Commission, assume the responsibility at his or her office for:

- (1) the retention of current license renewal pocket cards by all brokers employed at the office for which he or she is broker-in-charge; the proper display of licenses at such office in accordance with Rule .0101 of this Section; and assuring that each licensee employed at the office has complied with Rules .0503, .0504, and .0506 of this Subchapter;
- (2) the proper notification to the Commission of any change of business address or trade name of the firm and the registration of any assumed business name adopted by the firm for its use;
- (3) the proper conduct of advertising by or in the name of the firm at such office;
- (4) the proper maintenance at such office of the trust or escrow account of the firm and the records pertaining thereto;
- (5) the proper retention and maintenance of records relating to transactions conducted by or on behalf of the firm at such office, including those required to be retained pursuant to Rule .0108 of this Section;
- (6) the proper supervision of provisional brokers associated with or engaged on behalf of the firm at such office in accordance with the requirements of Rule .0506 of this Subchapter;
- (7) the proper supervision of all licensees employed at the office for which he or she is broker-in-charge with respect to adherence to agency agreement and disclosure requirements.

(b) When used in this Rule, the term:

- (1) "Branch Office" means any office in addition to the principal office of a broker which is operated in connection with the broker's real estate business; and
- (2) "Office" means any place of business where acts are performed for which a real estate license is ~~required~~ required ~~or where monies received by a licensee acting in a fiduciary capacity are handled or records for such trust monies are maintained.~~

(c) To qualify to ~~serve as~~ become a broker-in-charge, a broker shall not be a provisional broker and shall:

- (1) possess at least two years of full-time real estate brokerage experience or equivalent part-time real estate brokerage experience within the previous five years or real estate education or experience in real estate transactions that the Commission finds equivalent to such experience; and
- (2) complete the Commission's 12 classroom hour broker-in-charge course either within three years prior to designation as a broker-in-charge or within 120 days following designation as a broker-in-charge.

A broker-in-charge shall certify his or her experience qualifications in the written broker-in-charge declaration he or she submits to the Commission and shall provide to the Commission upon request evidence that he or she possesses the required experience. Status as a broker-in-charge shall be immediately terminated if a broker-in-charge fails to complete the broker-in-charge course during the required time period or if the Commission finds the broker-in-charge does not possess the required experience. A broker who is removed as broker-in-charge for failure to timely complete the Commission's 12 hour broker-in-charge course must first complete the 12 hour broker-in-charge course before he or she may again be designated as broker-in-charge. A broker-in-charge, upon written request of the Commission or a broker who has been affiliated with the broker-in-charge within the previous five years, shall provide the Commission or broker on a form prescribed by the Commission an accurate written statement regarding the broker's work at the office of the broker-in-charge, including the dates of affiliation, average number of hours worked per week, and the number and type of properties listed, sold, bought, leased, or rented for others by the ~~broker~~ licensee during his or her affiliation with the broker-in-charge.

(d) A broker who was the broker-in-charge of a real estate office on April 1, 2006, whose broker-in-charge declaration was received by the Commission prior to that date, and who ~~has~~ completed the Commission's broker-in-charge course ~~within five years~~ prior to April 1, 2006 or within 120 days following designation as a broker-in-charge, may continue to serve as a broker-in-charge thereafter until his or her ~~status-eligibility to serve as a broker-in-charge~~ is terminated as provided in paragraph (e) of this Rule.

(e) A broker's ~~status-eligibility to serve as~~ a broker-in-charge shall be terminated upon the occurrence of any of the following events:

- (1) The broker's license expires or the broker's ~~right to engage in real estate brokerage license~~ is suspended, revoked or surrendered; or
- (2) the broker's license is made inactive for any reason, including failure to satisfy the continuing education requirements described in Rule .1702 of this Subchapter or paragraph (f) of this ~~Rule~~ Rule;
- (3) ~~the license of the broker's firm expires or the firm's right to engage in real estate brokerage is suspended, revoked, or surrendered;~~

- (4) ~~the broker's firm is dissolved or otherwise ceases to be lawfully entitled to engage in business in North Carolina; or~~
- (5) ~~the broker ceases to act as the broker in charge of the office for which he or she was designated as broker-in-charge.~~

When a broker's ~~status~~ eligibility to serve as a broker-in-charge is terminated pursuant to this Paragraph and the broker subsequently seeks to again serve as broker-in-charge of the same or a different office, the broker must fully satisfy all the current broker-in-charge experience and education qualification requirements stated in Paragraph (c) of this Rule, Rule and a ~~Δ~~ broker-in-charge course taken by such broker prior to April 1, 2006 shall not be recognized toward the current education requirement. ~~However, when a broker terminates his or her broker in charge status with one office and contemporaneously declares himself or herself broker in charge of a different office with the same or a different firm, this change shall be considered a transfer rather than a termination and the broker shall not be required to satisfy the current broker in charge experience and education qualification requirements.~~

(f) ~~To continue maintain eligibility to serve as a broker-in-charge, a broker shall complete during each license period-year a special four classroom hour continuing education course prescribed by the Commission only for brokers-in-charge. This course must first be taken during the first full license period-year following designation as a broker-in-charge and must subsequently be taken each license period-year thereafter in order to remain eligible to serve as broker-in-charge.~~ The course shall satisfy the broker's general continuing education elective course requirement, but the broker must continue to take the mandatory continuing education update course each license period-year. When a broker-in-charge or a broker who retains broker-in-charge eligibility fails to take the special continuing education course specified in this Paragraph for brokers-in-charge during any license ~~period-year~~, his or her eligibility to serve as broker-in-charge status shall be terminated at the end of that license ~~period-year~~. Before such broker may again be designated a broker-in-charge, he or she must first satisfy the qualification requirements set forth in Paragraph (c) of this Rule. If, however, such broker has taken the 12 hour broker-in-charge course within the preceding three years, he or she still shall not be eligible to be redesignated as broker-in-charge of any office until he or she first either takes the current year's special broker-in-charge continuing education course required by this Paragraph or repeats the 12 hour broker-in-charge course, as he or she may elect. The special continuing education course specified in this Paragraph is reserved only for licensees who are brokers-in-charge or who retain broker-in-charge eligibility or who are seeking to reinstate broker-in-charge eligibility pursuant to this paragraph and only such licensees shall receive continuing education elective credit for the special continuing education course prescribed herein.

(g) ~~Each A~~ broker-in-charge shall notify the Commission in writing ~~of any change in his or her status that he or she no longer is serving as broker-in-charge of a particular office~~ within 10 days following ~~the any such~~ change.

(h) A licensed real estate firm shall not be required to designate a broker-in-charge if it:

- (1) has been organized for the sole purpose of receiving compensation for brokerage services furnished by its qualifying broker through another firm or broker;
- (2) is ~~designated~~ treated for tax purposes as a Subchapter S corporation by the United States Internal Revenue Service;
- (3) has no principal or branch office; and
- (4) has no person associated with it other than its qualifying broker.

(i) A broker-in-charge residing outside of North Carolina who is the broker-in-charge of a principal or branch office not located in North Carolina shall not be required to complete the broker-in-charge course or the special continuing education course prescribed for brokers-in-charge under Paragraph (f) of this Rule. However, if such broker-in-charge either becomes a resident of North Carolina or becomes broker-in-charge of an office located within North Carolina, then he or she must take the 12 hour broker-in-charge course within 120 days of such change, unless he or she has taken the 12 hour course within the preceding three years. Such broker-in-charge shall take the special broker-in-charge continuing education course prescribed in Paragraph (f) of this Rule during the first full license year following said change and each license year thereafter so long as the broker-in-charge remains a resident of North Carolina or continues to manage an office located in North Carolina.

(j) A nonresident commercial real estate broker licensed under the provisions of Section .1800 of this Subchapter shall not act as or serve in the capacity of a broker-in-charge of a firm or office in North Carolina.

Authority G.S. 93A-2; 93A-3(c); 93A-4; 93A-4.1; 93A-4.2; 93A-9.

21 NCAC 58A .0113 REPORTING CRIMINAL CONVICTIONS AND DISCIPLINARY ACTIONS

Any broker who is convicted of any felony or misdemeanor, or who ~~has disciplinary action taken against him or her is disciplined~~ by any governmental agency in connection with any other occupational license, shall file with the Commission a written report of such conviction or disciplinary action within 60 days of the final judgment or final order in the case. A form for this report is available from the Commission.

Authority G.S. 93A-3(c); 93A-6(a); 93A-6(a)(10); 93A-6(b)(2).

21 NCAC 58A .0114 RESIDENTIAL PROPERTY DISCLOSURE STATEMENT

(a) Every owner of real property subject to a transfer of the type contemplated by G.S. 47E-1, G.S. 47E-2, and G.S. 47E-3, shall complete the following residential property disclosure statement and furnish a copy of the complete statement to a purchaser in accordance with the requirements of G.S. 47E-4. The form shall bear the seal of the North Carolina Real Estate Commission and shall read as follows:

[N.C. REAL ESTATE COMMISSION SEAL]

STATE OF NORTH CAROLINA

RESIDENTIAL PROPERTY DISCLOSURE STATEMENT

Instructions to Property Owners

1. G.S. 47E requires owners of residential real estate (single-family homes and buildings with up to four dwelling units) to furnish purchasers a property disclosure statement. This form is the only one approved for this purpose. A disclosure statement must be furnished in connection with the sale, exchange, option and sale under a lease with option to purchase (unless the tenant is already occupying or intends to occupy the dwelling). A disclosure statement is not required for some transactions, including the first sale of a dwelling which has never been inhabited and transactions of residential property made pursuant to a lease with option to purchase where the lessee occupies or intends to occupy the dwelling. For a complete list of exemptions, see G.S. 47E-2.

2. You must check one of the boxes for each of the 20 questions on the reverse side of this form.

a. If you check "Yes" for any question, you must explain your answer and either describe the any problem or attach a report from an engineer, contractor, pest control operator or other expert or public agency describing it. If you attach a report, you will not be liable for any inaccurate or incomplete information contained in it so long as you were not grossly negligent in obtaining or transmitting the information.

b. If you check "No", you are stating that you have no actual knowledge of any problem. If you check "No" and you know there is a problem, you may be liable for making an intentional misstatement.

c. If you check "No Representation", you have no duty to disclose the conditions or characteristics of the property, even if you should have known of them.

* If you check "Yes" or "No" and something happens to the property to make your Statement incorrect or inaccurate (for example, the roof begins to leak), you must promptly give the purchaser a corrected Statement or correct the problem.

3. If you are assisted in the sale of your property by a licensed real estate broker, you are still responsible for completing and delivering the Statement to the purchasers; and the broker must disclose any material facts about your property which they know or reasonably should know, regardless of your responses on the Statement.

4. You must give the completed Statement to the purchaser no later than the time the purchaser makes an offer to purchase your property. If you do not, the purchaser can, under certain conditions, cancel any resulting contract (See "Note to Purchasers" below). You should give the purchaser a copy of the Statement containing your signature and keep a copy signed by the purchaser for your records.

Note to Purchasers

If the owner does not give you a Residential Property Disclosure Statement by the time you make your offer to purchase the property, you may under certain conditions cancel any resulting contract and be entitled to a refund of any deposit monies you may have paid. To cancel the contract, you must personally deliver or mail written notice of your decision to cancel to the owner or the owner's agent within three calendar days following your receipt of the Statement, or three calendar days following the date of the contract, whichever occurs first. However, in no event does the Disclosure Act permit you to cancel a contract after settlement of the transaction or (in the case of a sale or exchange) after you have occupied the property, whichever occurs first.

5. In the space below, type or print in ink the address of the property (sufficient to identify it) and your name. Then sign and date.

Property Address: _____
Owner's Name(s): _____
Owner(s) acknowledge having examined this Statement before signing and that all information is true and correct as of the date signed.
Owner Signature: _____ Date _____, ____
Owner Signature: _____ Date _____, ____
Purchaser(s) acknowledge receipt of a copy of this disclosure statement; that they have examined it before signing; that they understand that this is not a warranty by owner or owner's agent; that it is not a substitute for any inspections they may wish to obtain; and that the representations are made by the owner and not the owner's agent(s) or subagent(s). Purchaser(s) are encouraged to obtain their own inspection from a

PROPOSED RULES

licensed home inspector or other professional.

Purchaser Signature: _____ Date _____, _____
Purchaser Signature: _____ Date _____, _____

Property Address/Description: _____

[Note: In this form, "property" refers only to dwelling unit(s) and not sheds, detached garages or other buildings.]

Regarding the property identified above, do you know of any problem (malfunction or defect) with any of the following:

- | | Yes* | No Repr-
No sentation | |
|---|--------------------------|--------------------------|--------------------------|
| 1. FOUNDATION, SLAB, FIREPLACES/CHIMNEYS, FLOORS, WINDOWS (INCLUDING STORM WINDOWS AND SCREENS), DOORS, CEILINGS, INTERIOR AND EXTERIOR WALLS, ATTACHED GARAGE, PATIO, DECK OR OTHER STRUCTURAL COMPONENTS including any modifications to them? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| a. Siding is: <input type="checkbox"/> Masonry <input type="checkbox"/> Wood <input type="checkbox"/> Composition/Hardboard <input type="checkbox"/> Vinyl <input type="checkbox"/> Synthetic Stucco
<input type="checkbox"/> Other _____ | | | <input type="checkbox"/> |
| b. Approximate age of structure? _____ | | | <input type="checkbox"/> |
| 2. ROOF (leakage or other problem)? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| a. Approximate age of roof covering? _____ | | | <input type="checkbox"/> |
| 3. WATER SEEPAGE, LEAKAGE, DAMPNESS OR STANDING WATER in the basement, crawl space or slab? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 4. ELECTRICAL SYSTEM (outlets, wiring, panel, switches, fixtures etc.)? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 5. PLUMBING SYSTEM (pipes, fixtures, water heater, etc.)? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 6. HEATING AND/OR AIR CONDITIONING? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| a. Heat Source is: <input type="checkbox"/> Furnace <input type="checkbox"/> Heat Pump <input type="checkbox"/> Baseboard <input type="checkbox"/> Other _____ | | | <input type="checkbox"/> |
| b. Cooling Source is: <input type="checkbox"/> Central Forced Air <input type="checkbox"/> Wall/Window Unit(s)
<input type="checkbox"/> Other _____ | | | <input type="checkbox"/> |
| c. Fuel Source is: <input type="checkbox"/> Electricity <input type="checkbox"/> Natural Gas <input type="checkbox"/> Propane <input type="checkbox"/> Oil <input type="checkbox"/> Other _____ | | | <input type="checkbox"/> |
| 7. WATER SUPPLY (including water quality, quantity and water pressure)? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| a. Water supply is: <input type="checkbox"/> City/County <input type="checkbox"/> Community System <input type="checkbox"/> Private Well
<input type="checkbox"/> Other _____ | | | <input type="checkbox"/> |
| b. Water pipes are: <input type="checkbox"/> Copper <input type="checkbox"/> Galvanized <input type="checkbox"/> Plastic <input type="checkbox"/> Other _____
<input type="checkbox"/> Unknown | | | <input type="checkbox"/> |
| 8. SEWER AND/OR SEPTIC SYSTEM? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| a. Sewage disposal system is: <input type="checkbox"/> Septic Tank <input type="checkbox"/> Septic Tank with Pump
<input type="checkbox"/> Community System <input type="checkbox"/> Connected to City/County System | | | |

PROPOSED RULES

- City/County System available Straight pipe (wastewater does not go into a septic or other sewer system [note: use of this type of system violates state law])
- Other _____

9. BUILT-IN APPLIANCES (RANGE/OVEN, ATTACHED MICROWAVE, HOOD/FAN, DISHWASHER, DISPOSAL, etc.)?

Also regarding the property identified above, including the lot, other improvements, and fixtures located thereon, do you know of any:

10. ~~PROBLEMS WITH~~ PRESENT INFESTATION, OR DAMAGE FROM PAST INFESTATION OF WOOD DESTROYING INSECTS OR ORGANISMS which has not been repaired?

11. ~~PROBLEMS WITH~~ DRAINAGE, GRADING OR SOIL STABILITY OF LOT?

12. ~~PROBLEMS WITH~~ OTHER SYSTEMS AND FIXTURES: CENTRAL VACUUM, POOL, HOT TUB, SPA, ATTIC FAN, EXHAUST FAN, CEILING FAN, SUMP PUMP, IRRIGATION SYSTEM, TV CABLE WIRING OR SATELLITE DISH, OR OTHER SYSTEMS?

Also regarding the property identified above, including the lot, other improvements, and fixtures located thereon, do you know of any

13. ROOM ADDITIONS OR OTHER STRUCTURAL CHANGES ?
- a. If yes, were proper permits obtained for the addition(s) or other structural change(s)?

14. ENVIRONMENTAL HAZARDS (substances, materials or products) including asbestos, formaldehyde, radon gas, methane gas, lead-based paint, underground storage tank, or other hazardous or toxic material (whether buried or covered), contaminated soil or water, or other environmental contamination)?

15. COMMERCIAL OR INDUSTRIAL NUISANCES (noise, odor, smoke, etc.) affecting the property?

16. VIOLATIONS OF BUILDING CODES, ZONING ORDINANCES, RESTRICTIVE COVENANTS OR OTHER LAND-USE RESTRICTIONS?

17. UTILITY OR OTHER EASEMENTS, SHARED DRIVEWAYS, PARTY WALLS OR ENCROACHMENTS FROM OR ON ADJACENT PROPERTY?

18. LAWSUITS, FORECLOSURES, BANKRUPTCY, TENANCIES, JUDGMENTS, TAX LIENS, PROPOSED ASSESSMENTS, MECHANICS' LIENS, MATERIALMENS' LIENS, OR NOTICE FROM ANY GOVERNMENTAL AGENCY that could affect title to the property?

19. OWNERS' ASSOCIATION OR "COMMON AREA" EXPENSES OR ASSESSMENTS?

20. FLOOD HAZARD or that the property is in a FEDERALLY-DESIGNATED FLOOD PLAIN?

21. PRIVATE ROAD(S) adjoining the property?

* If you answered "Yes" to any of the above 21 questions, please explain (Attach additional sheets, if necessary):

(b) The form described in Paragraph (a) of this Rule may be reproduced, but the form shall not be altered or amended in any way.

Authority G.S. 47E-4(b); 93A-3(c); 93A-6.

SECTION .0500 - LICENSING

21 NCAC 58A .0502 BUSINESS ENTITIES

(a) Every business entity other than a sole proprietorship shall apply for and obtain from the Commission a firm license prior to engaging in business as a real estate broker. An entity that changes its business form other than by conversion shall be required to submit a new license application immediately upon making the change and to obtain a new firm license. An entity which converts to a different business entity in conformity with and pursuant to applicable North Carolina General Statutes shall not be required to apply for a new license. However, such converted entity shall provide the information required by this paragraph in writing to the Commission within 10 days of said conversion and shall include the applicable fee to have the firm license reissued in the legal name of the converted entity. Incomplete applications shall not be acted upon by the Commission. Application forms for partnerships, corporations, limited liability companies, associations and other business entities required to be licensed as brokers shall be available upon request to the Commission and shall require the applicant to set forth:

- (1) the name of the entity;
- (2) the name under which the entity will do business;
- (3) the type of business entity;
- (4) the address of its principal office;
- (5) the entity's NC Secretary of State Identification Number if required to be registered with the Office of the NC Secretary of State;
- (6) the name, real estate license number and signature of the proposed qualifying broker for the proposed firm;
- (7) the address of and name of the proposed broker-in-charge for each office ~~where brokerage activities will be conducted, as defined in Rule .0110(b),~~ along with a completed broker-in-charge declaration form for each proposed broker-in-charge;
- (8) any past criminal conviction of and any pending criminal charge against any principal in the company or any proposed broker-in-charge;
- (9) any past revocation, suspension or denial of a business or professional license of any principal in the company or any proposed broker-in-charge;
- (10) if a general partnership, a full description of the applicant entity, including a copy of its written partnership agreement or if no written agreement exists, a written description of the rights and duties of the several partners;
- (11) if a business entity other than a corporation, limited liability company or partnership, a full

description of the organization of the applicant entity, including a copy of its organizational documents evidencing its authority to engage in real estate brokerage;

- (12) if a foreign business entity, a certificate of authority to transact business in North Carolina and an executed consent to service of process and pleadings; and
- (13) any other information required by this Rule.

When the authority of a business entity to engage in the real estate business is unclear in the application or in law, the Commission may require the applicant to declare in the license application that the applicant's organizational documents authorize the firm to engage in the real estate business and to submit organizational documents, addresses of affiliated persons and similar information. For purposes of this Paragraph, the term principal shall mean any person or entity owning 10 percent or more of the business entity, or who is an officer, director, manager, member, partner or who holds any other comparable position.

(b) After filing a written application with the Commission and upon a showing that at least one principal of said business entity holds a broker license on active status and in good standing and will serve as qualifying broker of the entity, the entity shall be licensed provided it appears that the applicant entity employs and is directed by personnel possessed of the requisite truthfulness, honesty, and integrity. The qualifying broker of a partnership of any kind must be a general partner of the partnership; the qualifying broker of a limited liability company must be a manager of the company; and the qualifying broker of a corporation must be an officer of the corporation. A licensed business entity may serve as the qualifying broker of another licensed business entity if the qualifying broker-entity has as its qualifying broker a natural person who is licensed as a broker. The natural person who is qualifying broker shall assure the performance of the qualifying broker's duties with regard to both entities. A provisional broker may not serve as a qualifying broker.

(c) The licensing of a business entity shall not be construed to extend to the licensing of its partners, managers, members, directors, officers, employees or other persons acting for the entity in their individual capacities regardless of whether they are engaged in furthering the business of the licensed entity.

(d) The qualifying broker of a business entity shall assume responsibility for:

- (1) designating and assuring that there is at all times a broker-in-charge for each office and branch office of the entity at which real estate brokerage activities are conducted;
- (2) renewing the real estate broker license of the entity;
- (3) retaining the firm's renewal pocket card at the firm and producing it as proof of firm licensure upon request and maintaining a

- (4) photocopy of the firm license certificate and pocket card at each branch office thereof;
- (5) notifying the Commission of any change of business address or trade name of the entity and the registration of any assumed business name adopted by the entity for its use;
- (6) notifying the Commission in writing of any change of his or her status as qualifying broker within ten days following the change;
- (7) securing and preserving the transaction and trust account records of the firm whenever there is a change of broker-in-charge at the firm or any office thereof and notifying the Commission if the trust account records are out of balance or have not been reconciled as required by Rule .0107 of this Chapter;
- (8) retaining and preserving the transaction and trust account records of the firm upon termination of his or her status as qualifying broker until a new qualifying broker has been designated with the Commission or, if no new qualifying broker is designated, for the period of time for which said records are required to be retained by Rule .0108 of this Chapter; and
- (8) notifying the Commission if, upon the termination of his or her status as qualifying broker, the firm's transaction and trust account records cannot be retained or preserved or if the trust account records are out of balance or have not been reconciled as required by Rule .0107(e) of this Chapter.

(e) Every licensed business entity and every entity applying for licensure shall conform to all the requirements imposed upon it by the North Carolina General Statutes for its continued existence and authority to do business in North Carolina. Failure to conform to such requirements shall be grounds for disciplinary action or denial of the entity's application for licensure. Upon receipt of notice from an entity or agency of this state that a licensed entity has ceased to exist or that its authority to engage in business in this state has been terminated by operation of law, the Commission shall cancel the license of the entity.

Authority G.S. 55-11A-04; 93A-3(c); 93A-4(a),(b),(d).

21 NCAC 58A .0505 REINSTATEMENT OF EXPIRED LICENSE, REVOKED, SURRENDERED OR SUSPENDED LICENSE

(a) Licenses expired for not more than six months may be reinstated upon the submission of a complete and accurate application and payment of a fifty-five dollar (\$55.00) reinstatement fee. In order to reinstate such license on active status, the applicant shall also present clear and convincing evidence of having obtained such continuing education as is required by Rule .1703 of this Subchapter to change an inactive license to active status. A person reinstating such a license on inactive status shall not be required to have obtained any continuing education in order to reinstate such license; however, in order to subsequently change his or her reinstated license

from inactive status to active status, the licensee must satisfy the continuing education requirement prescribed in Rule .1703 of this Subchapter, and be supervised by a broker-in-charge in compliance with the requirements of Rule .0506 of this Section.

(b) Reinstatement of licenses expired for more than six months may be considered upon the submission of a complete and accurate application and payment of a fifty-five dollar (\$55.00) reinstatement fee. Applicants must satisfy the Commission that they possess the current knowledge, skills and competence, as well as the truthfulness, honesty and integrity, necessary to function in the real estate business in a manner that protects and serves the public interest. To demonstrate current knowledge, skills and competence, the Commission may require such applicants to complete real estate education or pass the license examination or both.

(c) Reinstatement of a revoked license may be considered upon the submission of a complete and accurate application and payment of a thirty dollar (\$30.00) fee. Applicants must satisfy the same requirements as those prescribed in Paragraph (b) of this Rule for reinstatement of licenses expired for more than six months.

(d) Reinstatement of a license surrendered under the provisions of G.S. 93A-6(e) may be considered upon termination of the period of surrender specified in the order approving the surrender and upon the submission of a complete and accurate application and payment of a thirty dollar (\$30.00) fee. Applicants must satisfy the same requirements as those prescribed in Paragraph (b) of this Rule for reinstatement of licenses expired for more than six months.

(e) When a license is suspended by the Commission, the suspended license shall be restored at the end of the period of active suspension provided that any applicable license renewal fees that accrued during the time of the suspension are paid by the licensee. In order for the license to be restored on active status, the licensee shall be required to demonstrate that the licensee has satisfied the continuing education requirement for license activation prescribed by Rule .1703 of this Subchapter and that the licensee is supervised by a broker-in-charge in compliance with the requirements of Rule .0506 of this Section, if applicable.

(f) Whenever a license is reinstated by the Commission following expiration, revocation, or voluntary surrender, the date of licensure for the licensee will be the date of reinstatement and not the date of original licensure.

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

SECTION .1700 – MANDATORY CONTINUING EDUCATION

21 NCAC 58A .1711 CONTINUING EDUCATION REQUIRED OF NONRESIDENT LICENSEES

(a) To be considered a nonresident for continuing education purposes, a real estate broker licensed in North Carolina shall not have a North Carolina business address, mailing address or residence address at the time he or she applies for license renewal if he or she seeks to renew his or her license on active status. Real estate brokers licensed in North Carolina but residing in another state at the time they apply for license

~~renewal who wish to renew their licenses~~ A nonresident North Carolina broker who wishes to renew his or her license on active status may fully satisfy the continuing education requirement by any one of the following means:

- (1) A nonresident licensee may, at the time of license renewal, hold a real estate license on active status in another state and certify on a form prescribed by the Commission that the licensee holds such license.
 - (2) A nonresident licensee may, within one year preceding license expiration, complete the Commission-prescribed Update course plus one Commission-approved continuing education elective course, or complete two Commission-approved continuing education elective courses.
 - (3) A nonresident licensee may, within one year preceding license expiration, complete eight classroom hours in courses approved for continuing education credit by the real estate licensing agency in the licensee's state of residence or in the state where the course was taken. To obtain credit for a continuing education course completed in another state and not approved by the Commission, the licensee must submit a written request for continuing education credit accompanied by a nonrefundable processing fee of twenty dollars (\$20.00) per request and evidence satisfactory to the Commission that the course was completed and that the course was approved for continuing education credit by the real estate licensing agency in the licensee's state of residence or in the state where the course was taken.
 - (4) A nonresident licensee may obtain eight hours equivalent credit for a course or courses not approved by the Commission or for related educational activities as provided in Rule .1708 of this Section. The maximum amount of continuing education credit the Commission will award a nonresident licensee for an unapproved course or educational activity is eight hours.
- (b) When requesting to change an inactive license to active status, or when applying for reinstatement of a license expired for not more than six months, a nonresident broker may fully satisfy the continuing education requirements described in Rules .0505 and .1703 of this Subchapter by complying with any of the options described in Paragraph (a) of this Rule, except that the requirements in Subparagraphs (a)(2) and (a)(3) of this Rule restricting the taking of courses to one year preceding license expiration shall not be applicable.
- (c) No carry-over credit to a subsequent license period shall be awarded for a course taken in another state that has not been approved by the North Carolina Real Estate Commission as an elective course.

Authority G.S. 93A-3(c); 93A-4.1.

SUBCHAPTER 58C - REAL ESTATE PRELICENSING EDUCATION

SECTION .0200 - PRIVATE REAL ESTATE SCHOOLS

21 NCAC 58C .0206 ADMINISTRATION

- (a) One person must be designated as the Director of the school. The Director ~~is defined as the person~~ shall be responsible for supervision of all school operations related to the conduct of real estate prelicensing and postlicensing courses and compliance with all statutory and rule requirements governing the licensing and operation of the school.
- (b) The school director must be possessed of good character and reputation and must satisfy one of the following qualification standards:
- (1) hold a baccalaureate or higher degree in the field of education; or
 - (2) have at least two years full-time experience within the past ten years as an instructor or school administrator; or
 - (3) possess qualifications which are found by the Commission to be substantially equivalent to those described in Subparagraph (1) or (2) of this Paragraph.

Authority G.S. 93A-4; 93A-33.

21 NCAC 58C .0208 BULLETINS

- (a) A school shall publish a single bulletin addressing prelicensing and postlicensing courses offered and this bulletin shall be used at all licensed locations where the school operates. A school may provide in its bulletin information about real estate continuing education courses for which the school is approved by the Commission as a sponsor, but any such information shall comply with the standards described in Paragraph (c) of this Rule. A school may provide in its bulletin information about courses that are not approved by the Commission only if the bulletin clearly states that such courses are not approved or sanctioned by the Commission. A school may not include in its bulletin any promotional information for a particular real estate broker, firm, franchise or association, even if the entity being promoted owns the school.
- (b) In addition to the information required by G.S. 93A-34(c)(5), school bulletins a school's bulletin shall contain describe the purpose of prelicensing and postlicensing courses, describe the school's policies and procedures on all other matters affecting students and include the name and address of the North Carolina Real Estate Commission along with a statement to the effect that any complaints concerning the school should be directed to the Commission.
- (c) All information provided in a school bulletin shall be accurate, complete, clearly stated, internally consistent and logically organized. The bulletin shall be typed or printed and shall utilize correct spelling, grammar and punctuation.

Authority G.S. 93A-4(a),(d); 93A-33.

21 NCAC 58C .0209 ENROLLMENT PROCEDURES AND CONTRACTS

~~Schools shall execute a written contract with each student enrolled and shall provide a copy of such contract to the student. Such contract shall state the amount of tuition and fees paid, the title and dates of the courses for which the student is enrolled and a provision incorporating by reference the school's policies as described in the school's bulletin that is provided to students at the time of enrollment.~~

(a) A school shall provide to a prospective student a copy of the school's bulletin prior to the time that a student becomes committed to payment of any portion of tuition or registration deposit without the right to a full refund. A school may require a prospective student to make an advance payment of a portion of tuition or a registration deposit to reserve space in a scheduled course provided that any such payment is fully refundable in the event that the student does not subsequently execute a written enrollment contract.

(b) A school shall execute a written enrollment contract with each student after the school's bulletin has been provided to the student but prior to the beginning of the course for which the student is enrolling. The student shall be provided a copy of the enrollment contract at the time of signing.

(c) A school's student enrollment contract shall include the student's name, the contract date, the title of the course(s) for which the student is enrolling, the course schedule (beginning date, end date and meeting days and times), the amount of tuition and other required fees, a provision incorporating by reference the school's policies as described in the school's bulletin, a provision whereby the school certifies that the school's bulletin has been provided to the student and that the student acknowledges receipt of the bulletin, any provisions needed to address special accommodations or arrangements applicable to a particular student, and the signatures of both the student and a school official. Other than the amount of tuition and fees, an enrollment contract shall not address other school policies that are addressed in the school's bulletin. The enrollment contract shall be a separate document and shall not be combined with the school's bulletin into a single document. A school may utilize the school's copy of the enrollment contract to note a record of student tuition payments.

Authority G.S. 93A-4; 93A-33.

21 NCAC 58C .0210 ADMISSIONS POLICY AND PRACTICE

Schools shall not discriminate in their admissions policy or practice against any person on the basis of age, sex, race, color, creed, national origin or religious preference. A statement to this effect shall be included in all school bulletins, catalogues or similar official publications. Schools shall not offer postlicensing courses in a manner that results in the courses being conducted only for licensees affiliated with a particular real estate broker, firm, franchise or association, even if the entity whose affiliated licensees would benefit from the closed course is the school owner.

Authority G.S. 93A-4(a),(d); 93A-33.

SECTION .0300 - PRELICENSING AND POSTLICENSING COURSES

21 NCAC 58C .0302 PROGRAM STRUCTURING AND ADMISSION REQUIREMENTS

(a) The real estate prelicensing education program shall consist of a single course consisting of at least 75 classroom hours of instruction. Schools may establish course admission standards that require students to demonstrate to the satisfaction of the school that they possess the basic reading, writing and mathematics skills necessary to be successful in the prelicensing course, and these standards may include a requirement to complete additional instruction prior to enrollment.

(b) The real estate postlicensing education program shall consist of three courses, prescribed by the Commission in 21 NCAC 58A .1902, each consisting of at least 30 classroom hours of instruction, which may be taken by students in any sequence. ~~Licensure as a broker in North Carolina or another state shall be a prerequisite for enrollment in these courses.~~

(c) The prerequisite for enrollment in a postlicensing course is possession of a current North Carolina broker license on provisional status; however, schools may admit an individual to a postlicensing course if the individual needs to complete the course for the purpose of qualifying for reinstatement of an expired, revoked or surrendered license not on provisional status, or if the individual is required to complete the course pursuant to a disciplinary consent order issued by the Commission. A school shall not knowingly enroll an individual in a postlicensing course while the individual is taking another postlicensing course at the same school or a different school if such enrollment would result in the individual being in class for more than 21 classroom hours in any given seven-day period.

Authority G.S. 93A-4(a1); 93A-33.

21 NCAC 58C .0309 COURSE COMPLETION REPORTING

(a) Schools shall provide each student who completes a prelicensing or postlicensing course in compliance with Commission rules and school course completion standards a course completion certificate in a format prescribed by this Rule. In addition to information identifying the course, student and instructor, the certificate must include the official letterhead of the school and must have the original signature or a signature stamp in a color other than black of the director, dean or other school official responsible for supervising the conduct of the course.

(b) Schools shall prepare and submit to the Commission, along with the fee prescribed by G.S. 93A-4(a2), accurate reports verifying completion of a prelicensing or postlicensing course for each licensee student who completes a prelicensing or postlicensing course in compliance with Commission rules and school course completion standards. Such reports shall include students' names, students' license numbers, course dates, school and course code numbers and course information presented in the format prescribed by the Commission, and shall be transmitted electronically via the Internet to the Commission within seven calendar days following the course.

Authority G.S. 93A-4(a),(d); 93A-33.

21 NCAC 58C .0313 NOTICE OF SCHEDULED COURSES

(a) Schools shall provide the Commission written notice of all scheduled postlicensing course offerings not later than 10 days prior to a scheduled course beginning date. The notice shall include the name and assigned number for the sponsor and, for each scheduled course, the name and assigned number for the course, the scheduled beginning and ending dates, the specific location and the name of the instructor.

(b) Schools shall notify the Commission of any schedule changes or course cancellations at least five days prior to the original scheduled course beginning date. If a last minute change or cancellation is necessary due to some unforeseen circumstance, then notice shall be provided to the Commission as soon as possible.

Authority G.S. 93A-4(a1), (d); 93A-33.

SECTION .0600 –PRELICENSING AND POSTLICENSING INSTRUCTORS

21 NCAC 58C .0603 APPLICATION AND CRITERIA FOR ORIGINAL APPROVAL

(a) An individual seeking original approval as a prelicensing and postlicensing course instructor shall make application on a form provided by the Commission. An applicant who is not a resident of North Carolina shall also file with the application a consent to service of process and pleadings. No application fee shall be required. All required information regarding the applicant's qualifications shall be submitted.

(b) An instructor applicant shall demonstrate that he or she possesses good moral character as set out in G.S. 93A-4(b) and the following qualifications or other qualifications found by the Commission to be equivalent to the following qualifications: a current North Carolina real estate broker ~~license~~; license that is not on provisional status; a current continuing education record; three years active full-time experience in general real estate brokerage, including substantial experience in real estate sales and at least one year of general brokerage experience in North Carolina, within the previous seven years; ~~120 classroom hours of real estate education excluding company or franchise in-service sales training~~; and 60 semester hours of college-level education at an institution accredited by the Southern Association of Colleges and Schools or any other college accrediting body recognized by the U.S. Department of Education. The Commission shall consider teaching experience at the secondary or post-secondary level in lieu of a portion of the brokerage experience requirement.

(c) In addition to the qualification requirements stated in Paragraph (b) of this Rule, an applicant shall also demonstrate completion of the Commission's new instructor seminar within three years prior to the date of application and shall submit a one-hour video recording which depicts the applicant teaching a real estate prelicensing or postlicensing course topic and which demonstrates that the applicant possesses the basic teaching skills described in Rule .0604 of this Section. The new instructor seminar requirement shall be waived upon a finding by the Commission that the applicant possesses comparable instructor training, three years full-time experience teaching real

estate pre-licensing courses in another state within the previous five years, or other equivalent qualifications. The video recording shall comply with the requirements specified in Rule .0605(c) of this Section. An applicant who is a Commission-approved continuing education update course instructor under Subchapter E, Section .0200 of this Chapter or who holds the Distinguished Real Estate Instructor (DREI) designation granted by the Real Estate Educators Association or an equivalent real estate instructor certification shall be exempt from the requirement to demonstrate satisfactory teaching skills by submission of a digital video disc (DVD) or videotape. An applicant who is qualified under Paragraph (b) of this Rule but who has not satisfied these additional requirements at the time of application shall be approved and granted a six-month grace period to complete these requirements. The approval of any instructor who is granted such six-month period to complete the requirements shall automatically expire on the last day of the period if the instructor has failed to satisfy his or her qualification deficiencies and the period has not been extended by the Commission. The Commission shall extend the six-month period for up to three additional months when the Commission requires more than 30 days to review and act on a submitted video recording, when the expiration date of the period occurs during a course being taught by the instructor, or when the Commission determines that such extension is otherwise warranted by exceptional circumstances which are outside the instructor's control or when failure to extend the grace period could result in harm or substantial inconvenience to students, licensees, or other innocent persons. An individual applying for instructor approval who within the previous three years was allowed the six-month grace period to satisfy the requirements stated in this Paragraph, but did not satisfy such requirements within the allowed grace period, shall not be allowed the grace period.

Authority G.S. 93A-4; 93A-33; 93A-34.

SUBCHAPTER 58E - REAL ESTATE CONTINUING EDUCATION

SECTION .0200 - UPDATE COURSE INSTRUCTORS

21 NCAC 58E .0203 APPLICATION AND CRITERIA FOR ORIGINAL APPROVAL

(a) A person seeking original approval as an update course instructor must make application on a form provided by the Commission. An applicant who is not a resident of North Carolina shall also file with the application a consent to service of process and pleadings. No application fee is required. All required information regarding the applicant's qualifications must be submitted.

(b) The applicant must be truthful, honest and of high integrity.
(c) The applicant must be qualified under one of the following standards:

- (1) Possession of a current North Carolina real estate broker license that is not on provisional status, a current continuing education record, and three years active full-time experience in general real estate brokerage, including

substantial experience in real estate sales and at least one year of general brokerage experience in North Carolina, within the previous seven ~~years, years, and 30 classroom hours of real estate education, excluding prelicensing education, within the past three years, such education covering topics which are acceptable under Commission rules for continuing education credit.~~

(2) Possession of qualifications found by the Commission to be equivalent to the standard stated in Subparagraph (c)(1) of this Rule.

(d) The applicant must possess good teaching skills as demonstrated on a video recording portraying the instructor teaching a live audience. The applicant must submit the video recording for Commission review on either a digital video disc (DVD) or a VHS formatted videocassette. The video recording must be 45-60 minutes in length and must depict a continuous block of instruction on a single real estate or directly related topic. The video recording must be unedited, must show at least a portion of the audience, and must have visual and sound quality sufficient to enable reviewers to clearly see and hear the instructor. The video recording must have been recorded within the previous one year. The video recording must demonstrate that the instructor possesses the teaching skills described in Rule .0509 of this Subchapter.

(e) An applicant shall be exempt from qualifying under Paragraphs (c) and (d) of this Rule if he or she is a Commission-approved real estate prelicensing instructor who has satisfied all requirements for an unconditional approval or possesses a current North Carolina real estate broker license, a current continuing education record, and a current designation as a Distinguished Real Estate Instructor (DREI) granted by the Real Estate Educators Association.

Authority G.S. 93A-3(c); 93A-4A.

CHAPTER 58 – REAL ESTATE COMMISSION

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Real Estate Commission intends to adopt the rule cited as 21 NCAC 58A .0115 and amend the rule cited as 21 NCAC 58A .0104.

Proposed Effective Date: July 1, 2008

Public Hearing:

Date: July 11, 2007

Time: 9:00 a.m.

Location: Hilton Wilmington Riverside, 301 North Water Street, Wilmington, NC 28401

Reason for Proposed Action:

21 NCAC 58A .0104 – To clarify that certain agency agreements must be written and signed.

21 NCAC 58A .0115 – To promote fair practice by prohibiting a broker from sharing the price and material terms of a buyer's

offer with competing buyers unless the buyer has expressly authorized the disclosure.

Procedure by which a person can object to the agency on a proposed rule: Any person who objects or who has comment about the proposed rule changes may submit written comments to rule-making coordinator Sandra L. Good at the address listed below.

Comments may be submitted to: Sandra L. Good, 1313 Navaho Drive, Raleigh, NC 27619, phone (919) 875-3700

Comment period ends: July 11, 2007

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 58A - REAL ESTATE BROKERS AND SALESMEN

SECTION .0100 - GENERAL BROKERAGE

21 NCAC 58A .0104 AGENCY AGREEMENTS AND DISCLOSURE

(a) Every agreement for brokerage services in a real estate transaction and every agreement for services connected with the management of a property owners association shall be in writing and signed by the parties thereto. Every agreement for brokerage services between a broker and an owner of the property to be the subject of a transaction must be in writing and signed by the parties from the time of its formation. Every agreement for brokerage services between a broker and a buyer or tenant shall be express and shall be reduced to writing and signed by the parties thereto not later than the time one of the parties makes an offer to purchase, sell, rent, lease, or exchange real estate to another. However, every agreement between a broker and a buyer or tenant which seeks to bind the buyer or tenant for a period of time or to restrict the buyer's or tenant's right to work with other agents or without an agent shall be in writing and signed by the parties thereto from its

formation. A broker shall not continue to represent a buyer or tenant without a ~~written~~ **written, signed** agreement when such agreement is required by this Rule. Every written agreement for brokerage services of any kind in a real estate transaction shall provide for its existence for a definite period of time, shall include the licensee's license number, and shall provide for its termination without prior notice at the expiration of that period, except that an agency agreement between a landlord and broker to procure tenants or receive rents for the landlord's property may allow for automatic renewal so long as the landlord may terminate with notice at the end of any contract period and any subsequent renewals. For the purposes of this rule, an agreement between licensees to cooperate or share compensation shall not be considered an agreement for brokerage services and, except as required by Rule .1807 of this Subchapter, need not be memorialized in writing.

(b) Every listing agreement, written buyer agency agreement or other written agreement for brokerage services in a real estate transaction shall contain the following provision: The broker shall conduct all brokerage activities in regard to this agreement without respect to the race, color, religion, sex, national origin, handicap or familial status of any party or prospective party to the agreement. The provision shall be set forth in a clear and conspicuous manner which shall distinguish it from other provisions of the agreement. For the purposes of this Rule, the term, familial status, shall be defined as it is in G.S. 41A-3(1b).

(c) In every real estate sales transaction, a broker shall, at first substantial contact directly with a prospective buyer or seller, provide the prospective buyer or seller with a copy of the publication "Working with Real Estate Agents," set forth the broker's name and license number thereon, review the publication with the buyer or seller, and determine whether the agent will act as the agent of the buyer or seller in the transaction. If the first substantial contact with a prospective buyer or seller occurs by telephone or other electronic means of communication where it is not practical to provide the "Working with Real Estate Agents" publication, the broker shall at the earliest opportunity thereafter, but in no event later than three days from the date of first substantial contact, mail or otherwise transmit a copy of the publication to the prospective buyer or seller and review it with him or her at the earliest practicable opportunity thereafter. For the purposes of this Rule, "first substantial contact" shall include contacts between a broker and a consumer where the consumer or broker begins to act as though an agency relationship exists and the consumer begins to disclose to the broker personal or confidential information.

(d) A real estate broker representing one party in a transaction shall not undertake to represent another party in the transaction without the written authority of each party. Such written authority must be obtained upon the formation of the relationship except when a buyer or tenant is represented by a broker without a written agreement in conformity with the requirements of Paragraph (a) of this Rule. Under such circumstances, the written authority for dual agency must be reduced to writing not later than the time that one of the parties represented by the broker makes an offer to purchase, sell, rent, lease, or exchange real estate to another party.

(e) In every real estate sales transaction, a broker working directly with a prospective buyer as a seller's agent or subagent

shall disclose in writing to the prospective buyer at the first substantial contact with the prospective buyer that the broker represents the interests of the seller. The written disclosure shall include the broker's license number. If the first substantial contact occurs by telephone or by means of other electronic communication where it is not practical to provide written disclosure, the broker shall immediately disclose by similar means whom he represents and shall immediately mail or otherwise transmit a copy of the written disclosure to the buyer. In no event shall the broker mail or transmit a copy of the written disclosure to the buyer later than three days from the date of first substantial contact with the buyer.

(f) In every real estate sales transaction, a broker representing a buyer shall, at the initial contact with the seller or seller's agent, disclose to the seller or seller's agent that the broker represents the buyer's interests. In addition, in every real estate sales transaction other than auctions, the broker shall, no later than the time of delivery of an offer to the seller or seller's agent, provide the seller or seller's agent with a written confirmation disclosing that he represents the interests of the buyer. The written confirmation may be made in the buyer's offer to purchase and shall include the broker's license number.

(g) The provisions of Paragraphs (c), (d) and (e) of this Rule shall not apply to real estate licensees representing sellers in auction sales transactions.

(h) A broker representing a buyer in an auction sale transaction shall, no later than the time of execution of a written agreement memorializing the buyer's contract to purchase, provide the seller or seller's agent with a written confirmation disclosing that he represents the interests of the buyer. The written confirmation may be made in the written agreement.

(i) A firm which represents more than one party in the same real estate transaction is a dual agent and, through the brokers associated with the firm, shall disclose its dual agency to the parties.

(j) When a firm represents both the buyer and seller in the same real estate transaction, the firm may, with the prior express approval of its buyer and seller clients, designate one or more individual brokers associated with the firm to represent only the interests of the seller and one or more other individual brokers associated with the firm to represent only the interests of the buyer in the transaction. The authority for designated agency must be reduced to writing not later than the time that the parties are required to reduce their dual agency agreement to writing in accordance with Paragraph (d) of this Rule. An individual broker shall not be so designated and shall not undertake to represent only the interests of one party if the broker has actually received confidential information concerning the other party in connection with the transaction. A broker-in-charge shall not act as a designated broker for a party in a real estate sales transaction when a provisional broker under his or her supervision will act as a designated broker for another party with a competing interest.

(k) When a firm acting as a dual agent designates an individual broker to represent the seller, the broker so designated shall represent only the interest of the seller and shall not, without the seller's permission, disclose to the buyer or a broker designated to represent the buyer:

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- (1) that the seller may agree to a price, terms, or any conditions of sale other than those established by the seller;
- (2) the seller's motivation for engaging in the transaction unless disclosure is otherwise required by statute or rule; and
- (3) any information about the seller which the seller has identified as confidential unless disclosure of the information is otherwise required by statute or rule.

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Board of Recreational Therapy Licensure intends to amend the rules cited as 21 NCAC 65 .0301 - .0302.

Proposed Effective Date: September 1, 2007

Public Hearing:

Date: May 16, 2007

Time: 6 p.m.

Location: Dorothea Dix Hospital, Brown Bldg., 801 Biggs Drive, Raleigh, NC 27603

Reason for Proposed Action:

21 NCAC 65 .0301 – To amend this Rule for Educational Requirements under the newly adopted NC Recreational Therapy Licensure Act G.S. Chapter 90C.

21 NCAC 65 .0302 – To amend this Rule for Educational Requirements for Licensed Recreational Therapy Assistants under the newly adopted NC Recreational Therapy Licensure Act G.S. Chapter 90C.

Procedure by which a person can object to the agency on a proposed rule:

All written comments will be accepted by Becky Garrett, NC BRTL Executive Director at P.O. Box 67, Saxapahaw, NC 27340 until July 2, 2007

Comments may be submitted to: Becky Garrett, LRT/CTRS, P.O. Box 67, Saxapahaw, NC 27340, phone (336) 212-1133

Comment period ends: July 2, 2007

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 .0300 - REQUIREMENTS FOR LICENSURE

21 NCAC 65 .0301 MINIMUM LEVEL OF

(l) When a firm acting as a dual agent designates an individual broker to represent the buyer, the broker so designated shall represent only the interest of the buyer and shall not, without the buyer's permission, disclose to the seller or a broker designated to represent the seller:

- (1) that the buyer may agree to a price, terms, or any conditions of sale other than those established by the seller;
- (2) the buyer's motivation for engaging in the transaction unless disclosure is otherwise required by statute or rule; and
- (3) any information about the buyer which the buyer has identified as confidential unless disclosure of the information is otherwise required by statute or rule.

(m) A broker designated to represent a buyer or seller in accordance with Paragraph (j) of this Rule shall disclose the identity of all of the brokers so designated to both the buyer and the seller. The disclosure shall take place no later than the presentation of the first offer to purchase or sell.

(n) When an individual broker represents both the buyer and seller in the same real estate sales transaction pursuant to a written agreement authorizing dual agency, the parties may provide in the written agreement that the broker shall not disclose the following information about one party to the other without permission from the party about whom the information pertains:

- (1) that a party may agree to a price, terms or any conditions of sale other than those offered;
- (2) the motivation of a party for engaging in the transaction, unless disclosure is otherwise required by statute or rule; and
- (3) any information about a party which that party has identified as confidential, unless disclosure is otherwise required by statute or rule.

Authority G.S. 41A-3(1b); 41A-4(a); 93A-3(c); 93A-9.

21 NCAC 58A .0115 DISCLOSURE OF OFFERS PROHIBITED

A broker shall not disclose the price or other material terms contained in a party's offer to purchase, sell, lease, rent, or option real property to a competing party without the express authority of the offering party.

Authority G.S. 93A-3(c); 93A-6.

EDUCATION AND COMPETENCY FOR LICENSED RECREATIONAL THERAPIST

(a) For the purposes of G.S. 90C-27(a), a candidate for licensure as a recreational therapist must have graduated from an accredited college or university with a baccalaureate degree or higher and with a major or specialization in recreational therapy or therapeutic recreation. An academic major is defined as a degree in recreational therapy or therapeutic recreation. A specialization in recreational therapy or therapeutic recreation is defined as a degree in recreation and leisure studies, or recreation, or health and physical education, or health and human performance with a specialization, also known as an option, emphasis or concentration, in therapeutic recreation or recreational therapy. An accredited college or university is defined as a college or university accredited by an accreditation body recognized by the United States Department of Education. The academic major or specialization must be verified by an official transcript. An academic major or specialization is defined by the following components:

- (1) Coursework for a degree or specialization in recreational therapy or therapeutic recreation must reflect a minimum of three courses (nine semester hours) and as of December 31, 2007 four courses (12 semester hours) and as of July 1, 2010 five courses (15 semester hours) in which the title, course description and course outline reflects recreational therapy or therapeutic recreation content according to the current National Council for Therapeutic Recreation Certification (NCTRC)© Job Analysis Study published by the National Council for Therapeutic Recreation Council for Therapeutic Recreation Certification (NCTRC), which is herein incorporated by reference, and including any subsequent amendments and changes a changes. A copy may be found-obtained at no cost on the National Council for Therapeutic Recreation Certification (NCTRC) website at: <http://www.nctrc.org>. For candidates for licensure who have passed the National Council for Therapeutic Recreation Certification (NCTRC) examination and were certified by the National Council for Therapeutic Recreation Certification prior to December 31, 2002, a therapeutic recreation or recreational therapy content course taught is considered equivalent competency to taking the same as a therapeutic recreation or recreational therapy content course taken. Candidates for licensure who have passed the National Council for Therapeutic Recreation Certification Therapeutic Recreation examination and were certified by the National Council for Therapeutic Recreation Certification (NCTRC) prior to December 31, 2002 but have not taken or taught three therapeutic recreation or recreational therapy content courses may work as a recreational therapy aide assisting in the provision of

~~recreational therapy services while the required recreational therapy or therapeutic recreation content courses are completed.~~

- (2) Supportive coursework are courses, not including the recreational therapy or therapeutic recreation content courses, ~~that~~ which contribute to the knowledge base to practice recreational therapy or therapeutic recreation. Support content courses provide knowledge about human development, human functioning, health, illness and disabling conditions as well as health care and human services to contribute to the ability to safely and effectively practice recreational therapy or therapeutic recreation. Supportive coursework related to the practice of recreational therapy or therapeutic recreation is required for the major or specialization in recreational therapy or therapeutic recreation. Supportive coursework for a degree or specialization in recreational therapy or therapeutic recreation must include three semester hours of anatomy and physiology, three semester hours of abnormal psychology, three semester hours of human growth and development across lifespan, and nine semester hours in the area of health and human services. Health and human services coursework may include content in the areas of education, ethics, and other supportive coursework related to the practice of recreational therapy; ~~candidates for licensure who have passed the National Council for Therapeutic Recreation Certification examination and were certified by the National Council for Therapeutic Recreation Certification (NCTRC) prior to December 31, 2002 who want to apply for licensure, but who lack required support content courses may be employed as a recreational therapy aide assisting in the provision of recreational therapy services while the required support content courses are completed.~~
- (3) A field placement course, sometimes called an internship course, is a course taken for college or university credit which shall require clinical education in an agency providing therapeutic recreation services to clients. A field placement course is required for a major or specialization in therapeutic recreation or recreational therapy. The field placement or internship course must meet the criteria for a field placement set forth by the National Council for Therapeutic Recreation Certification (NCTRC). A copy of the NCTRC field placement requirements may be obtained at no cost on the National Council for Therapeutic Recreation Certification (NCTRC) website at: <http://www.nctrc.org>.

university supervisor of a field placement course is defined as the university faculty assigned to supervise the student and course from the university. An agency supervisor is the recreational therapist or therapeutic recreation specialist, in an agency providing therapeutic recreation or recreational therapy services to patients or clients, assigned to provide clinical supervision to the field placement student from the agency. Successful performance in the field placement course must be demonstrated to verify competency to practice as a recreational therapist, to the North Carolina Board of Recreational Therapy Licensure (NC BRTL) on a performance appraisal form adopted by the North Carolina Board of Recreational Therapy Licensure that includes the content and performance criteria from the ATRA Standards for the Practice of Therapeutic Recreation and Self-Assessment Guide, Clinical Performance Appraisal Summary, which is herein incorporated by reference. A copy of the ATRA Standards for the Practice of Therapeutic Recreation and Self-Assessment Guide may be purchased from the American Therapeutic Recreation Association (ATRA) at: <http://www.atra-TR.org>. Successful performance in a field placement course is defined as a grade of C or higher awarded by the university field placement supervisor and an Overall Rating of "Meets Performance Expectations" awarded by the agency supervisor is required on the performance appraisal form adopted by the North Carolina Board of Recreational Therapy Licensure.

~~(b) Field placement shall be a minimum of 480 hours. If the student taking the field placement course from a college or university in North Carolina is assigned to an agency in North Carolina, Agency as well as college or university supervisors of recreational therapy or therapeutic recreation students taking a field placement course must be North Carolina Licensed Recreational Therapists.~~

(c) If a student takes the field placement course from a college or university in North Carolina and completes the field placement between October 5, 2006 and January 15, 2008, in a state other than North Carolina, agency supervision must be provided by a National Council for Therapeutic Recreation Certification (NCTRC) "Certified Therapeutic Recreation Specialist" (CTRS™). If the field placement is done after January 15, 2008, in a state other than North Carolina, agency supervision of field placement students must be provided by a National Council for Therapeutic Recreation Certification Council (NCTRC) "Certified Therapeutic Recreation Specialist" (CTRS™) who meets the academic requirements for licensure, as defined in Paragraph (a) of this Rule, as verified on an agency field placement supervisor form adopted by the North Carolina Board of Recreational Therapy Licensure (NC BRTL). If an out-of-state agency field placement supervisor was originally

certified by NCTRC prior to January 1, 1990 and has maintained certification continuously, but has not taken all the courses listed in Paragraph (a) of this Rule, he may serve as an agency supervisor of field placement students if:

(1) he can demonstrate to the North Carolina Board of Recreational Therapy Licensure, on forms approved by the board, that he has obtained the knowledge required by course requirements listed in Paragraph (a) of this Rule by a combination of related courses taken and experience, as demonstrated by successful performance as a recreational therapist. Successful performance is defined as a rating by the immediate supervisor of "Met Expectations" on a performance appraisal form adopted by the North Carolina Board of Recreational Therapy Licensure that includes the content and performance criteria from the ATRA Standards for the Practice of Therapeutic Recreation and Self-Assessment Guide, Clinical Performance Appraisal Summary, which is herein incorporated by reference. A copy of the ATRA Standards for the Practice of Therapeutic Recreation and Self-Assessment Guide may be purchased from the American Therapeutic Recreation Association (ATRA) at: <http://www.atra-TR.org>, and

(2) he has provided adequate supervision of a field placement student. Adequate supervision of a field placement student must be verified on a performance appraisal form adopted by the North Carolina Board of Recreational Therapy Licensure that includes the content and performance criteria from the ATRA Standards for the Practice of Therapeutic Recreation and Self-Assessment Guide, Clinical Performance Appraisal Summary, which is herein incorporated by reference. A copy of the ATRA Standards for the Practice of Therapeutic Recreation and Self-Assessment Guide may be purchased from the American Therapeutic Recreation Association (ATRA) at: <http://www.atra-TR.org>.

~~(b) Field placement shall be a minimum of 480 hours. Agency as well as college or university supervisors of recreational therapy or therapeutic recreation interns must be North Carolina Licensed Recreational Therapists or if the college or university is in a state other than North Carolina, the university supervisor of interns must be a National Council for Therapeutic Recreation Certification Council "Certified Therapeutic Recreation Specialist" who meets the requirements of Subparagraphs (a)(1) and (a)(2) of this Rule. If the internship is done between October 5, 2006 and January 15, 2008, in a state other than North Carolina, agency supervision must be by a National Council for Therapeutic Recreation Certification (NCTRC) "Certified Therapeutic Recreation Specialist" (CTRS). If the internship is done after January 15, 2008, in a state other than North Carolina, agency supervision must be provided by a~~

~~National Council for Therapeutic Recreation Certification Council (NCTRC) "Certified Therapeutic Recreation Specialist" (CTRS) who meets the academic requirements for licensure adopted by the North Carolina Board of Recreational Therapy Licensure (NC BRTL) including the recreational therapy or therapeutic recreation coursework and supportive coursework requirements as listed in Subparagraphs (a)(1) and (a)(2) of this Rule. The field placement must meet the criteria set forth by the National Council for Therapeutic Recreation Certification. Successful performance as an intern during the field placement must be demonstrated to the North Carolina Board of Recreational Therapy Licensure (NC BRTL), using an intern performance form adopted by the North Carolina Board of Recreational Therapy Licensure (NC BRTL), to verify competency to practice as a recreational therapist.~~

~~(e)(d)~~ Candidates for licensure, after January 15, 2008, who have completed their degree from a college or university in a state other than North Carolina and have completed all recreational therapy or therapeutic recreation content courses, all support content requirements and an internship a field placement out-of-state under the clinical supervision of a National Council for Therapeutic Recreation Certification "Certified Therapeutic Recreation Specialist" who meets all requirements of Chapter 90C and this Rule except the requirement to have the internship supervised by a clinical supervisor who is a Licensed Recreational Therapist (LRT), shall be issued a license to practice as a recreational therapist if they verify a minimum of one year of successful work performance in another state as a recreational therapist or therapeutic recreation specialist during which time they were a "Certified Therapeutic Recreation Specialist" by National Council for Therapeutic Recreation Certification. Successful work performance must be verified to the North Carolina Board of Recreational Therapy Licensure (NC BRTL) on a performance appraisal form provided by the North Carolina Board of Recreational Therapy Licensure (NC BRTL) adopted by the North Carolina Board of Recreational Therapy Licensure that includes the content and performance criteria from the ATRA Standards for the Practice of Therapeutic Recreation and Self-Assessment Guide, Clinical Performance Appraisal Summary, which is herein incorporated by reference. A copy of the ATRA Standards for the Practice of Therapeutic Recreation and Self-Assessment Guide may be purchased from the American Therapeutic Recreation Association (ATRA) at: <http://www.atra-TR.org>. Successful performance is defined as an overall rating completed by the immediate supervisor of "Met Expectations" on the performance appraisal form provided by the North Carolina Board of Recreational Therapy Licensure.

~~(4)(e)~~ Candidates must submit evidence of a passing score on the National Council for Therapeutic Recreation Certification (NCTRC) examination. The passing score on the National Council for Therapeutic Recreation Certification Examination is determined by the National Council for Therapeutic Recreation Certification.

Authority G.S. 90C-27(a); 90C-24.

21 NCAC 65 .0302 MINIMUM LEVEL OF EDUCATION AND COMPETENCY FOR LICENSED

RECREATIONAL THERAPY ASSISTANTS

(a) For the purposes of G.S. 90C-27(b) an academic major is defined as an Associate of Applied Science Degree in therapeutic recreation or recreational therapy from a community college accredited by the Southern Association of Colleges and Schools.

(b) Course work for an Associate degree must reflect the following:

- (1) A minimum of nine semester hours in therapeutic recreation or recreational therapy content courses. January 15, 2008, nine hours in recreational therapy or therapeutic recreation content courses.
- (2) Ten semester hours in therapeutic recreation or recreational therapy interventions;
- (3) A minimum of 15 semester hours of supportive coursework including at least one course from three of the following areas: psychology, sociology, physical and biological science, human services and physical education courses. Beginning January 15, 2008, the degree requirements for supportive coursework must include a minimum of five semester hours of anatomy and physiology and three semester hours of abnormal psychology, three semester hours of growth and development the remaining ~~four~~ six semester hours of supportive coursework must be in the areas of psychology, sociology, physical and biological science, human services and/or physical education;
- (4) A minimum 380 hour field placement experience in a clinical, residential, or community-based agency under the supervision of a Licensed Recreational Therapist or Licensed Recreational Therapy Assistant. The field placement must be a minimum of ~~40~~ 12 consecutive weeks with each week including a minimum of 20 hours.

Authority G.S. 90C-27(b); 90C-24(a)(3).

TITLE 26 – OFFICE OF ADMINISTRATIVE HEARINGS

Notice is hereby given in accordance with G.S. 150B-21.2 that the Office of Administrative Hearings intends to amend the rules cited as 26 NCAC 02C .0303 and .0307.

Proposed Effective Date: *September 1, 2007*

Instructions on How to Demand a Public Hearing: *(must be requested in writing within 15 days of notice): Any person may send a written request for a public hearing postmarked no later than May 16, 2007 to Molly Masich, OAH – Rules Division, 6714 Mail Service Center, Raleigh, NC 27699-6714.*

Reason for Proposed Action: *In the 2006 session, the General Assembly amended G.S. 150B-21.17 to allow the Codifier of Rules to authorize and license the private indexing, marketing, sales, reproduction, and distribution of the Register. OAH completed the RFP process and has licensed LexisNexis to publish the print copy of the NC Register starting with the subscription and renewal period starting February 2007. OAH no longer incurs the cost of printing; therefore, Rule .0307 was amended to reflect that change.*

Procedure by which a person can object to the agency on a proposed rule: *Written objections to the rules should be sent to Molly Masich, OAH-Rules Division, 6714 Mail Service Center, Raleigh, NC 27699-6714 and postmarked no later than July 6, 2007. The objection letter should clearly state which rule the objection is to and the reason for the objection.*

Comments may be submitted to: *Molly Masich, 6714 Mail Service Center, Raleigh, NC 27699-6714, email molly.masich@ncmail.net*

Comment period ends: *July 6, 2007*

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: A copy of the fiscal note can be obtained from the agency.

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

CHAPTER 02 - RULES DIVISION

SUBCHAPTER 02C - SUBMISSION PROCEDURES FOR RULES AND OTHER DOCUMENTS TO BE PUBLISHED IN THE NORTH CAROLINA REGISTER AND THE NORTH CAROLINA ADMINISTRATIVE CODE

SECTION .0300 - THE NORTH CAROLINA REGISTER

26 NCAC 02C .0303 AVAILABILITY OF THE NORTH CAROLINA REGISTER

(a) ~~A print subscription to the Register shall be one hundred and ninety five dollars (\$195.00) annually plus NC sales tax if applicable.~~ is available from LexisNexis Matthew Bender and may be ordered directly from LexisNexis by calling 1-800-833-9844, ordering from the online store at www.lexisnexis.com/bookstorelink/, or by writing to LexisNexis Matthew Bender, Order Fulfillment, 1275 Broadway, Albany, NY 12204.

(b) ~~Individual print issues, including back issues, if available, shall be ten dollars (\$10.00) plus NC sales tax if applicable.~~

(c) ~~A person requesting a subscription shall direct the request to:~~
Office of Administrative Hearings
6714 Mail Service Center
Raleigh, NC 27699-6714
phone: 919.733.2678
fax: 919.733.3462
email:

(d)(b) ~~The Register is available at no charge on the OAH website: <http://www.oah.state.nc.us>.~~ <http://www.ncoah.com>

Authority G.S. 150B-21.25.

26 NCAC 02C .0307 OTHER NOTICES FOR PUBLICATION

(a) ~~OAH may publish any document or notice that is not statutorily required if an agency submits a written request. Factors OAH shall use in determining whether to grant the request are:~~

- (1) ~~degree of disruption to OAH publication and work schedule; and~~
- (2) ~~degree of benefit to the public.~~

(b) ~~OAH shall charge the agency thirty dollars (\$30.00) per published page.~~

Authority G.S. 150B-21.17(6); 150B-19(5)(a); 150B-21.25.

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) 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 60th 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.*

NC BUILDING CODE COUNCIL

Rule-making Agency: *Building Code Council*

Rule Citation: *Residential Code, R302.1 Exception 2, Exterior Wall Projections (070313 Item B-2)*

Effective Date: *April 5, 2007*

Findings Reviewed and Approved by the Codifier: *March 27, 2007*

Reason for Action: *Current methods of townhouse construction that are allowed by the NC Residential Code have demonstrated the potential to allow fire to spread along and through the roof soffit areas and into attic spaces. In the specific instance of vinyl soffits, the soffit material can melt away and allow an open chase for flames to rapidly spread into the attic space. Having noncombustible soffit material will reduce the spread of flames into the attic and adjacent units; thereby making the fire easier to control and manage. The recent Raleigh townhouse fire brought this issue to the attention of the Council. Numerous new townhouse building permits will be issued prior to adoption and approval of the Permanent Rule.*

NC Building Code Council
NC Residential Code
R302.1 Exception 2, Exterior Wall Projections (070313 Item B-2)

R302.1 Exterior walls. Exterior walls with a fire separation distance less than 3 feet (914mm) shall have not less than a one-hour fire-resistive rating with exposure from both sides. Non-rated projections shall not extend beyond the distance determined by the following two methods, whichever results in the lesser projections:

1. A point one-third the distance to the property line from an assumed vertical plane located where protected openings are required.
2. More than 12 inches (305 mm) into areas where openings are prohibited.

Projections extending beyond the distance described above into the fire separation distance shall have not less than one-hour fire-resistive construction on the underside. The above provisions shall not apply to walls which are perpendicular to the line used to determine the fire separation distance.

Exceptions:

1. Tool and storage sheds, playhouses and similar structures exempted from permits by Chapter 1 are not required to provide wall protection based on location on the lot. Projections beyond the exterior wall shall not extend over the lot line.

2. In townhouse construction (3 or more attached dwellings) noncombustible soffit material, not including aluminum, shall be used and shall be securely attached to framing members or shall have a 1 hour fire rating as required by code. Vented noncombustible soffit shall be permitted.

The Effective Date for this Emergency Rule is the April 5, 2007. The Statutory authority for Rule-making is G. S. 143-136; 143-138.

APPROVED RULES

*This Section includes a listing of rules approved by the Rules Review Commission followed by the full text of those rules. The rules that have been approved by the RRC in a form different from that originally noticed in the Register or when no notice was required to be published in the Register are identified by an * in the listing of approved rules. Statutory Reference: G.S. 150B-21.17.*

Rules approved by the Rules Review Commission at its meeting on March 15, 2007

**REGISTER CITATION TO THE
NOTICE OF TEXT**

BANKS, OFFICE OF THE COMMISSIONER

<u>Examining Committee Report</u>	04	NCAC	03C	.0701	21:12 NCR
<u>Reports of Condition and Income</u>	04	NCAC	03C	.0702	21:12 NCR
<u>Publisher's Copy Report of Condition</u>	04	NCAC	03C	.0703	21:12 NCR
<u>Loan Documentation</u>	04	NCAC	03C	.1001*	21:12 NCR
<u>Leasing of Personal Property</u>	04	NCAC	03C	.1002*	21:12 NCR
<u>Definitions: Issuance of Capital Notes and Debentures</u>	04	NCAC	03C	.1101	21:12 NCR
<u>Capital Debentures and Notes</u>	04	NCAC	03C	.1102	21:12 NCR
<u>Annual Vacation</u>	04	NCAC	03C	.1301	21:12 NCR

USS NORTH CAROLINA BATTLESHIP COMMISSION

<u>Hours of Operation</u>	07	NCAC	05	.0202*	20:08 NCR
<u>Admission Prices</u>	07	NCAC	05	.0203	20:08 NCR

HEALTH AND HUMAN SERVICES, DEPARTMENT OF

<u>Scope</u>	10A	NCAC	01G	.0101*	21:11 NCR
<u>Application for NC NOVA Special Licensure Designation</u>	10A	NCAC	01G	.0102*	21:11 NCR

HHS-FACILITY SERVICES

<u>Performance Standards</u>	10A	NCAC	14C	.2103*	21:08 NCR
<u>Definitions</u>	10A	NCAC	14C	.3301*	21:02 NCR

HHS - MENTAL HEALTH

<u>Scope</u>	10A	NCAC	29A	.0101*	n/a G.S. 150B-21.5(b)(1)
<u>Definitions</u>	10A	NCAC	29A	.0102*	n/a G.S. 150B-21.5(b)(1)
<u>Criteria For Admissions</u>	10A	NCAC	29A	.0103*	n/a G.S. 150B-21.5(b)(1)
<u>Application for Admission</u>	10A	NCAC	29A	.0104*	n/a G.S. 150B-21.5(b)(1)
<u>Priority for Admission</u>	10A	NCAC	29A	.0105*	n/a G.S. 150B-21.5(b)(1)
<u>Maximum Number of Class Members to be Served</u>	10A	NCAC	29A	.0106*	n/a G.S. 150B-21.5(b)(1)
<u>Funds for Assaultive Children</u>	10A	NCAC	29A	.0107*	n/a G.S. 150B-21.5(b)(1)
<u>Scope</u>	10A	NCAC	29A	.0108*	n/a G.S. 150B-21.5(b)(1)
<u>Definitions</u>	10A	NCAC	29A	.0109*	n/a G.S. 150B-21.5(b)(1)
<u>General Provisions</u>	10A	NCAC	29A	.0110*	n/a G.S. 150B-21.5(b)(1)
<u>Eligibility Criteria</u>	10A	NCAC	29A	.0111*	n/a G.S. 150B-21.5(b)(1)

APPROVED RULES

<u>Emotional, Mental or Neurological Handicap Defined</u>	10A NCAC	29A	.0112*	n/a G.S. 150B-21.5(b)(1)
<u>Violent or Assaultive Behavior Defined</u>	10A NCAC	29A	.0113*	n/a G.S. 150B-21.5(b)(1)
<u>Determination that State has not Provided Appropriate Tre...</u>	10A NCAC	29A	.0114*	n/a G.S. 150B-21.5(b)(1)
<u>Application for Designation as Youth Behavioral Services ...</u>	10A NCAC	29A	.0115*	n/a G.S. 150B-21.5(b)(1)
<u>Determination of Eligibility</u>	10A NCAC	29A	.0116*	n/a G.S. 150B-21.5(b)(1)
<u>Re-review of Eligibility Decisions</u>	10A NCAC	29A	.0117*	n/a G.S. 150B-21.5(b)(1)
<u>Needs Assessment</u>	10A NCAC	29A	.0118*	n/a G.S. 150B-21.5(b)(1)
<u>Service Planning</u>	10A NCAC	29A	.0119*	n/a G.S. 150B-21.5(b)(1)
<u>Provision of Services</u>	10A NCAC	29A	.0120*	n/a G.S. 150B-21.5(b)(1)
<u>Area Program Requirements</u>	10A NCAC	29A	.0121*	n/a G.S. 150B-21.5(b)(1)
<u>Division Requirements</u>	10A NCAC	29A	.0122*	n/a G.S. 150B-21.5(b)(1)
<u>Prior Notice of Decision</u>	10A NCAC	29A	.0123*	n/a G.S. 150B-21.5(b)(1)
<u>Mediation</u>	10A NCAC	29A	.0124*	n/a G.S. 150B-21.5(b)(1)
<u>Contested Case Hearings</u>	10A NCAC	29A	.0125*	n/a G.S. 150B-21.5(b)(1)
<u>Administrative Review by Review Officer</u>	10A NCAC	29A	.0126*	n/a G.S. 150B-21.5(b)(1)
<u>Evaluation Reports</u>	10A NCAC	29A	.0127*	n/a G.S. 150B-21.5(b)(1)
<u>Thomas S. Community Services</u>	10A NCAC	29B	.0101*	n/a G.S. 150B-21.5(b)(1)
<u>Scope</u>	10A NCAC	29B	.0102*	n/a G.S. 150B-21.5(b)(1)
<u>Definitions</u>	10A NCAC	29B	.0103*	n/a G.S. 150B-21.5(b)(1)
<u>Reporting Requirements</u>	10A NCAC	29B	.0104*	n/a G.S. 150B-21.5(b)(1)
<u>Death Review Requirements</u>	10A NCAC	29B	.0105*	n/a G.S. 150B-21.5(b)(1)
<u>Thomas S. Mortality Review Committee</u>	10A NCAC	29B	.0106*	n/a G.S. 150B-21.5(b)(1)
<u>Scope</u>	10A NCAC	29D	.0201*	n/a G.S. 150B-21.5(b)(1)
<u>Explanation of Terms</u>	10A NCAC	29D	.0202*	n/a G.S. 150B-21.5(b)(1)
<u>Designation Procedures</u>	10A NCAC	29D	.0203*	n/a G.S. 150B-21.5(b)(1)

HEALTH AND HUMAN SERVICES, DEPARTMENT OF

<u>Limitation of Permit</u>	10A NCAC	41B	.0302*	n/a G.S. 150-21.5(a)(2),(4),(6)
<u>Screening Test for Alcohol Concentration</u>	10A NCAC	41B	.0501*	n/a G.S. 150-21.5(a)(2),(4),(6)
<u>Approval: Alcohol Screening Test Devices: Use</u>	10A NCAC	41B	.0502*	n/a G.S. 150-21.5(a)(2),(4),(6)

HEALTH SERVICES, COMMISSION FOR

<u>Definitions</u>	10A NCAC	43D	.0202*	21:09 NCR
<u>Authorized WIC Vendors</u>	10A NCAC	43D	.0706*	21:09 NCR

HHS - VOCATIONAL REHABILITATION SERVICES

<u>Rates of Payment</u>	10A NCAC	89C	.0103*	21:10 NCR
<u>General Policies</u>	10A NCAC	89D	.0101*	21:10 NCR
<u>Community Rehabilitation Program Standards</u>	10A NCAC	89D	.0204*	21:10 NCR

CODE OFFICIALS QUALIFICATION BOARD

<u>Continuing Education Requirements</u>	11 NCAC	08	.0713	21:12 NCR
<u>Approved Courses</u>	11 NCAC	08	.0720*	21:12 NCR

INSURANCE, DEPARTMENT OF

Model Regulation Permitting the Recognition of Preferred ... 11 NCAC 11F .0801* 21:12 NCR

LABOR, DEPARTMENT OF

Exceptions to Civil Penalty 13 NCAC 12 .0703 21:11 NCR

Notification at Time of Hiring 13 NCAC 12 .0804* 21:11 NCR

Amusement Device Inspection Fee Schedule 13 NCAC 15 .0703* 21:12 NCR

COASTAL RESOURCES COMMISSION

General Use Standards for Ocean Hazard Areas 15A NCAC 07H .0306* 21:03 NCR

HEALTH SERVICES, COMMISSION FOR

Identification and Listing of Hazardous Wastes - Part 261 15A NCAC 13A .0106 21:09 NCR

SECRETARY OF STATE, DEPARTMENT OF

Location and Hours 18 NCAC 07A .0101 21:05 NCR

Investigations 18 NCAC 07A .0202 21:05 NCR

Disposition of Commission 18 NCAC 07A .0204 21:05 NCR

Fee 18 NCAC 07A .0205 21:05 NCR

Requirements for Reappointment 18 NCAC 07A .0206 21:05 NCR

Revocation of Commissions 18 NCAC 07A .0207 21:05 NCR

Certificates of Authority 18 NCAC 07A .0208 21:05 NCR

Approved Course of Study 18 NCAC 07A .0301 21:05 NCR

Instructions 18 NCAC 07A .0302 21:05 NCR

Approved Manual 18 NCAC 07A .0303 21:05 NCR

General Provisions 18 NCAC 07B .0101* 21:05 NCR

Definitions 18 NCAC 07B .0102 21:05 NCR

Location, Hours and Contact Information 18 NCAC 07B .0103* 21:05 NCR

Forms 18 NCAC 07B .0104* 21:05 NCR

Fees 18 NCAC 07B .0105* 21:05 NCR

Waiver 18 NCAC 07B .0106 21:05 NCR

Continuing Obligations of Notaries 18 NCAC 07B .0107* 21:05 NCR

General 18 NCAC 07B .0201* 21:05 NCR

Initial Appointment 18 NCAC 07B .0301* 21:05 NCR

Timing of Filing of Initial Application 18 NCAC 07B .0302* 21:05 NCR

Reappointment of Notaries Public 18 NCAC 07B .0401* 21:05 NCR

Reappointment Test 18 NCAC 07B .0402* 21:05 NCR

Application After Reappointment Denial Based on Failing Test 18 NCAC 07B .0403* 21:05 NCR

Appointment and Issuance of Commissioning Certificate 18 NCAC 07B .0501* 21:05 NCR

Commissioning Certificate Date 18 NCAC 07B .0502* 21:05 NCR

APPROVED RULES

<u>Oath of Office and Delivery of Commissioning Certificate</u>	18	NCAC	07B	.0503*	21:05 NCR
<u>Reappointment if Oath Not Taken Within 45 Days</u>	18	NCAC	07B	.0504*	21:05 NCR
<u>Term of Office</u>	18	NCAC	07B	.0505*	21:05 NCR
<u>Factors Considered in Disciplinary Actions</u>	18	NCAC	07B	.0901*	21:05 NCR
<u>General Application Denial</u>	18	NCAC	07B	.0902*	21:05 NCR
<u>Executed Document Violations</u>	18	NCAC	07B	.0903*	21:05 NCR
<u>Complete and Lawful Notarial Act Violations</u>	18	NCAC	07B	.0904*	21:05 NCR
<u>Other Violations</u>	18	NCAC	07B	.0905*	21:05 NCR
<u>Minimum Sanction</u>	18	NCAC	07B	.0906*	21:05 NCR
<u>Appeal Procedures</u>	18	NCAC	07B	.0907*	21:05 NCR
<u>Public Information</u>	18	NCAC	07B	.1001*	21:05 NCR

GENERAL CONTRACTORS, LICENSING BOARD FOR

<u>Definitions</u>	21	NCAC	12	.0901	21:04 NCR
<u>Filing Deadline and Service</u>	21	NCAC	12	.0904	21:04 NCR
<u>Processing of Application</u>	21	NCAC	12	.0906*	21:04 NCR

MEDICAL BOARD

<u>Disciplinary Action</u>	21	NCAC	32M	.0112*	21:10 NCR
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NURSING, BOARD OF

<u>Disciplinary Action</u>	21	NCAC	36	.0812*	21:10 NCR
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PHARMACY, BOARD OF

<u>Pharmacy Permits</u>	21	NCAC	46	.1601*	21:04 NCR
<u>Device and Medical Equipment Permits</u>	21	NCAC	46	.1608*	21:04 NCR
<u>Storage of Devices and Medical Equipment in Possession of...</u>	21	NCAC	46	.2613*	21:04 NCR
<u>Clinical Pharmacist Practitioner</u>	21	NCAC	46	.3101*	21:05 NCR

These rules are subject to the next Legislative Session. (See G.S. 150B-21.3(b2))

HHS-MEDICAL ASSISTANCE

<u>Waiver of Transfer of Assets Penalty Due to Undue Hardship</u>	10A	NCAC	21B	.0314*	21:09 NCR
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CRIME CONTROL AND PUBLIC SAFETY

<u>Definitions</u>	14A	NCAC	09H	.0308*	21:12 NCR
<u>Securing Vehicles When Operator is Arrested</u>	14A	NCAC	09H	.0310*	21:12 NCR
<u>Vehicles Transported and Stored Over Objection of Owner</u>	14A	NCAC	09H	.0311	21:12 NCR
<u>Transporting and Storing Vehicles</u>	14A	NCAC	09H	.0313*	21:12 NCR
<u>Notification</u>	14A	NCAC	09H	.0314*	21:12 NCR

APPROVED RULES

<u>Release of Vehicles</u>	14A	NCAC	09H	.0315*	21:12 NCR
<u>Vehicle Inventory</u>	14A	NCAC	09H	.0316*	21:12 NCR
<u>Reimbursement of Wrecker Operators</u>	14A	NCAC	09H	.0317	21:12 NCR
<u>Rotation, Zone, Contract, and Deviation from System</u>	14A	NCAC	09H	.0320*	21:12 NCR
<u>Rotation Wrecker Service Regulations</u>	14A	NCAC	09H	.0321*	21:12 NCR
<u>Recording Wrecker Requests/Incidents</u>	14A	NCAC	09H	.0322*	21:12 NCR
<u>Sanctions for Violations</u>	14A	NCAC	09H	.0323*	21:12 NCR
<u>Hearing Procedures</u>	14A	NCAC	09H	.0324*	21:12 NCR

TITLE 04 – DEPARTMENT OF COMMERCE

04 NCAC 03C .0701 EXAMINING COMMITTEE REPORT

04 NCAC 03C .0702 REPORTS OF CONDITION AND INCOME

04 NCAC 03C .0703 PUBLISHER'S COPY, REPORT OF CONDITION AND INCOME

History Note: Authority G.S. 53-83; 53-92; 53-99; 53-105; Eff. February 1, 1976; Amended Eff. September 1, 2006; July 1, 1990; September 26, 1979; Repealed Eff. April 1, 2007.

04 NCAC 03C .1001 LOAN DOCUMENTATION

Unless otherwise provided, each bank, or any branch thereof, where notes are held must maintain on file the appropriate supporting documents as follows:

- (1) Financial Statements. Financial statements shall be required from any borrower who is a maker, co-maker, guarantor, endorser or surety on any unsecured loans or other unsecured extensions of credit in an amount of fifty thousand dollars (\$50,000.00) or more in the aggregate. Financial statements required by this Item shall:
 - (a) be signed or otherwise properly executed;
 - (b) be dated within 18 months preceding the origination date of the credit obligation;
 - (c) be renewed within 18 months after the date of the last financial statement on file;
 - (d) be addressed to, or made specifically for, the lending bank; and
 - (e) include such information as will adequately reflect the assets, liabilities, net worth and income of the borrower.
- (2) Financial Statement Exceptions. A bank may waive the financial statement required by Item (1) of this Rule for credit granted under a credit card. Additionally, a bank may elect to

substitute in the place of a current financial statement a current credit bureau report for consumer loans scheduled to be repaid in at least quarterly installments.

- (3) Personal Property Appraisals. Appraisals on personal property used as collateral for a loan shall be obtained and shall be completed as follows:

- (a) Generally. Except as otherwise provided below, a written appraisal of personal property used to collateralize any loan must be made by the executive committee or loan committee of the bank, or any branch thereof, or other reliable persons familiar with the value of the property. Except as provided, all appraisals must be renewed every 24 months.

- (b) Requirements. The appraisal required by this Item must include:

- (i) the name of the borrower;
- (ii) the date the appraisal was made;
- (iii) the value of the collateral;
- (iv) the signatures of at least two persons making the appraisal;
- (v) a brief description of the property;
- (vi) the amount of any prior lien and holder of the lien, if any; and
- (vii) the original amount or outstanding balance of the loan which the property is used to secure.

- (c) Appraisal Exceptions. No appraisal shall be required under the following circumstances:

- (i) on collateral to notes of less than fifty thousand dollars (\$50,000.00);
- (ii) on loans fully secured by obligations of the United

- States or the State of North Carolina;
- (iii) on loans fully secured by deposits in the bank maintaining the loan account;
 - (iv) on loans fully secured by the cash surrender or loan value of life insurance policies;
 - (v) on loans fully secured by bonded warehouse receipts;
 - (vi) on floor plan loans to dealers fully secured by new automobiles, stationwagons, vans, and trucks;
 - (vii) on discounted notes for a dealer where the note is given as the purchase price of an automobile or other consumer goods; or
 - (viii) on loans fully secured by listed securities, unless such loans are within the provisions of the Securities Exchange Act of 1934 as defined by Regulation "U," as amended from time to time by the Board of Governors of the Federal Reserve System. On loans secured by such collateral, appraisal must be made and kept on file until the loan is fully paid.
- (d) **Renewal Exceptions.** Appraisals need not be renewed annually where an automobile, stationwagon, mobile home, or where a truck or van not exceeding 8,000 pounds empty weight, is the sole or partial collateral for a loan.
- (e) **Single Signature Exception.** An appraisal may be signed by only one person where an automobile, stationwagon, mobile home, or where a truck or van not exceeding 8,000 pounds empty weight, is the sole collateral for a loan.
- (4) **Real Estate Appraisals.** Unless otherwise provided, all real estate taken as security for loans shall be appraised in the form and manner set forth in Sub-item (4)(a) through (4)(c) of this Rule. In addition, the appraisal must be independent in that the appraiser is not involved in the loan transaction secured by the property being appraised and has no interest, financial or otherwise, in the property.
- (a) The bank may elect to waive the requirement for an appraisal of real estate given as security for loans of fifty thousand dollars (\$50,000.00) or less. Appraisals of real estate given as security for loans over fifty thousand dollars (\$50,000.00), but not exceeding two hundred fifty thousand dollars (\$250,000.00), whether directly or indirectly pledged shall be prepared by any one of the following methods:
 - (i) Two members of the executive or loan committee who are familiar with real estate values in the community where the property is located;
 - (ii) Two bank employees who are familiar with real estate values in the community where the property is located, provided that one of the two employees must not be involved in the loan transaction secured by the property being appraised;
 - (iii) A state-licensed real estate appraiser or state-certified real estate appraiser or a person certified as a real estate appraiser by an appraisal trade organization approved by the bank to perform the appraisal; or
 - (iv) In lieu of an appraisal as provided by Sub-items (4)(a)(i) through (iii) of this Rule, for loans less than two hundred fifty thousand dollars (\$250,000.00), a bank may elect to accept a copy of the most recent real property tax notice from the tax administrator's office in the county in which the property is located provided that such notice states the assessed ad valorem tax value of the real estate, and any improvements thereon, separate from the personal property; and provided further, the loan officer shall include with the tax notice a memorandum to file that he or she has obtained the notice from the county tax administrator and is of the opinion that such notice

- accurately reflects the real property values.
- (b) Except as noted, appraisals required by Sub-item (4)(a) (i), (ii), and (iii) of this Rule shall be in writing, and signed and dated by the person or persons making the appraisal. Additionally, the appraisal must identify the loan transaction for which it was made, the current balance of prior lien and holder of the lien, if any, disclosed by the attorney's title certificate, segregate values of improvements from values of the land, and describe the property so as to make it easily identifiable. If a professional appraisal form is used which does not include this information, the bank must complete and attach to such appraisal its own appraisal form disclosing the required information. The appraisal must state the basis or approach used to determine the value of the property. Acceptable approaches to determining the value of real property are:
- (i) The current cost of replacing a property, less depreciation relating to deterioration in functional and economic obsolescence;
 - (ii) The value indicated by recent sales of comparable properties in the market and other market factors such as listings and offers to sell; or
 - (iii) The value that the property's net earning power will support, based on a capitalization of net income.
- (c) All real estate given as security to loans in an amount over two hundred fifty thousand dollars (\$250,000.00), whether directly or indirectly pledged shall be appraised and such appraisal shall be subject to the provisions of 12 C.F.R. 321.1 through 12 C.F.R. 323.7, which are herein incorporated by reference. Pursuant to G.S. 150B-21.6, any reference to 12 C.F.R. 323.1 through 12 C.F.R. 323.7 shall automatically include any later amendments or additions to those rules.
- (5) Certificate of Title. For loans secured primarily by real property and only secondarily by the borrower's general credit worthiness and projected income, a certificate of title furnished by an attorney at law or, title insurance issued by a company licensed by the Commissioner of Insurance, or other insurance coverage that provides to the bank substantially similar protection against loss from title defects or errors/omissions at closing or other loan-related risks, must accompany each deed of trust or mortgage given as security on loans of fifty thousand dollars (\$50,000.00) or more.
- (6) Stock Certificate/Powers. Where stock certificates, or similar securities, are accepted as collateral to loans, each certificate must be endorsed and witnessed in ink, or accompanied by a stock power signed and witnessed in ink. Where such collateral is in the name of another, other than the maker or endorser of the note, there must be on file in the bank written authority from the owner permitting the hypothecation of the collateral.
- (7) Corporate Resolutions. Loans made directly to corporations must be supported by certified copies of resolutions of the board of directors of the corporation, authorizing the making of such loans.
- (8) Partnership Declaration. Loans made directly to partnerships must be supported by a declaration by the partners showing the composition of the partnership and unless all partners sign the note, the authority of the partner(s) executing the note to bind the partnership.
- (9) Limited Liability Company Certification. Loans made directly to limited liability companies must be supported by a certification of a manager thereof that the loan is authorized and is obtained for the carrying on in the usual way the business of the limited liability company.
- (10) Unlisted Securities. Full credit information on all unlisted securities, now owned or hereafter purchased or acquired, must be secured and kept on file in the bank.

History Note: Authority G.S. 53-92; 53-104; 53-110; Eff. February 1, 1976; Amended Eff. April 1, 2007; June 1, 1995; May 1, 1992; September 1, 1990; September 1, 1983.

04 NCAC 03C .1002 LEASING OF PERSONAL PROPERTY

Each bank or branch thereof acquiring and leasing personal property or personal property subject to an existing lease together with the lessor's interest therein and incurring such additional obligations as may be incident to becoming an owner and lessor of such property may do so only when subject to the following restrictions:

- (1) Before the acquisition thereof upon the specific request and for the use of the customer

- the prospective lessee shall execute an agreement to lease such property;
- (2) During the minimum period of the lease, terms require payment to the bank rentals which in the aggregate will exceed the total expenditures by the bank for or in connection with the ownership, maintenance, and protection of the property. In determining the total expenditures under this Rule, a bank may deduct a realistic residual value in determining the rentals to be charged during the term of a lease agreement. Any unguaranteed portion of the estimated residual value relied upon by the bank to calculate total expenditures under this Regulation may not exceed 25 percent of the original cost of the property to the lessor. The amount of any estimated residual value guaranteed by a manufacturer, the lessee, or a third party, which is not an affiliate of the bank, may exceed 25 percent of the original cost of the property where the bank has determined, and can provide full, supporting documentation, that the guarantor has the resources to meet the guarantee;
- (3) The total leasing obligations or rentals to any bank of any person, partnership, association, corporation; or limited liability company shall at no time exceed the legal limit permitted by G.S. 53-48;
- (4) The overall investment of the bank in such property leased to all lessees shall at no time exceed 200 percent of its unimpaired capital fund as defined in G.S. 53-1(9);
- (5) The bank shall at all times maintain adequate protection by way of insurance or indemnity provided by the lessee;
- (6) No such lease or other agreement shall obligate the bank to maintain, repair, or service personal property in connection with any lease held by it;
- (7) No personal property acquired pursuant to the ownership or lease of personal property shall be included in the computable investment in fixed assets under G.S. 53-43(3);
- (8) Rental payments collected by the bank under lease arrangements shall be rent and shall not be deemed to be interest or compensation for the use of money loaned;
- (9) Upon expiration of any lease whether by virtue of the lease agreement or by virtue of the retaking of possession by the bank, such personal property shall be re-let, sold, or otherwise disposed of, or charged off within one year from the time of expiration of such lease; and
- (10) Upon written request the Commissioner may waive or modify any of the foregoing restrictions. In evaluating such a request, the Commissioner shall consider such factors as:

- (a) the bank's size, profitability, capital sufficiency, risk profile, market, and operational capabilities, especially with a view towards the bank's involvement in lease financing;
- (b) current best practices of financial institutions engaged in lease financing;
- (c) the nature, size, duration, aggregate amount, and other risks attendant to the bank's lease financing transactions;
- (d) the risk of significant loss to the bank if the Commissioner does not grant the request.

History Note: Authority G.S. 53-92; 53-104; Eff. February 1, 1976; Amended Eff. April 1, 2007; September 1, 1990; September 1, 1983; May 1, 1982.

04 NCAC 03C .1101 DEFINITIONS: ISSUANCE OF CAPITAL NOTES AND DEBENTURES
04 NCAC 03C .1102 CAPITAL DEBENTURES AND NOTES

History Note: Authority G.S. 53-1; 53-43.4; 53-92; 53-104; Eff. February 1, 1976; Amended Eff. June 1, 1995; September 26, 1979; Repealed Eff. April 1, 2007.

04 NCAC 03C .1301 ANNUAL VACATION

History Note: Authority G.S. 53-92; 53-104; Eff. February 1, 1976; Amended Eff. June 1, 1995; October 1, 1990; Repealed Eff. April 1, 2007.

TITLE 07 – DEPARTMENT OF CULTURAL RESOURCES

07 NCAC 05 .0202 HOURS OF OPERATION

The U.S.S. North Carolina Battleship Memorial shall be open during the following hours:

- (1) The memorial shall be open every day at 8:00 a.m.
- (2) Closing time shall be 5:00 p.m. from the day after Labor Day through the Thursday preceding the Memorial Day weekend and at 8:00 p.m. from Friday of Memorial Day weekend through Labor Day.

History Note: Authority G.S. 143B-362; 143B-73; Eff. February 1, 1976; Readopted Eff. December 1, 1977; Amended Eff. April 1, 2007; April 1, 1997; June 1, 1989.

07 NCAC 05 .0203 ADMISSION PRICES

The admission price for the U.S.S. North Carolina Battleship Memorial is twelve dollars (\$12.00) for persons age 12 and over, six dollars (\$6.00) for children age 6 through 11, three dollars (\$3.00) per student for organized school groups in grades kindergarten through 6, and six dollars (\$6.00) per student for organized school groups in grades 7 through 12.

History Note: Authority G.S. 143B-73; Eff. February 1, 1976; Readopted Eff. December 1, 1977; Amended Eff. January 1, 1993; January 1, 1990; June 1, 1989; February 1, 1987; Temporary Amendment Eff. January 1, 1997; Amended Eff. April 1, 1997; Temporary Amendment Eff. January 1, 1997 Expired on September 29, 1997; Temporary Amendment Eff. March 1, 1998; Amended Eff. July 1, 1998; Temporary Amendment Eff. September 1, 2002; Amended Eff. April 1, 2007; April 1, 2003.

TITLE 10A – DEPARTMENT OF HEALTH AND HUMAN SERVICES

10A NCAC 01G .0101 SCOPE

(a) The rules contained in this Section shall apply to home care agencies and nursing homes licensed pursuant to Chapter 131E of the General Statutes, and adult care homes licensed pursuant to Article 1 of Chapter 131D of the General Statutes that are seeking NC NOVA licensure designation pursuant to G.S. 131E, Article 5.

(b) Not later than six months after the effective date of this Section, rules will be proposed for adoption which will delineate the process by which the NC NOVA Partner Team, as defined in G.S. 131E-154.13(3), develops the NC NOVA Provider Information Manual as defined in G.S. 131E-154.13(4).

History Note: Authority G.S. 131E-154.12; 131E-154.13; 131E-154.14; Eff. April 1, 2007.

10A NCAC 01G .0102 APPLICATION FOR NC NOVA SPECIAL LICENSURE DESIGNATION

Applicants shall obtain and complete an NC NOVA application via the internet at www.ncnova.org or www.thecarolinascenter.org.

History Note: Authority G.S. 131E-154.14; Eff. April 1, 2007.

10A NCAC 14C .2103 PERFORMANCE STANDARDS

(a) In projecting utilization, the existing, approved and proposed operating rooms shall be considered to be available for use five days per week and 52 weeks a year.

(b) A proposal to establish a new ambulatory surgical facility, to increase the number of operating rooms (excluding dedicated C-section operating rooms), to convert a specialty ambulatory surgical program to a multi-specialty ambulatory surgical program or to add a specialty to a specialty ambulatory surgical program shall not be approved unless:

- (1) the applicant documents that the average number of surgical cases per operating room to be performed in each facility owned by the applicant in the proposed service area, is reasonably projected to be at least 2.4 surgical cases per day for each inpatient operating room (excluding dedicated open-heart and dedicated C-Section operating rooms), 4.8 surgical cases per day for each outpatient or ambulatory surgical operating room, and 3.2 surgical cases per day for each shared operating room during the third year of operation following completion of the project; or
- (2) the applicant demonstrates conformance of the proposed project to Policy AC-3 in the State Medical Facilities Plan titled "Exemption From Plan Provisions for Certain Academic Medical Center Teaching Hospital Projects."

(c) A proposal to develop an additional operating room to be used as a dedicated C-section operating room shall not be approved unless the applicant documents that the average number of surgical cases per operating room to be performed in each facility owned by the applicant in the proposed service area, is reasonably projected to be at least 2.4 surgical cases per day for each inpatient operating room (excluding dedicated open-heart and dedicated C-section operating rooms), 4.8 surgical cases per day for each outpatient or ambulatory surgical operating room and 3.2 surgical cases per day for each shared operating room during the third year of operation following completion of the project.

(d) An applicant proposing to convert a specialty ambulatory surgical program to a multi-specialty ambulatory surgical program or to add a specialty to a specialty ambulatory surgical program shall provide documentation to show that each existing ambulatory surgery program in the service area that performs ambulatory surgery in the same specialty area as proposed in the application is currently operating at 4.8 surgical cases per day for each outpatient or ambulatory surgical operating room, 7.2 gastrointestinal endoscopy cases per day for each gastrointestinal endoscopy room, and 3.2 surgical cases per day for each shared operating room.

(e) An applicant proposing to convert a specialty ambulatory surgical program to a multi-specialty ambulatory surgical program or to add a specialty to a specialty ambulatory surgical program shall provide documentation to show that each existing and approved ambulatory surgery program in the service area that performs ambulatory surgery in the same specialty areas as proposed in the application is reasonably projected to be operating at 4.8 surgical cases per day for each outpatient or ambulatory surgical operating room, 7.2 gastrointestinal endoscopy cases per day for each gastrointestinal endoscopy

room, and 3.2 surgical cases per day for each shared surgical operating room prior to the completion of the proposed project.
(f) The applicant shall document the assumptions and provide data supporting the methodology used for each projection in this Rule.

History Note: Authority G.S. 131E-177; 131E-183(b); Eff. November 1, 1990; Amended Eff. March 1, 1993; Temporary Amendment Eff. September 1, 1993 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner; Amended Eff. January 4, 1994; Temporary Amendment Eff. January 1, 2002; July 1, 2001; Amended Eff. August 1, 2002; Temporary Amendment effective January 1, 2002 amends and replaces the permanent rule effective August 1, 2002; Amended Eff. April 1, 2003; Temporary Amendment Eff. January 1, 2005; Amended Eff. November 1, 2005; Temporary Amendment Eff. February 1, 2006; Amended Eff. April 1, 2007; November 1, 2006.

10A NCAC 14C .3301 DEFINITIONS

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

- (1) "Air ambulance" as defined in G.S. 131E-176(1a).
- (2) "Air ambulance service" means an entity engaged in the operation of an air ambulance transporting patients.
- (3) "Air ambulance service area" means a geographic area defined by the applicant from which the project's patients originate.
- (4) "Approved air ambulance" means either a rotary air ambulance or a fixed wing air ambulance that was not operational prior to the beginning of the review period but which had been acquired prior to March 18, 1993 in accordance with 1993 N.C. Sess. Laws c.7, s. 12.
- (5) "Capacity of fixed wing air ambulance" means the maximum number of hours the aircraft can be operated as defined by the aircraft manufacturer.
- (6) "Existing air ambulance" means either a rotary air ambulance or a fixed wing air ambulance in operation prior to the beginning of the review period.
- (7) "Inter-facility patient transport" means the transport of a patient from one facility to another facility.
- (8) "Level 2 trauma center" as defined in North Carolina's Trauma Center Criteria developed by the OEMS pursuant to 10A NCAC 03D .3201(16).
- (9) "Patient" as defined in G.S. 131E-155(16).
- (10) "Scene transport" means the transport of a patient from the scene of a medical emergency.

- (11) "Base of an air ambulance service" means the site at which medical control and operation of an air ambulance is located. Unless otherwise specified, if an air ambulance service provider is a health service facility, the base of an air ambulance service is presumed to be the facility itself. Notwithstanding anything in this regulation, an air ambulance service provider may station its air ambulance at an airport within the county of its base facility or within 25 miles of its base facility.

History Note: Authority G.S. 131E-177(1); 131E-183(b); Temporary Adoption Eff. September 1, 1993 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner; Eff. February 1, 1994; Temporary Amendment Eff. May 15, 2002; Amended Eff. April 1, 2007; April 1, 2003.

10A NCAC 21B .0314 WAIVER OF TRANSFER OF ASSETS PENALTY DUE TO UNDUE HARDSHIP

- (a) Prior to imposition of a period of ineligibility for long-term care services because of an asset transfer, also known as a penalty period, the county department of social services shall notify the individual of his right to request a waiver of the penalty period because it will cause an undue hardship to himself. The Director of the county department of social services or the Director's designee shall grant a waiver of the penalty period due to undue hardship if the individual meets the conditions set forth in Paragraph (e) of this Rule.
- (b) When a Medicaid applicant who is requesting Medicaid to pay for institutional care requests a waiver of a penalty period due to undue hardship, the determination of whether to waive the penalty period shall be processed as part of the Medicaid application and is subject to the application processing standards set forth in 10A NCAC 21B .0203.
- (c) When an ongoing Medicaid recipient applies for institutional care or is receiving Medicaid payment for institutional care receives the notice described in Paragraph (a) of this Rule, he has 12 calendar days from the date of the notice to request a waiver of the penalty due to undue hardship. The following are the procedures for processing the waiver request:
 - (1) Within five work days of receipt of a request for a waiver of the transfer of assets penalty, the county department of social services shall notify the individual in writing of the information and documentation necessary to determine if the requirements for approving the undue hardship waiver are met.
 - (2) The individual shall have 12 calendar days from the date of the notice specified in Subparagraph (c)(1) of this Rule to provide the necessary information and documentation to establish the undue hardship.
 - (3) If at the end of the first 12 calendar day period the necessary information and documentation

has not been received by the county department of social services, the county department of social services shall again notify the individual of the necessary information and documentation. The individual shall be given an additional 12 calendar days to provide the information and documentation.

- (4) If the individual fails to request the undue hardship waiver within 12 calendar days from the date of the notice described in Paragraph (a) of this Rule, the county department of social services shall impose the transfer of assets penalty in accordance with notice requirements in G.S.108A-79.
- (5) If by the end of the 12 calendar days from the notice described in Subparagraph (c)(3) of this Rule, the necessary information and documentation has not been received by the county department of social services, the county department of social services shall deny the request for waiver of the penalty for undue hardship and notify the individual of the denial in accordance with G.S. 108A-79.
- (6) If by the end of the time allowed under Subparagraphs (c)(2) and (c)(3) of this Rule the county department of social services has received the necessary information and documentation, the county department of social services shall make a determination of whether the imposition of the penalty period would cause an undue hardship to the individual. The county department of social services shall complete the determination and notify the individual, pursuant to Paragraph (g) of this Rule, of whether the imposition of the penalty period will be waived due to undue hardship within 12 calendar days of the receipt of the necessary information and documentation.
- (7) If as part of the determination described in Subparagraph (c)(6) of this Rule the county department of social services identifies the need for additional information and documentation, it shall notify the individual in writing of that information and documentation. This notice shall initiate a new period of time for the individual to provide the information and documentation as set forth in Subparagraphs (c)(2) and (c)(3) of this Rule. Within 12 calendar days of the receipt of the additional information and documentation, the county department of social services shall complete the determination and notify the individual, pursuant to Paragraph (g) of this Rule, of whether the imposition of the penalty period will be waived due to undue hardship.

(d) As required by 42 U.S.C. 1396p(c)(2)(D), the facility in which an institutionalized individual is residing may request an undue hardship waiver on behalf of the institutionalized

individual with the written consent of the individual or the personal representative of the individual. A facility applying for a waiver for an individual residing in the facility shall adhere to the requirements of this Rule.

(e) Except as provided for in Paragraph (f) of this Rule undue hardship exists if the imposition of the penalty period would deprive the individual of medical care, such that the individual's health or life would be endangered; or of food clothing, shelter, or other necessities of life. The individual must provide the information and documentation necessary to demonstrate to the Director of the county department of social services or the Director's designee that:

- (1) The individual currently has no alternative source available to provide the medical care or food, clothing, shelter or other necessities of life that the individual would be deprived of due to the imposition of the penalty; and
- (2) The individual or some other person acting on the individual's behalf is making a good faith effort to pursue all reasonable means to recover the transferred asset or the fair market value of the transferred asset including:
 - (A) Seeking the advice of an attorney and pursuing any available legal or equitable remedies such as asset freezing, assignment, or injunction; or seeking modification, avoidance or nullification of a financial instrument, promissory note, loan, mortgage or other property agreement, or other similar transfer agreement; and
 - (B) Cooperating with any attempt to recover the transferred asset or the fair market value of the transferred asset.
- (3) The following definitions shall apply to Paragraph (e) of this Rule.
 - (A) "Health or life would be endangered" means a medical doctor with knowledge of the individual's medical condition certifies in writing that in his or her professional opinion, the individual will be in danger of death or the individual's health will suffer irreparable harm if a penalty period is imposed.
 - (B) "Other necessities of life" includes basic, life sustaining utilities, including water, heat, electricity, phone, and other items or activities that without which the individual's health or life would be endangered.

(f) An undue hardship shall not exist when the application of a transfer of assets penalty merely causes the individual an inconvenience or restricts his or her lifestyle.

(g) If the Director of the county department of social services or the Director's designee determines that:

- (1) An undue hardship exists, the county department of social services shall waive the

penalty period and notify the individual of approval of the waiver of the penalty in accordance with G.S. 108A-79.

- (2) An undue hardship does not exist, the county department of social services shall deny the request for the waiver of the penalty and notify the individual of denial of the waiver request in accordance with G.S. 108A-79.

(h) During a penalty period that has been waived because of undue hardship, acquisition by the individual of new or increased income or resources shall be treated as a change in situation and evaluated pursuant to the rules of this Chapter.

(i) While the determination on a request for a waiver of the penalty period due to undue hardship is pending, Medicaid shall not make payments for nursing facility services or intermediate care facility for the mentally retarded services to hold a bed for the individual, as described in 42 U.S.C. 1396p(c)(2)(D). However, if the individual is institutionalized and receiving Medicaid payment for services, Medicaid will maintain the same level of services until the last day of the month after the latter of the following:

- (1) Expiration of the ten workday period following the notice required by G.S. 108A-79; or
(2) The date of the decision of a local appeal hearing described in G.S. 108A-79 is issued if the individual requests an appeal of the imposition of a transfer of assets penalty period within the ten workday period described in Subparagraph (i)(1) of this Rule.

History Note: Authority G.S. 108A-54; 108A-58.1; P.L. 109-171; 42 U.S.C. 1396p; Eff. Pending Legislative Review.

- 10A NCAC 29A .0101 SCOPE
10A NCAC 29A .0102 DEFINITIONS
10A NCAC 29A .0103 CRITERIA FOR ADMISSION
10A NCAC 29A .0104 APPLICATION FOR ADMISSION
10A NCAC 29A .0105 PRIORITY FOR ADMISSION
10A NCAC 29A .0106 MAXIMUM NUMBER OF CLASS MEMBERS TO BE SERVED

History Note: Authority G.S. 143B-147; S.L. 1981, Ch. 859; Eff. September 30, 1981; Amended Eff. April 1, 1990; Repealed Eff. April 1, 2007.

10A NCAC 29A .0107 FUNDS FOR ASSAULTIVE CHILDREN

History Note: Authority G.S. 122C-147; 122C-150; Eff. January 1, 1982; Amended Eff. February 1, 1996; April 1, 1990; October 1, 1983; November 1, 1982; Repealed Eff. April 1, 2007.

10A NCAC 29A .0108 SCOPE

History Note: Authority G.S. 122C-3; 122C-112; 122C-194; 122C-195; 122C-196; 122C-197; 122C-198; 122C-199; 122C-200; Eff. March 1, 1997; Repealed Eff. April 1, 2007.

10A NCAC 29A .0109 DEFINITIONS

History Note: Authority G.S. 122C-3; 122C-112; Eff. February 1, 1997; Transferred and Recodified from 10 NCAC 18W .0202 Eff. February 7, 1997; Repealed Eff. April 1, 2007.

10A NCAC 29A .0110 GENERAL PROVISIONS

History Note: Authority G.S. 122C-112; 122C-146; Eff. March 1, 1997; Repealed Eff. April 1, 2007.

10A NCAC 29A .0111 ELIGIBILITY CRITERIA

History Note: Authority G.S. 7A-647(3); 7A-649(1), (6), (10); 122C-3; 122C-112; 122C, Article 5; Eff. February 1, 1997; Transferred and Recodified from 10 NCAC 18W .0204 Eff. February 7, 1997; Repealed Eff. April 1, 2007.

10A NCAC 29A .0112 EMOTIONAL, MENTAL OR NEUROLOGICAL HANDICAP DEFINED

History Note: Authority G.S. 122C-3; 122C-112; 122C-194; Eff. March 1, 1997; Transferred and Recodified from 10 NCAC 18W .0205 Eff. February 7, 1997; Repealed Eff. April 1, 2007.

10A NCAC 29A .0113 VIOLENT OR ASSAULTIVE BEHAVIOR DEFINED

10A NCAC 29A .0114 DETERMINATION THAT STATE HAS NOT PROVIDED APPROPRIATE TREATMENT

10A NCAC 29A .0115 APPLICATION FOR DESIGNATION AS YOUTH BEHAVIORAL SERVICES CLIENT

10A NCAC 29A .0116 DETERMINATION OF ELIGIBILITY

10A NCAC 29A .0117 RE-REVIEW OF ELIGIBILITY DECISIONS

History Note: Authority G.S. 122C-3; 122C-112; 122C-194; Eff. February 1, 1997; Temporary Amendment Eff. July 8, 1997; Temporary Amendment Expired March 28, 1998;

Transferred and Recodified from 10 NCAC 18W .0206 Eff. February 7, 1997 (10A NCAC 29A .0113)
Transferred and Recodified from 10 NCAC 18W .0207 Eff. February 7, 1997 (10A NCAC 29A .0114);
Transferred and Recodified from 10 NCAC 18W .0208 Eff. February 7, 1997 (10A NCAC 29A .0115);
Transferred and Recodified from 10 NCAC 18W .0209 Eff. February 7, 1997 (10A NCAC 29A .0116);
Transferred and Recodified from 10 NCAC 18W .0210 Eff. February 7, 1997 (10A NCAC 29A .0117);
Repealed Eff. April 1, 2007.

10A NCAC 29A .0118 NEEDS ASSESSMENT

History Note: Authority G.S. 122C-3; 122C-112; 122C-194; Eff. March 1, 1997;
Repealed Eff. April 1, 2007.

**10A NCAC 29A .0119 SERVICE PLANNING
10A NCAC 29A .0120 PROVISION OF SERVICES**

History Note: Authority G.S. 122C-3; 122C-112; 122C-194; Eff. February 1, 1997;
Transferred and Recodified from 10 NCAC 18W .0212 Eff. February 7, 1997 (10A NCAC 29A .0119);
Transferred and Recodified from 10 NCAC 18W .0213 Eff. February 7, 1997 (10A NCAC 29A .0120);
Repealed Eff. April 1, 2007.

**10A NCAC 29A .0121 AREA PROGRAM REQUIREMENTS
10A NCAC 29A .0122 DIVISION REQUIREMENTS**

History Note: Authority G.S. 122C-3; 122C-112; 122C-194; Eff. March 1, 1997;
Repealed Eff. April 1, 2007.

**10A NCAC 29A .0123 PRIOR NOTICE OF DECISION
10A NCAC 29A .0124 MEDIATION**

History Note: Authority G.S. 122C-3; 122C-112; 122C-194; Eff. February 1, 1997;
Transferred and Recodified from 10 NCAC 18W .0216 Eff. February 7, 1997 (10A NCAC 29A .0123);
Transferred and Recodified from 10 NCAC 18W .0217 Eff. February 7, 1997 (10A NCAC 29A .0124);
Repealed Eff. April 1, 2007.

10A NCAC 29A .0125 CONTESTED CASE HEARINGS

History Note: Authority G.S. 122C-3; 122C-112; 122C-194; Eff. March 1, 1997;
Repealed Eff. April 1, 2007.

10A NCAC 29A .0126 ADMINISTRATIVE REVIEW BY REVIEW OFFICER

History Note: Authority G.S. 122C-3; 122C-112; 122C-194; Eff. February 1, 1997;

Transferred and Recodified from 10 NCAC 18W .0218 Eff. February 7, 1997;
Repealed Eff. April 1, 2007.

10A NCAC 29A .0127 EVALUATION REPORTS

History Note: Authority G.S. 122C-114; 143B-10; S.L. 1282, c. 1282;
Eff. July 1, 1983;
Amended Eff. March 1, 1990;
Repealed Eff. April 1, 2007.

10A NCAC 29B .0101 THOMAS S. COMMUNITY SERVICES

History Note: Authority G.S. 122C-147; Eff. July 1, 1994;
Amended Eff. February 1, 1996;
Repealed Eff. April 1, 2007.

**10A NCAC 29B .0102 SCOPE
10A NCAC 29B .0103 DEFINITIONS
10A NCAC 29B .0104 REPORTING REQUIREMENTS
10A NCAC 29B .0105 DEATH REVIEW REQUIREMENTS
10A NCAC 29B .0106 THOMAS S. MORTALITY REVIEW COMMITTEE**

History Note: Authority G.S. 108A-99; 108A-100; 108A-101; 08A-102; 108A-103; 108A-104; 108A-105; 108A-106; 108A-107; 108A-108; 108A-109; 108A-110; 108A-111; 108A, Article 6; 122C-112(a)(15); 122C-147; 122C-191; 130A-33; 130A-383; 130A-389; 130A-398;
Eff. August 1, 1998;
Amended Eff. February 1, 1996;
Repealed Eff. April 1, 2007.

**10A NCAC 29D .0201 SCOPE
10A NCAC 29D .0202 EXPLANATION OF TERMS
10A NCAC 29D .0203 DESIGNATION PROCEDURES**

History Note: Authority G.S. 143B-147; Eff. July 1, 1994;
Repealed Eff. April 1, 2007.

10A NCAC 41B .0302 LIMITATION OF PERMIT

(a) Permits shall be limited in scope to the methods or instruments for performing chemical analyses in which the individual applying for a permit has demonstrated competence. This limitation shall be upon the basis of the methods or instruments that received primary emphasis in the particular course of instruction attended by the applicant in the event that successful completion of the course is offered as proof of ability to perform chemical analyses. Initial and renewal permits shall state the date upon which they are to become effective and the date upon which they are to expire. The expiration date shall be no more than 24 months after the effective date.

(b) Permits granted under this Section, initial and renewals, shall be valid only during the period the permittee is employed by a law enforcement agency, the Forensic Tests for Alcohol Branch or a member of its instructional staff, or by some other federal, state, county or municipal agency with the responsibility of administering chemical analyses to drivers charged with implied consent offenses.

History Note: Authority G.S. 20-139.1(b); Eff. January 1, 1982; Amended Eff. April 1, 2007; April 1, 1992; September 1, 1990; January 1, 1985; October 1, 1983.

10A NCAC 41B .0501 SCREENING TESTS FOR ALCOHOL CONCENTRATION

(a) This Section governs the requirement of G.S. 20-16.3 that the Department examine devices suitable for use by law enforcement officers in making on-the-scene tests of drivers for alcohol concentration and that the Department approve these devices and their manner of use. In examining devices for making chemical analyses, the Department finds that at present only screening devices for testing the breath of drivers are suitable for on-the-scene use by law enforcement officers.

(b) This Section does not address or in any way restrict the use of screening tests for impairment other than those based on chemical analyses, including various psychophysical tests for impairment.

History Note: Authority G.S. 20-16.3; 20-16.3A; Eff. February 1, 1976; Readopted Eff. December 5, 1977; Amended Eff. April 1, 2007; October 1, 1993; October 1, 1983; January 1, 1982.

10A NCAC 41B .0502 APPROVAL: ALCOHOL SCREENING TEST DEVICES: USE

(a) Alcohol screening test devices that measure alcohol concentration through testing the breath of individuals are approved on the basis of results of evaluations by the Forensic Tests for Alcohol Branch. Devices shall meet the minimum requirements as set forth in the Department specifications for Alcohol Screening Test Devices. Evaluations are not limited in scope and may include any factors deemed appropriate to insure the accuracy, reliability, stability, cost, and ease of operation and durability of the device being evaluated. On the basis of evaluations to date, approved devices are listed in 10A NCAC 41B .0503 of this Section.

(b) When the validity of an alcohol screening test of the breath of a driver administered by a law enforcement officer depends upon approval by the Department of the test device and its manner of use, the test shall be administered as follows:

- (1) The officer shall determine that the driver has removed all food, drink, tobacco products, chewing gum and other substances and objects from his mouth. Dental devices or oral jewelry need not be removed.
- (2) Unless the driver volunteers the information that he has consumed an alcoholic beverage within the previous 15 minutes, the officer

shall administer a screening test as soon as feasible. If a test made without observing a waiting period results in an alcohol concentration reading of 0.08 or more, the officer shall wait five minutes and administer an additional test. If the results of the additional test show an alcohol concentration reading more than 0.02 under the first reading, the officer shall disregard the first reading.

- (3) The officer may request that the driver submit to one or more additional screening tests.
- (4) In administering any screening test, the officer shall use an alcohol screening test device approved under 10A NCAC 41B .0503 of this Section in accordance with the operational instructions supplied by the Forensic Tests for Alcohol Branch and listed on the device.

History Note: Authority G.S. 20-16.3; Eff. February 1, 1976; Readopted Eff. December 5, 1977; Amended Eff. April 1, 2007; April 1, 2001; September 1, 1990; January 1, 1990; October 1, 1983.

10A NCAC 43D .0202 DEFINITIONS

For the purposes of this Subchapter, all definitions set forth in 7 C.F.R. Part 246.2 are hereby incorporated by reference, including subsequent amendments and additions, with the following additions and modifications:

- (1) An "administrative appeal" is an appeal in accordance with Section .0800 of this Subchapter through which a local WIC agency, potential local WIC agency, authorized WIC vendor or potential authorized WIC vendor may appeal the adverse actions listed in 7 C.F.R. 246.18(a)(1)(i), (a)(1)(ii) and (a)(3)(i).
- (2) An "authorized store representative" includes an owner, manager, assistant manager, head cashier, or chief fiscal officer.
- (3) An "authorized WIC vendor" is a food retailer or free-standing pharmacy that has executed a currently effective North Carolina WIC Vendor Agreement.
- (4) A "chain store" is a store that is owned or operated by a corporation, partnership, cooperative association, or other business entity that has 20 or more stores owned or operated by the business entity.
- (5) A "fair hearing" is the informal dispute resolution process in Section .0900 of this Subchapter through which any individual may appeal a state or local agency action which results in a claim against the individual for repayment of the cash value of improperly issued benefits or results in the individual's denial of participation or disqualification from

- the WIC Program. This process must be complied with prior to requesting a contested case hearing in accordance with G.S. 150B.
- (6) A "food instrument" means a voucher, check, electronic benefits transfer card (EBT), coupon or other document which is used to obtain supplemental foods.
 - (7) "FNS" means the Food and Nutrition Service of the U.S. Department of Agriculture.
 - (8) "Free-standing pharmacy" means a pharmacy that does not operate within another retail store. Free-standing pharmacy includes free-standing pharmacies that are chain stores and free-standing pharmacies participating under a WIC corporate agreement.
 - (9) The "local WIC agency" is the local agency which enters into an agreement with the Division of Public Health to operate the Special Supplemental Nutrition Program for Women, Infants and Children.
 - (10) A "local WIC program plan" is a written compilation of information on the local WIC agency policies concerning program operation, including administration, nutrition education, personnel functions, costs and other information prepared by the local WIC agency and submitted to the Nutrition Services Branch in accordance with instructions issued by the Branch.
 - (11) A "predominantly WIC vendor" is a vendor that derives more than 50 percent of its annual food sales revenue from WIC food instruments.
 - (12) "Redemption" is the process by which a vendor deposits a food instrument for payment and the state agency (or its financial agent) makes payment to the vendor for the food instrument.
 - (13) "Shelf price" is the price a vendor charges a non-WIC customer for a WIC supplemental food.
 - (14) The "state agency" is the Nutrition Services Branch, Women's and Children's Health Section, Division of Public Health, Department of Health and Human Services.
 - (15) "Store" means the physical building located at a permanent and fixed site that operates as a food retailer or free-standing pharmacy.
 - (16) "Supplemental food" or "WIC supplemental food" is a food which satisfies the requirements of 10A NCAC 43D .0501.
 - (17) "Support costs" are clinic costs, administrative costs, and nutrition education costs.
 - (18) "Transaction" is the process by which a WIC customer tenders a food instrument to a vendor in exchange for authorized supplemental foods.
 - (19) "Vendor applicant" is a store that is not yet authorized as a WIC vendor.

- (20) A "vendor overcharge" is intentionally or unintentionally charging more for supplemental food provided to a WIC customer than to a non-WIC customer or charging more than the current shelf price for supplemental food provided to a WIC customer.
- (21) A "WIC corporate agreement" is a single WIC Vendor Agreement with a corporate entity that has 20 or more stores authorized as WIC vendors under the Agreement.
- (22) "WIC customer" means a WIC participant, parent or caretaker of an infant or child participant, proxy or compliance investigator who tenders a food instrument to a vendor in exchange for WIC supplemental food.
- (23) "WIC program" means the special supplemental nutrition program for women, infants and children authorized by 42 U.S.C. 1786 of the Child Nutrition Act of 1966 as amended.

A copy of 7 C.F.R. Part 246.1 through 246.28 is available for inspection at the Department of Health and Human Services, Division of Public Health, Women's and Children's Health Section, Nutrition Services Branch, 5601 Six Forks Road, Raleigh, North Carolina. Copies are available at no cost from the Supplemental Nutrition Programs Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Room 540, Alexandria, Virginia 22302 by calling (703) 305-2730 or access <http://www.access.gpo.gov/nara/cfr/index.html>.

History Note: Authority G.S. 130A-361; 42 U.S.C. 1786; 7 C.F.R. 246; Eff. July 1, 1981; Amended Eff. December 6, 1991; November 1, 1990; July 1, 1989; Temporary Amendment Eff. May 17, 2000; Amended Eff. April 1, 2001; Temporary Amendment Eff. July 1, 2002; Amended Eff. August 1, 2004; Temporary Amendment Eff. July 1, 2006; Amended Eff. April 1, 2007.

10A NCAC 43D .0706 AUTHORIZED WIC VENDORS

- (a) Vendor applicants and authorized vendors shall be placed into peer groups as follows:
 - (1) When annual WIC supplemental food sales are not yet available, vendor applicants and authorized vendors, excluding chain stores, stores under a WIC corporate agreement, military commissaries, predominantly WIC vendors, and free-standing pharmacies, shall be placed into peer groups based on the number of cash registers in the store until six months WIC supplemental food sales become available. The following are the peer groups based on the number of cash registers in the store:

- Peer Group I - - zero to two cash registers;
- Peer Group II - - three to five cash registers; and
- Peer Group III - - six or more cash registers.

WIC sales figures of new vendors shall be reviewed six months from authorization. A vendor whose first six months of WIC sales exceed twenty five thousand dollars (\$25,000) shall be placed in the peer group designation in accordance with the dollar thresholds of Subparagraph (a)(2) of this Rule.

- (2) Authorized vendors for which annual WIC supplemental food sales is available, excluding chain stores, stores under a WIC corporate agreement, military commissaries, predominantly WIC vendors, and free-standing pharmacies, shall be placed into peer groups as follows, except as provided in Subparagraph (a)(8) of this Rule.

- Peer Group I - - two thousand dollars (\$2,000) to twenty five thousand dollars (\$25,000) annually in WIC supplemental food sales at the store;
- Peer Group II - - greater than twenty five thousand dollars (\$25,000) but not exceeding seventy five thousand dollars (\$75,000) annually in WIC supplemental food sales at the store;
- Peer Group III - - greater than seventy five thousand dollars (\$75,000) but not exceeding three hundred thousand dollars (\$300,000) annually in WIC supplemental food sales at the store; and
- Peer Group IV - - greater than three hundred thousand dollars (\$300,000) annually in WIC supplemental food sales at the store;

- (3) Chain stores, stores under a WIC corporate agreement (20 or more authorized vendors under one agreement), military commissaries, predominantly WIC vendors, and free-standing pharmacies, including free-standing pharmacy chain stores and free-standing pharmacies participating under a WIC corporate agreement, shall be placed into peer groups as follows:

- Peer Group IV - - chain stores, stores under a WIC corporate agreement (20 or more authorized vendors under one agreement), military commissaries, and predominantly WIC vendors; and
- Peer Group V - - free-standing pharmacies, including free-standing pharmacy chain stores and free-standing pharmacies participating under a WIC corporate agreement;

- (4) Annual WIC supplemental food sales is the dollar amount in sales of WIC supplemental foods at the store within a 12-month period.
 - (5) If a vendor applicant has at least 30 percent ownership in the applying store and at least 30 percent ownership in a store(s) already authorized, the applying store shall be placed in the peer group of the highest designation of the already authorized stores(s). Upon reauthorization of the WIC Vendor Agreement, all stores held under common ownership shall be placed in the highest peer group among those held commonly. Common ownership is ownership of 30 percent or more in two or more stores.
 - (6) In determining a vendor's peer group designation based on annual WIC supplemental food sales under Subparagraph (a)(2) of this Rule, the state agency shall look at the most recent 12-month period for which sales data is available. If the most recent available 12-month period of WIC sales data ends more than one year prior to the time of designation, the peer group designation shall be based on the number of cash registers in the store in accordance with Subparagraph (a)(1) of this Rule.
 - (7) The state agency may reassess an authorized vendor's peer group designation at any time during the vendor's agreement period and place the vendor in a different peer group if upon reassessment the state agency determines that the vendor is no longer in the appropriate peer group.
 - (8) A vendor applicant previously authorized in a peer group under Subparagraph (a)(2) of this Rule that is being reauthorized following the nonrenewal or termination of its Agreement or disqualification from the WIC Program shall be placed into the same peer group the vendor applicant was previously in under Subparagraph (a)(2) of this Rule, provided that no more than one year has passed since the nonrenewal, termination or disqualification. If more than one year has passed, the vendor applicant shall be placed into a peer group in accordance with Subparagraph (a)(1) of this Rule.
- (b) To become authorized as a WIC vendor, a vendor applicant shall comply with the following vendor selection criteria:
- (1) A vendor applicant shall accurately complete a WIC Vendor Application, a WIC Price List, and a WIC Vendor Agreement. A vendor applicant shall submit its current highest shelf price for each WIC supplemental food listed on the WIC Price List.
 - (2) A vendor applicant, at the time of application and throughout the term of authorization, shall submit all completed forms to the local WIC

program, except that a corporate entity operating under a WIC corporate agreement shall submit one completed WIC corporate agreement and the WIC Price Lists to the state agency and a separate WIC Vendor Application for each store to the local WIC agency. A corporate entity operating under a WIC corporate agreement may submit a single WIC Price List for those stores that have the same prices for WIC supplemental foods in each store, rather than submitting a separate WIC Price List for each store.

- (3) A vendor applicant shall agree to purchase all infant formula, exempt infant formula, and WIC-eligible medical food directly from:
 - (A) Infant formula manufacturers registered with the U.S. Food and Drug Administration;
 - (B) Food and drug wholesalers registered with the North Carolina Secretary of State and inspected or licensed by the North Carolina Department of Agriculture;
 - (C) Retail food stores that purchase directly from infant formula manufacturers in accordance with Part (b)(3)(A) of this Rule or an approved wholesaler in accordance with Part (b)(3)(B) of this Rule; or
 - (D) A supplier on another state's list of approved infant formula suppliers as verified by the state agency.

Authorized vendors shall agree to make available to the state or local WIC agency, upon request, invoices or receipts documenting purchases of all infant formula, exempt infant formula, and WIC-eligible medical food directly from the above listed sources. Acceptable receipts include company letterhead or name of wholesaler/manufacturer, date(s) of purchase and itemization of purchases reflecting infant formula, exempt infant formula, and WIC-eligible medical food purchases.

- (4) A vendor applicant's current highest shelf price for each WIC supplemental food listed on the WIC Price List must not exceed the maximum price set by the state agency for each supplemental food within that vendor applicant's peer group, except as provided in Part (b)(4)(B) of this Rule.
 - (A) The most recent WIC Price Lists submitted by authorized vendors within the same peer group shall be used to determine the maximum price for each supplemental food. The WIC Price Lists of predominantly WIC vendors shall be excluded from the maximum price determination. The

maximum price shall be the 97th percentile of the current highest shelf prices for each supplemental food within a vendor peer group. The state agency shall reassess the maximum price set for each supplemental food at least four times a year. For two of its price assessments, the state agency shall use the WIC Price Lists which must be submitted by all vendors by April 1 and October 1 each year in accordance with Subparagraph (c)(30) of this Rule. The other two price assessments shall be based on WIC Price Lists requested from a sample of vendors within each peer group in January and July of each year. The sample of vendors shall exclude predominantly WIC vendors.

- (B) If any of the vendor applicant's price(s) on its WIC Price List exceed the maximum price(s) set by the state agency for that applicant's peer group, the applicant shall be notified in writing. Within 30 days of the date of the written notice, the vendor applicant may resubmit price(s) that it will charge the state WIC Program for those foods that exceeded the maximum price(s). If none of the vendor applicant's resubmitted prices exceed the maximum prices set by the state agency, the vendor applicant shall be deemed to have met the requirements of Subparagraph (b)(4) of this Rule. If any of the vendor applicant's resubmitted prices still exceed the maximum prices set by the state agency, or the vendor applicant does not resubmit prices within 30 days of the date of written notice, the application shall be denied in writing. The vendor applicant must wait 90 days from the date of receipt of the written denial to reapply for authorization.

- (5) A vendor applicant shall pass a monitoring review by the local WIC program to determine whether the store has minimum inventory of supplemental foods as specified in Subparagraph (c)(23) of this Rule. A vendor applicant who fails this review shall be allowed a second opportunity for an unannounced monitoring review within 14 days. If the applicant fails both reviews, the applicant shall wait 90 days from the date of the second monitoring review before submitting a new application.

- (6) A vendor applicant shall attend, or cause a manager or other authorized store representative to attend, WIC Vendor Training provided by the local WIC Program prior to authorization and ensure that the applicant's employees receive instruction in WIC program procedures and requirements.
- (7) An applicant shall mark the current shelf prices of all WIC supplemental foods on the foods or have the prices posted on the shelf or display case at all times.
- (8) The store shall be located at a permanent and fixed location within the State of North Carolina. The store shall be located at the address indicated on the WIC vendor application and shall be the site at which WIC supplemental foods are selected by the WIC customer.
- (9) The store shall be open throughout the year for business with the public at least six days a week for at least 40 hours per week between 8:00 a.m. and 11:00 p.m.
- (10) The store shall not use either the acronym "WIC" or the WIC logo, including close facsimiles, in total or part, either in the official name in which the business is registered or in the name under which it does business, if different.
- (11) A vendor applicant shall not submit false, erroneous, or misleading information in an application to become an authorized WIC vendor or in subsequent documents submitted to the state or local WIC agency.
- (12) The owner(s), officer(s) or manager(s) of a vendor applicant shall not be employed, or have a spouse, child, or parent who is employed by the state WIC program or the local WIC program serving the county in which the vendor applicant conducts business. A vendor applicant shall not have an employee who handles, transacts, deposits, or stores WIC food instruments who is employed, or has a spouse, child, or parent who is employed by the state WIC program or the local WIC program serving the county in which the vendor applicant conducts business.
- (13) WIC vendor authorization shall be denied if in the last six years any of the vendor applicant's current owners, officers, or managers have been convicted of or had a civil judgment entered against them for any activity indicating a lack of business integrity, including, fraud, antitrust violations, embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, and obstruction of justice. For purposes of this Subparagraph, "convicted" or "conviction" means and includes a plea of guilty, a verdict or finding of guilt by a jury, judge, magistrate, or other duly constituted, established, adjudicating body, tribunal, or official, either civilian or military, or a plea of no contest, nolo contendere, or the equivalent. Entry of a prayer for judgment continued following a conviction as defined in this Rule is the same as a conviction for purposes of this Subparagraph.
- (14) A vendor applicant shall not be authorized if it is currently disqualified from the Food Stamp Program or it has been assessed a Food Stamp Program civil money penalty for hardship and the disqualification period that otherwise would have been imposed has not expired.
- (15) A vendor applicant, excluding chain stores and stores under a WIC corporate agreement that have a separate manager on site for each store, shall not have an owner who holds a financial interest in any of the following:
 - (A) a Food Stamp vendor which is disqualified from participation in the Food Stamp Program or has been assessed a civil money penalty for hardship in lieu of disqualification and the time period during which the disqualification would have run, had a penalty not been paid, is continuing; or
 - (B) another WIC vendor which is disqualified from participation in the WIC Program or which has been assessed an administrative penalty pursuant to G.S. 130A-22(c1), Paragraph (k), or Paragraph (l) of this Rule as the result of violation of Paragraphs (g), (h)(1)(A), (h)(1)(B), (h)(1)(C), (h)(1)(D) or (h)(2)(D) of this Rule, and if assessed a penalty, the time during which the disqualification would have run, had a penalty not been assessed, is continuing.

The requirements of this Subparagraph shall not be met by the transfer or conveyance of financial interest during the period of disqualification. Additionally, the requirements of this Subparagraph shall not be met even if such transfer or conveyance of financial interest in a Food Stamp vendor under Part (b)(15)(A) of this Subparagraph prematurely ends the disqualification period applicable to that Food Stamp vendor. The requirements of this Subparagraph shall apply until the time the Food Stamp vendor disqualification otherwise would have expired.
- (16) A vendor applicant, excluding free-standing pharmacies, must have Food Stamp Program authorization for the store as a prerequisite for

- WIC vendor authorization and must provide its Food Stamp Program authorization number to the state agency.
- (17) A vendor applicant shall not become authorized as a WIC vendor if the store has been disqualified from participation in the WIC Program and the disqualification period has not expired.
- (c) By signing the WIC Vendor Agreement, the vendor agrees to:
- (1) Process WIC program food instruments in accordance with the terms of this agreement, state and federal WIC program rules, and applicable law;
 - (2) Accept WIC program food instruments in exchange for WIC supplemental foods. Supplemental foods are those foods which satisfy the requirements of 10A NCAC 43D .0501;
 - (3) Provide only the authorized supplemental foods listed on the food instrument, accurately determine the charges to the WIC program, and complete the "Pay Exactly" box on the food instrument prior to obtaining the countersignature of the WIC customer. The WIC customer is not required to get all of the supplemental foods listed on the food instrument;
 - (4) Enter in the "Pay Exactly" box on the food instrument only the total amount of the current shelf prices, or less than the current shelf prices, for the supplemental food actually provided and shall not charge or collect sales taxes for the supplemental food provided;
 - (5) Charge no more for supplemental food provided to a WIC customer than to a non-WIC customer or no more than the current shelf price, whichever is less;
 - (6) Accept payment from the state WIC Program only up to the maximum price set by the state agency for each food instrument within that vendor's peer group. The maximum price for each food instrument shall be based on the maximum prices set by the state agency for each supplemental food, as described in Part (b)(4)(A) of this Rule, listed on the food instrument. A food instrument deposited by a vendor for payment which exceeds the maximum price shall be paid at the maximum price set by the state agency for that food instrument. Payment to predominantly WIC vendors for a food instrument shall not exceed the statewide average for that food instrument. This average excludes data from predominantly WIC vendors;
 - (7) Not charge the state WIC Program more than the maximum price set by the state agency under Part (b)(4)(A) of this Rule for each supplemental food within the vendor's peer group;
 - (8) For non-contract brand milk-based and soy-based infant formulas, excluding exempt infant formulas, accept payment from the state WIC Program only up to the maximum price established for contract brand infant formulas under Part (b)(4)(A) of this Rule for the vendor's peer group;
 - (9) For free-standing pharmacies, provide only infant formula and WIC-eligible medical foods;
 - (10) Excluding free-standing pharmacies, redeem at least two thousand dollars (\$2,000) annually in WIC supplemental food sales. Failure to redeem at least two thousand dollars (\$2,000) annually in WIC supplemental food sales shall result in termination of the WIC Vendor Agreement. The store must wait 180 days to reapply for authorization;
 - (11) Accept WIC program food instruments only on or between the "Date of Issue" and the "Participant Must Use By" dates;
 - (12) Prior to obtaining the countersignature, enter in the "Date Transacted" box the month, day and year the WIC food instrument is exchanged for supplemental food;
 - (13) Ensure that the food instrument is countersigned in the presence of the cashier;
 - (14) Refuse acceptance of any food instrument on which quantities, signatures or dates have been altered;
 - (15) Not transact food instruments in whole or in part for cash, credit, unauthorized foods, or non-food items;
 - (16) Not provide refunds or permit exchanges for authorized supplemental foods obtained with food instruments, except for exchanges of an identical authorized supplemental food when the original authorized supplemental food is defective, spoiled, or has exceeded its "sell by," "best if used by," or other date limiting the sale or use of the food. An identical authorized supplemental food means the exact brand, type and size as the original authorized supplemental food obtained and returned by the WIC customer;
 - (17) Imprint the authorized WIC vendor stamp in the "Pay the Authorized WIC Vendor Stamped Here" box on the face of the food instrument to enable the vendor number to be read during the Program editing process;
 - (18) Imprint the vendor's bank deposit stamp or the vendor's name, address and bank account number in the "Authorized WIC Vendor Stamp" box in the endorsement;
 - (19) Promptly deposit WIC program food instruments in the vendor's bank. All North Carolina WIC program food instruments must

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- be deposited in the vendor's bank within 60 days of the "Date of Issue" on the food instrument;
- (20) Ensure that the authorized WIC vendor stamp is used only for the purpose and in the manner authorized by this agreement and assume full responsibility for the unauthorized use of the authorized WIC vendor stamp;
- (21) Maintain storage so only the staff designated by the vendor owner or manager have access to the authorized WIC vendor stamp and immediately report loss of this stamp to the local agency;
- (22) Notify the local WIC agency of misuse (attempted or actual) of the WIC program food instrument(s);

- (23) Maintain a minimum inventory of supplemental foods in the store for purchase. Supplemental foods that are outside of the manufacturer's expiration date do not count towards meeting the minimum inventory requirement. The following items and sizes constitute the minimum inventory of supplemental foods for vendors in Peer Groups I through III of Subparagraph (a)(1) of this Rule, vendors in Peer Groups I through IV of Subparagraph (a)(2) of this Rule and vendors in Peer Group IV of Subparagraph (a)(3) of this Rule:

Food Item	Type of Inventory	Quantities Required
Milk	Whole fluid: gallon	Total of 6 gallons fluid milk
	-and-	
	Skim/lowfat fluid: gallon	
	Nonfat dry: quart package	Total of 5 quarts when reconstituted
	-or-	
	Evaporated: 12 ounce can	5 cans
Cheese	2 varieties in 8 or 16 ounce package	Total of 6 pounds
Cereals	4 types (minimum package size 12 ounce)	Total of 12 packages
Eggs	Grade A, large or extra-large: white or brown: one dozen size carton	6 dozen
Juices	Frozen: 11.5-12 ounce container	10 containers
	Single strength: 46 ounce container	10 containers
	Orange juice must be available in frozen and single strength. A second flavor must be available in frozen or single strength.	
Dried Peas and Beans	2 varieties: one pound package or	3 packages
Peanut Butter	Plain (smooth, crunchy, or whipped; No reduced fat): 18 ounce container	3 containers
Infant Cereal	Plain-no fruit added: 2 cereal grains (one must be rice); 8- ounce box; brand specified in Vendor Agreement	6 boxes
Infant Formula	milk-based concentrate;	31 cans

	13 ounce	
	-and-	
	soy-based concentrate;	15 cans
	13 ounce	
	-and-	
	milk-based powder;	9 cans
	12 – 14.3 ounce	
	-and-	
	soy-based powder;	4 cans
	12 – 14.3 ounce	
	Brand specified in Vendor Agreement	
Tuna	Chunk light in water:	4 cans
	6-6.5 ounce can	
Carrots	Raw, canned or frozen	2 packages/cans
	14.5-16 ounce size	

- All vendors in Peer Groups I through III of Subparagraph (a)(1) of this Rule, Peer Groups I through IV of Subparagraph (a)(2) of this Rule and Peer Groups IV and V of Subparagraph (a)(3) of this Rule shall supply milk or soy-based infant formula in 32 ounce ready-to-feed or lactose-free infant formula in 32 ounce ready-to-feed or powder within 48 hours of request by the state or local WIC agency;
- (24) Ensure that all supplemental foods in the store for purchase are within the manufacturer's expiration date;
- (25) Permit the purchase of supplemental food without requiring other purchases;
- (26) Attend, or cause a manager or other authorized store representative to attend, annual vendor training class upon notification of class by the local agency;
- (27) Inform and train vendor's cashiers and other staff on WIC Program requirements;
- (28) Be accountable for the actions of its owners, officers, managers, agents, and employees who commit vendor violations;
- (29) Allow monitoring and inspection of the store premises and procedures to ensure compliance with the agreement and state and federal WIC Program rules, regulations and statutes. This includes allowance of access to all WIC food instruments at the store, vendor records pertinent to the purchase and sale of WIC supplemental foods, including invoices, copies of purchase orders, and any other proofs of purchase, federal and state corporate and individual income tax and sales and use tax returns and all records pertinent to these returns, and books and records of all financial and business transactions. These records must be retained by the vendor for a period of three years or until any audit pertaining to these records is resolved, whichever is later. Failure or inability to provide these records or providing false records for an inventory audit
- (30) shall be deemed a violation of 7 C.F.R. 246.12(l)(1)(iii)(B) and Part (g)(2)(A) of this Rule;
- (30) Submit a current accurately completed WIC Price List when signing this agreement, and by April 1 and October 1 of each year. The vendor also agrees to submit a WIC Price List within one week of any written request by the state or local WIC agency. Failure to submit a WIC Price List as required by this Subparagraph within 30 days of the required submission date shall result in disqualification of the vendor from the WIC Program in accordance with Part (h)(1)(D) of this Rule;
- (31) Reimburse the state agency within 30 days of written notification of a claim assessed due to a vendor violation that affects payment to the vendor or a claim assessed due to the unauthorized use of the authorized WIC vendor stamp. The state agency shall deny payment or assess a claim in the amount of the full purchase price of each food instrument rendered invalid under Subparagraphs (a)(2), (a)(5), (a)(6) or (a)(7) of Rule .0704 of this Section. Denial of payment by the state agency or payment of a claim by the vendor for a vendor violation(s) shall not absolve the vendor of the violation(s). The vendor shall also be subject to any vendor sanctions authorized under this Rule for the vendor violation(s);
- (32) Not seek restitution from the WIC customer for reimbursement paid by the vendor to the state agency or for WIC food instruments not paid or partially paid by the state agency. Additionally, the vendor shall not charge the WIC customer for authorized supplemental foods obtained with food instruments;
- (33) Not contact a WIC customer outside the store regarding the transaction or redemption of WIC food instruments;
- (34) Notify the local WIC agency in writing at least 30 days prior to a change of ownership,

change in location, cessation of operations, or withdrawal from the WIC Program. Change of ownership, change in location of more than three miles from the vendor's previous location, cessation of operations, withdrawal from the WIC Program or disqualification from the WIC Program shall result in termination of the WIC Vendor Agreement by the state agency. Change of ownership, change in location, ceasing operations, withdrawal from the WIC Program or nonrenewal of the WIC Vendor Agreement shall not stop a disqualification period applicable to the store;

- (35) Return the authorized WIC vendor stamp to the local WIC agency upon termination of this agreement or disqualification from the WIC Program;
- (36) Offer WIC customers the same courtesies as offered to other customers;
- (37) Not provide incentive items to WIC customers unless each incentive item is less than two dollars (\$2.00) in cost to the vendor in accordance with federal regulations. If incentive items are offered to WIC customers, no more than one incentive item per visit is permitted. Vendors shall not provide to WIC customers transportation to or from the vendor's premises, delivery of supplemental foods, lottery tickets, nor cash gifts. The limitations of this Subparagraph apply only to predominantly WIC vendors;
- (38) Reapply to continue to be authorized beyond the period of its current WIC Vendor Agreement. Additionally, a store must reapply to become authorized following the expiration of a disqualification period or termination of the Agreement. In all cases, the vendor applicant shall be subject to the vendor selection criteria of Paragraph (b) of this Rule; and
- (39) Comply with all the requirements for vendor applicants of Subparagraphs (b)(4) and (b)(7) through (b)(16) of this Rule throughout the term of authorization. The state agency may reassess a vendor at any time during the vendor's period of authorization to determine compliance with these requirements. The state agency shall terminate the WIC Vendor Agreement of any vendor that fails to comply with Subparagraphs (b)(4), (b)(8), (b)(9), (b)(12), (b)(13) or (b)(15) of this Rule during the vendor's period of authorization, and terminate the Agreement of or sanction or both any vendor that fails to comply with Subparagraphs (b)(7), (b)(11), (b)(14) or (b)(16) of this Rule during the vendor's period of authorization.

(d) By signing the WIC Vendor Agreement, the local agency agrees to the following:

- (1) Provide annual vendor training classes on WIC procedures and rules;
- (2) Monitor the vendor's performance under this agreement to ensure compliance with the agreement, state and federal WIC program rules, regulations, and applicable law. A minimum of one-third of all authorized vendors shall be monitored within a contract year (October 1 through September 30) and all vendors shall be monitored at least once within three consecutive contract years. Any vendor shall be monitored within one week of written request by the state agency;
- (3) Provide vendors with the North Carolina WIC Vendor Manual, all Vendor Manual amendments, blank WIC Price Lists, and the authorized WIC vendor stamp indicated on the signature page of the WIC Vendor Agreement;
- (4) Assist the vendor with questions which may arise under this agreement or the vendor's participation in the WIC Program; and
- (5) Keep records of the transactions between the parties under this agreement pursuant to 10A NCAC 43D .0206.

(e) In order for a food retailer or free-standing pharmacy to participate in the WIC Program a current WIC Vendor Agreement must be signed by the vendor, the local WIC agency, and the state agency.

(f) If an application for status as an authorized WIC vendor is denied, the applicant is entitled to an administrative appeal as described in Section .0800 of this Subchapter.

(g) Title 7 C.F.R. 246.12(l)(1)(i) through (vi) and (xii) are incorporated by reference with all subsequent amendments and editions. In accordance with 7 CFR 246.12(l)(1)(i), the state agency shall not allow imposition of a civil money penalty in lieu of disqualification for a vendor permanently disqualified. A pattern, as referenced in 7 CFR 246.12 (l)(1)(iii)(B) through (F) and 246.12(l)(1)(iv), shall be established as follows:

- (1) claiming reimbursement for the sale of an amount of a specific supplemental food item which exceeds the store's documented inventory of that supplemental food item for six or more days within a 60-day period. The six or more days do not have to be consecutive days within the 60-day period. Failure or inability to provide records or providing false records required under Subparagraph (c)(29) of this Rule for an inventory audit shall be deemed a violation of 7 C.F.R. 246.12(l)(1)(iii)(B) and Part (g)(2)(A) of this Rule;
- (2) two occurrences of vendor overcharging within a 12-month period;
- (3) two occurrences of receiving, transacting or redeeming food instruments outside of authorized channels, including the use of an

- unauthorized vendor or an unauthorized person within a 12-month period;
 - (4) two occurrences of charging for supplemental food not received by the WIC customer within a 12-month period;
 - (5) two occurrences of providing credit or non-food items, other than alcohol, alcoholic beverages, tobacco products, cash, firearms, ammunition, explosives, or controlled substances as defined in 21 U.S.C. 802, in exchange for food instruments within a 12-month period; or
 - (6) three occurrences of providing unauthorized food items in exchange for food instruments, including charging for supplemental food provided in excess of those listed on the food instrument within a 12-month period.
- (h) Title 7 C.F.R. Section 246.12(l)(2)(i) is incorporated by reference with all subsequent amendments and editions. Except as provided in 7 C.F.R. 246.12 (l)(1)(xii), a vendor shall be disqualified from the WIC Program for the following state-established violations in accordance with the sanction system below. The total period of disqualification shall not exceed one year for state-established violations investigated as part of a single investigation, as defined in Paragraph (i) of this Rule:
 - (1) When a vendor commits any of the following violations, the state-established disqualification period shall be:
 - (A) 90 days for each occurrence of failure to properly transact a WIC food instrument by not completing the date or purchase price on the WIC food instrument before obtaining the countersignature, by not obtaining the countersignature in the presence of the cashier, or by accepting a WIC food instrument prior to the "Date of Issue" or after the "Participant Must Use By" dates on the food instrument;
 - (B) 60 days for each occurrence of requiring a cash purchase to transact a WIC food instrument;
 - (C) 30 days for each occurrence of requiring the purchase of a specific brand when more than one WIC supplemental food brand is available; and
 - (D) 30 days for each occurrence of failure to submit a WIC Price List as required by Subparagraph (c)(30) of this Rule.
 - (2) When a vendor commits any of the following violations, the vendor shall be assessed sanction points as follows for each occurrence:
 - (A) 2.5 points for:
 - (i) stocking WIC supplemental foods outside of the manufacturer's expiration date; or
 - (ii) unauthorized use of the "WIC" acronym or the WIC logo in accordance with Paragraph (b)(10) of this Rule.
- (B) 5 points for:
 - (i) failure to attend annual vendor training;
 - (ii) failure to stock minimum inventory;
 - (iii) failure to mark the current shelf prices of all WIC supplemental foods on the foods or have the prices posted on the shelf or display case; or
 - (iv) offering improper incentives, free merchandise, or services by a predominantly WIC vendor in accordance with Subparagraph (c)(37) of this Rule.
- (C) 7.5 points for:
 - (i) discrimination on the basis of WIC participation (separate WIC lines, denying trading stamps, etc.); or
 - (ii) contacting a WIC customer in an attempt to recoup funds for food instrument(s) or contacting a WIC customer outside the store regarding the transaction or redemption of WIC food instruments.
- (D) 15 points for:
 - (i) failure to allow monitoring of a store by WIC staff when required;
 - (ii) failure to provide WIC food instrument(s) for review when requested;
 - (iii) failure to provide store inventory records when requested by WIC staff, except as provided in Subparagraph (c)(29) and Part (g)(2)(A) of this Rule for failure or inability to provide records for an inventory audit;
 - (iv) nonpayment of a claim made by the state agency;
 - (v) providing false information on vendor records (application, vendor agreement, price list, WIC food instrument(s), monitoring forms), except as

provided in Subparagraph (c)(29) and Part (g)(2)(A) of this Rule for providing false records for an inventory audit; or

- (vi) failure to purchase infant formula, exempt infant formula, and WIC-eligible medical food from an authorized supplier.

(3) For the violations listed in Subparagraph (h)(2) of this Rule, all sanction points assessed against a vendor remain on the vendor's record for 12 months or until the vendor is disqualified as a result of those points. If a vendor accumulates 15 or more points, the vendor shall be disqualified. The nature of the violation(s) and the number of violations, as represented by the points assigned in Subparagraph (h)(2) of this Rule, are used to calculate the period of disqualification. The formula used to calculate the disqualification period is: the number of points assigned to the violation carrying the highest number of sanction points multiplied by 18 days. Additionally, if the vendor has accumulated more than 15 points, 18 days shall be added to the disqualification period for each point over 15 points.

(i) For investigations pursuant to this Section, a single investigation is:

- (1) Compliance buy(s) conducted by undercover investigators within a 12-month period to detect the following violations:
 - (A) buying or selling food instruments for cash (trafficking);
 - (B) selling firearms, ammunition, explosives, or controlled substances as defined in 21 U.S.C. 802, in exchange for food instruments;
 - (C) selling alcohol or alcoholic beverages or tobacco products in exchange for food instruments;
 - (D) vendor overcharging;
 - (E) receiving, transacting, or redeeming food instruments outside of authorized channels, including the use of an unauthorized vendor or an unauthorized person;
 - (F) charging for supplemental food not received by the WIC customer;
 - (G) providing credit or non-food items, other than alcohol, alcoholic beverages, tobacco products, cash, firearms, ammunition, explosives, or controlled substances as defined in 21 U.S.C. 802, in exchange for food instruments;

- (H) providing unauthorized food items in exchange for food instruments, including charging for supplemental food provided in excess of those listed on the food instrument;
- (I) failure to properly transact a WIC food instrument;
- (J) requiring a cash purchase to transact a WIC food instrument; or
- (K) requiring the purchase of a specific brand when more than one WIC supplemental food brand is available.

(2) Monitoring reviews of a vendor conducted by WIC staff within a 12-month period which detect the following violations:

- (A) failure to stock minimum inventory;
- (B) stocking WIC supplemental food outside of the manufacturer's expiration date;
- (C) failure to allow monitoring of a store by WIC staff when required;
- (D) failure to provide WIC food instrument(s) for review when requested;
- (E) failure to provide store inventory records when requested by WIC staff; or
- (F) failure to mark the current shelf prices of all WIC supplemental foods on the foods or have the prices posted on the shelf or display case.

(3) Any other method used by the state or local agency to detect the following violations by a vendor within a 12-month period:

- (A) failure to attend annual vendor training;
- (B) failure to submit a WIC Price List as required by Subparagraph (c)(30) of this Rule;
- (C) discrimination on the basis of WIC participation (separate WIC lines, denying trading stamps, etc.);
- (D) contacting a WIC customer in an attempt to recoup funds or food instrument(s) or contacting a WIC customer outside the store regarding the transaction or redemption of WIC food instruments;
- (E) nonpayment of a claim made by the state agency;
- (F) providing false information on vendor records (application, vendor agreement, price list, WIC food instrument(s), monitoring forms); or
- (G) claiming reimbursement for the sale of an amount of a specific supplemental food item which exceeds the store's documented inventory of that supplemental food

item for a specific period of time, or failure or inability to provide records or providing false records required under Subparagraph (c)(29) of this Rule for an inventory audit.

(j) The Food Stamp Program disqualification provisions in 7 C.F.R. 246.12(l)(1)(vii) are incorporated by reference with all subsequent amendments and editions.

(k) The participant access provisions of 7 C.F.R. 246.12(l)(1)(ix) and 246.12(l)(8) are incorporated by reference with all subsequent amendments and editions. The existence of any of the factors listed in Parts (l)(3)(A), (l)(3)(B) or (l)(3)(C) of this Rule shall conclusively show lack of inadequate participant access provided there is no geographic barrier, such as an impassable mountain or river, to using the other authorized WIC vendors referenced in these Subparagraphs. The agency shall not consider other indicators of inadequate participant access when any of these factors exist.

(l) The following provisions apply to civil money penalties assessed in lieu of disqualification of a vendor:

(1) The civil money penalty formula in 7 C.F.R. 246.12(l)(1)(x) is incorporated by reference with all subsequent amendments and editions, provided that the vendor's average monthly redemptions shall be calculated by using the six-month period ending with the month immediately preceding the month during which the notice of administrative action is dated.

(2) The state agency may also impose civil money penalties in accordance with G.S. 130A-22(c1) in lieu of disqualification of a vendor for the state-established violations listed in Paragraph (h) of this Rule when the state agency determines that disqualification of a vendor would result in participant hardship in accordance with Subparagraph (l)(3) of this Rule.

(3) In determining whether to disqualify a WIC vendor for the state-established violations listed in Paragraph (h) of this Rule, the agency shall not consider other indicators of hardship if any of the following factors, which conclusively show lack of hardship, are found to exist:

(A) the noncomplying vendor is located outside of the limits of a city, as defined in G.S. 160A-2, and another WIC vendor is located within seven miles of the noncomplying vendor;

(B) the noncomplying vendor is located within the limits of a city, as defined in G.S. 160A-2, and another WIC vendor is located within three miles of the noncomplying vendor; or

(C) a WIC vendor, other than the noncomplying vendor, is located within one mile of the local agency at

which WIC participants pick up their food instruments.

(4) The provisions for failure to pay a civil money penalty in 7 C.F.R. 246.12(l)(6) are incorporated by reference with all subsequent amendments and editions.

(m) The provisions of 7 C.F.R. 246.12(l)(1)(viii) prohibiting voluntary withdrawal from the WIC Program or nonrenewal of the WIC Vendor Agreement as an alternative to disqualification are incorporated by reference with all subsequent amendments and editions.

(n) The provision in 7 C.F.R. 246.12(l)(3) regarding prior warning to vendors is incorporated by reference with all subsequent amendments and editions.

(o) The state agency may set off payments to an authorized vendor if the vendor fails to reimburse the state agency in accordance with Subparagraph (c)(31) of this Rule.

(p) In accordance with 7 C.F.R. 246.12(l)(7) or 246.12(u)(5) or both, North Carolina's procedures for dealing with abuse of the WIC program by authorized WIC vendors do not exclude or replace any criminal or civil sanctions or other remedies that may be applicable under any federal and state law.

(q) Notwithstanding other provisions of this Rule, for the purpose of providing a one-time payment to a non-authorized store for WIC food instruments accepted by the store, an agreement for a one-time payment need only be signed by the store manager and the state agency. The store may request such one-time payment directly from the state agency. The store manager shall sign an agreement indicating that the store has provided foods as prescribed on the food instrument, charged current shelf prices or less than current shelf prices, not charged sales tax, and verified the identity of the WIC customer. Any agreement entered into in this manner shall automatically terminate upon payment of the food instrument in question. After entering into an agreement for a one-time payment, a non-authorized store shall not be allowed to enter into any further one-time payment agreements for WIC food instruments accepted thereafter.

(r) Except as provided in 7 C.F.R. 246.18(a)(2), an authorized WIC vendor shall be given at least 15 days advance written notice of any adverse action which affects the vendor's participation in the WIC Program. The vendor appeal procedures shall be in accordance with 10A NCAC 43D .0800.

History Note: Authority G.S. 130A-361; 7 C.F.R. 246; 42 U.S.C. 1786; Eff. July 1, 1981; Amended Eff. August 1, 1995; October 1, 1993; May 1, 1991; December 1, 1990; Temporary Amendment Eff. June 23, 2000; May 17, 2000; Amended Eff. April 1, 2001; Temporary Amendment Eff. September 1, 2002; July 1, 2002; Amended Eff. November 1, 2005; August 1, 2004; Temporary Amendment Eff. July 1, 2006; Amended Eff. April 1, 2007.

10A NCAC 89C .0103 RATES OF PAYMENT

(a) Rules governing rates of payment for all purchases, vocational rehabilitation services, and current rates of payment may be reviewed 8 a.m. to 5 p.m., Monday through Friday, at the Division's State office, 805 Ruggles Drive, Dorothea Dix Campus, Raleigh, North Carolina or on the Division's internet site. Vendors providing any services authorized by the Division shall agree not to make any charge to, or accept payment from, the individual receiving services from the Division or the individual's family for such services unless the amount for such service charge or payment is previously known to and approved by the Division in accordance with Sections .0200 and .0300 of this Chapter.

(b) The Division's rate of payment for post secondary education, graduate, professional and summer school shall not exceed the Division's fixed rate charged for the public university and professional schools system and the rate charged for the community college system for tuition and fees as approved by the North Carolina General Assembly October 2001.

(c) The Division's rate of payment for proprietary for profit vocational and trade schools or other training programs that offer curriculums comparable to those offered through the community college system shall not exceed the rate for payment established for the community college system.

(d) The Division's rate of payment for proprietary for profit vocational and trade schools or other training programs that offer an accelerated or condensed curriculum or those training programs that offer training in areas not offered through the community college system shall not exceed the Division's fixed rate for the public university system per semester multiplied by two.

(e) The Division's rate of payment for proprietary for profit vocational and trade schools and any other vocational or trade program that does not operate on a semester system or has varying program lengths up to one year shall not exceed a prorated monthly rate based on the Division's fixed rate for the public university system per semester multiplied by two and the Division's fixed rate for a session of summer school in the public university system multiplied by two.

(f) The Division's rate of payment for proprietary for profit vocational and trade schools and any other vocational or trade programs that does not operate on a semester system or has a varying program length that is twelve months or longer shall not exceed the Division's fixed rate for the public university system per semester multiplied by two and the Division's fixed rate for a session of summer school in the public university system multiplied by two.

(g) The Division's rate of payment for those individuals who are North Carolina residents and choose to attend training programs out-of-state, is limited to the Division's fixed rate specified in Paragraph (b) of this Rule.

(h) The Division's rate of payment for optional fees at the community college system shall not exceed the amount approved by the local community college boards.

(i) No training or training services in an institution of higher education (universities, colleges, community or junior colleges, vocational schools, technical institutes, or hospital schools of nursing) as noted in Rule .0205, Paragraph (a)(9) of this Subchapter shall be paid for with vocational rehabilitation funds until maximum efforts have been made by the designated state

unit and the individual to secure grant assistance in whole or part from other resources to pay for training and such assistance is applied to the cost of training.

(j) The Division's rate of payment for community rehabilitation programs approved for vendorship shall be determined as follows:

- (1) Community rehabilitation programs approved by the Division for outcome based payment shall be paid based upon the Division's established benchmark rate. A payment is made for each benefit or outcome achieved that the vendor contracts with the Division to provide. The benchmark rate is determined based on average cost of outcomes for fiscal years 1997, 1998, and 1999. These benchmark rates are published in DVR-Vol V fee schedule manual.
- (2) Community rehabilitation programs approved by the Division for fee for service shall be paid an hourly rate for providing the services authorized by the Division. The rate is established by the Division based on historical cost finding. The vendor shall be reimbursed based on the number of hours of actual services provided.
- (3) Any adjustments to the rate shall be determined by the Division based on availability of funds and shall not exceed 85 percent of the annual salary increases for state employees as awarded by the legislature.

History Note: Authority G.S. 143-545.1; 34 C.F.R. 361.50; Eff. February 1, 1976; Amended Eff. May 1, 1990; Temporary Amendment Eff. January 26, 2003; May 1, 2002; Amended Eff. April 1, 2007; August 1, 2004.

10A NCAC 89D .0101 GENERAL POLICIES

The Division shall use, whenever feasible, facilities and providers of services who are accredited by a public authority or professional organizations that grants accreditation in the related program area or areas of service provided. Providers of community rehabilitation program services shall be accredited by an entity approved by the Division. In other cases, facilities shall be selected on the condition that they appear upon investigation to be best adapted to render the specific services required. Questions from the general public with regards to these standards may be directed in writing to:

Director
Division of Vocational Rehabilitation Services
805 Ruggles Drive
2801 Mail Service Center
Raleigh, North Carolina 27699-2801

History Note: Authority G.S. 143-546; 34 C.F.R. 361.45; Eff. February 1, 1976; Amended Eff. April 1, 2007; July 1, 1990; October 20, 1979.

10A NCAC 89D .0204 COMMUNITY

REHABILITATION PROGRAM STANDARDS

(a) The following definitions apply to the terms as used in this Rule:

- (1) "Community rehabilitation program" means a program that provides directly or facilitates the provision of one or more of the following vocational rehabilitation services to individuals with disabilities to enable those individuals to maximize their opportunities for employment, including career advancement:
 - (A) Medical, psychiatric, psychological, social, and vocational services that are provided under one management.
 - (B) Testing, fitting, or training in the use of prosthetic and orthotic devices.
 - (C) Recreational therapy.
 - (D) Physical and occupational therapy.
 - (E) Speech, language, and hearing therapy.
 - (F) Psychiatric, psychological, and social services, including positive behavior management.
 - (G) Assessment for determining eligibility and vocational rehabilitation needs.
 - (H) Rehabilitation technology.
 - (I) Job development, placement, and retention services.
 - (J) Evaluation or control of specific disabilities.
 - (K) Orientation and mobility services for individuals who are blind.
 - (L) Extended employment.
 - (M) Psychosocial rehabilitation services.
 - (N) Supported employment services and extended services.
 - (O) Services to family members if necessary to enable the applicant or eligible individual to achieve an employment outcome.
 - (P) Personal assistance services.
 - (Q) Services similar to the services described in Subparagraph (A) through (P) of this Paragraph.
 - (R) Trial Work.
- (2) "Conflict of Interest" means an actual or perceived interest by a staff member of the Division or the vendor or potential vendor, a board member or immediate family for either party in an action that results in, or has the appearance of resulting in, personal, organizational, or professional gain. A conflict of interest occurs when any individual as defined has a direct or fiduciary interest in another relationship. The definition of conflict of interest shall include any bias or the appearance of bias in a decision-making process that would reflect a dual role played by a member of the organization or group.

- (3) "Fee for service funding" means an hourly rate, fee for service method of funding in which an hourly cost of providing the service is identified and the program is reimbursed based on the number of hours of actual services provided.
- (4) "Noncompliance" means a failure by a vendor to comply with rules.
- (5) "Outcome –Based Client Services and Reimbursement" means payment is made to the vendor based upon the Division's benchmark rate established pursuant to 10A NCAC 89C .0103. A payment is made for each benefit or outcome achieved that the vendor contracts with the Division to provide.
- (6) "Qualified Personnel" means staff who perform the primary job functions as stipulated by the accreditation body and who are trained to perform the job tasks. Qualified personnel or staff for a provider applying for vendorship with the Division is further defined as having a minimum of three years experience in the area of service for which the provider is applying for vendorship or other required business areas of the services.
- (7) "Serious findings" means those areas of noncompliance that may affect the safety, health or well-being of clients; those that appear to be violations of the law; and those which deny the client quality services in accordance with the law and rules.
- (8) "Vendor" means a provider of services which has complied with the Division's rules, and is authorized to provide services to clients of the Division.

(b) Statement of Policy:

- (1) Approved community rehabilitation program vendors shall meet and adhere to the standards in Paragraph (c) of this Rule in terms of management, operations and client service delivery.
- (2) The inclusion of a provider of community rehabilitation services on the Division's list of approved vendors shall not commit the Division to utilize the available services.
- (3) The Division shall not provide any provider of community rehabilitation services with a guarantee of a total dollar commitment or number of total client referrals during any specific time frame except if determined as a condition of a federal grant or a contract.
- (4) Any provider approved as a new vendor shall agree to a fee for service rate of payment.
- (5) Any vendor shall have to meet the following criteria to change payment from fee for service to Outcome reimbursement:
 - (A) Accreditation as defined in this Rule.
 - (B) A five year business relationship with the Division.

- (C) Adherence to all standards for community rehabilitation programs set forth in this Rule without documentation of serious findings.
- (D) Three year average expenditures at or above the level agreed upon by the Division and CRPs and funds are available.
- (E) Achievement at or above the annual program outcome levels agreed on between the Division and the community rehabilitation program.
- (F) Letter from the Division Regional Director indicating that there is a client service need that can be met by the provider.

If the above criteria in (A)-(F) are met, the Division shall allow the vendor to move to Outcome-based funding.

- (6) The provider, if providing supported employment services, shall provide for extended services, ongoing support services and continuous or periodic job skill training services provided at least twice monthly at the work site unless the consumer's Individualized Plan for Employment provides for off-site monitoring. Other support services provided at or away from the work site, such as transportation, personal car services, and counseling to family members, if skill training services are also needed by, and provided to, that individual at the work site. The provider shall make known the plan for extended services to the Division.
- (7) Community rehabilitation programs and other providers of rehabilitation services shall have qualified personnel, a safe environment, have obtained applicable state and federal licenses, meet the program accessibility and special communication requirements specified in 34 C.F.R. 361.51, and provide services designed to enable individuals with disabilities to have access to employment.
- (8) A vendor shall not subcontract any of the services under the approved vendorship.

(c) The following standards shall apply to existing vendors and providers of community rehabilitation program services applying to be a vendor:

- (1) Accreditation: The Division shall utilize only those community rehabilitation programs that meet the following accreditation options:
 - (A) Existing vendors as of the date of the last amendment to this Rule must be accredited by The Commission on Accreditation of Rehabilitation Facilities (CARF); the Council on Accreditation (COA); or the Council on Quality Leadership (COL). In lieu of current accreditation or pending

approval for accreditation, a vendor shall provide evidence of training regarding accreditation within one year of the last rule amendment and be granted accreditation within three years.

- (B) Community rehabilitation programs applying to be a vendor shall be accredited by the Commission on Accreditation of Rehabilitation Facilities (CARF), the Council on Accreditation (COA) or the Council on Quality Leadership (COL). In lieu of current accreditation or pending approval for accreditation at the time of application for vendorship, a vendor shall provide evidence of training regarding accreditation before approval as vendor or; evidence of training regarding accreditation is required within one year of vendor application with accreditation rendered within three years.

(2) The community rehabilitation program that is an approved vendor shall maintain accreditation in the area of approved vendorship. A copy of the accreditation shall be submitted to the Division.

(3) Accessibility and nondiscrimination standards. Each community rehabilitation program shall comply with the accessibility and nondiscrimination standards set forth in federal and state law. The agency may deny funding to and refuse to contract with any community rehabilitation program which fails to comply with such provisions.

(4) Compliance with applicable laws:

(A) The provider shall be a legally constituted entity under federal, state, and local statute(s). The nature of the entity shall be described in its constitution and its operating principles shall be prescribed by its bylaws.

(B) The provider shall comply with all laws, ordinances, codes, rules, regulations, and licensing requirements that are applicable to the conduct of business, including those of federal, state, and local agencies having jurisdiction or authority.

(C) Affirmative action. The State plan must assure that community rehabilitation programs that receive assistance under part B of Title I of the Rehabilitation Act as amended take affirmative action to employ and advance in employment qualified

- individuals with disabilities covered under and on the same terms and conditions as in section 503 of the Act.
- (5) Health and Safety Standards:
- (A) The community rehabilitation program shall assure that every individual served receives services in an environment that is free of health and safety hazards.
- (B) With respect to substances which have been identified by federal or state agencies to be toxic or hazardous, but for which no level of safe exposure to such substances has been determined, the program shall not permit the use or storage of such substances within its premises.
- (C) In situations in which a community rehabilitation program uses locations, other than those of the program, for trial work, for transitional employment, or for any other purpose, it shall assure that such location is in compliance with the provisions of this rule.
- (D) The community rehabilitation program shall meet all applicable governmental requirements, including OSHA standards from the Department of Labor and, have an internal health and safety program.
- (6) Work Standards:
- (A) The community rehabilitation program shall establish production and payment practices for individuals with disabilities which maximize earning potential.
- (B) The community rehabilitation program shall maintain all applicable certification and documentation for the Wage and Hour Division, U.S. Department of Labor rules and regulations governing wage reimbursement and the Workers' Compensation Act.
- (7) Insurance Standard.
- (A) The community rehabilitation program shall have insurance to protect assets and to ensure compensation for staff and individuals with disabilities in the event such compensation would be required for occurrences for which the community rehabilitation program is liable. There shall be documentation that the governing body of the community rehabilitation program reviews the insurance profile annually after consultation with professional insurance representatives.
- (B) The community rehabilitation program shall maintain workers' compensation insurance.
- (8) Physical Accessibility Standard:
- (A) The community rehabilitation program shall comply with Section 504 of the Rehabilitation Act, the Architectural Barriers Act of 1968, the Uniform Accessibility Standards and their implementing standards in 41 CFR Part 101-19.6, the American National Standards Institute No. A117-1-1986; and
- (B) The community rehabilitation program shall comply with applicable sections of the Americans with Disabilities Act (ADA).
- (9) Organizational Standard:
- (A) The community rehabilitation program shall be structured to achieve its stated mission, secure all licenses or permits to do business within its jurisdiction(s) and scope of operation, plan.
- (B) The community rehabilitation program shall maintain written policy and administrative records, which are available for review by Division staff.
- (C) The community rehabilitation program shall monitor the efficiency and effectiveness of services, and maintain records and reports that reflect the operation and provision of services and the organization's status.
- (D) Providers of service applying to be a vendor shall have a minimum of three years of experience as a provider in the area of service delivery for which the provider is seeking approval or staff having a minimum of three years experience in the area of service for which the provider is applying to be a vendor or other required business areas of services.
- (E) The community rehabilitation program shall ensure that real or apparent conflict of interest between a member of the organization is disclosed and remedied. Failure to disclose or remedy may result in termination of the vendor approval.
- (10) Fiscal Management Standard:
- (A) Fiscal affairs relative to provision of rehabilitation services shall be managed in a manner consistent with the stated purposes and in accordance

- with legal requirements, including assurances that any state or federal audit and reporting requirements are met.
 - (B) The community rehabilitation program shall operate under an annual budget approved by its governing body.
 - (C) Community rehabilitation programs providing supported employment services shall provide the Division with information regarding the funding source for each individual's extended services program.
- (11) Personnel Standard:
- (A) As applicable, the community rehabilitation program shall maintain qualified personnel and written organizational personnel policies which support the provision of services essential to the achievement of defined individual and program goals.
 - (B) The community rehabilitation program shall maintain professional and business licensure or certification required for the type of program or service(s) provided to clients.
- (12) Program Management Standard.
- (A) The community rehabilitation program shall ensure that services provided are individually tailored and coordinated in order to enhance each client's employment independence, integration, and productivity as identified within each Individualized Plan for Employment and through client participation in service planning, implementation and evaluation.
 - (B) The community rehabilitation program shall have policies and follow procedures designed to promote and document client input in program development and each client's involvement in planning his or her own program.
 - (C) The community rehabilitation program shall maintain the confidentiality of all medical, psychological, and other consumer information shared with it by the Division.
 - (D) The community rehabilitation program shall provide for meetings with Division staff during the time the client is being served inclusive of admission or pre-admission meetings to review the client's progress.
 - (E) The community rehabilitation program shall provide reports of services and results to the Division at completion or as otherwise agreed upon.
 - (F) The community rehabilitation program shall use language or mode of communication most compatible with the individual client's abilities and culture.
 - (G) Community rehabilitation programs explicitly designed to serve those people with the most significant disabilities such as supported employment programs shall provide ongoing support services over an extended period of time to maintain their employment, with no end date or time limit placed on this assistance.
 - (H) Providers applying to be a vendor shall demonstrate a record of success as defined in this rule in the area of service delivery for which the provider is seeking approval.
- (13) Program Evaluation Standard:
- (A) The community rehabilitation program shall establish a program evaluation and reporting system which is used to measure both effectiveness and efficiency and to monitor the results of program.
 - (B) The community rehabilitation program shall provide timely reports to the Division of such information, and by such means, as the Division may require for evaluation of ongoing program effectiveness, costs, and impact of services provided by the provider.
- (d) The Division shall evaluate each provider's ability to ensure compliance with each of the standards that, for the purposes of the rules in this Chapter, apply to the provider and type of service provision being approved.
 - (e) Any vendor approved prior to the effective date of this amended rule shall not have to submit a new vendor application.
 - (f) Any service provider interested in providing community rehabilitation program services after the effective date of this amended Rule shall adhere to the following procedures:
 - (1) The provider shall obtain a vendor application packet from the Division's website or shall request the vendor application packet from the Division.
 - (2) The vendor application packet shall include:
 - (A) the application for vendorship; and
 - (B) the criteria and procedures for review and approval.
 - (3) The provider shall complete the vendor application forms and submit all required

documentation to the Division. This shall include a recommendation from Division staff or other source such as a local management entity (LME), another vendor, or professional organization.

- (4) Once the application has been reviewed and checked for accuracy and completion, an on site vendor review shall be conducted by staff of the Division.
- (5) Within 30 days, the vendor shall be contacted either to provide additional information or clarification or to complete the process.
- (6) If the application is disapproved, a letter of explanation shall be sent to the vendor. Applications may be disapproved for failure to submit required information, or failure of the vendor to agree to the standards and requirements set forth in this Rule to provide quality services to the Division's clients.
- (g) The vendor shall provide accurate information describing vendored services and shall maintain accurate documentation of the costs of delivery of each service.
- (h) The vendor shall have record keeping capabilities to identify each consumer as an individual, how many units of a service during any given month that consumer received, and provide accurate bills and reports that reflect the actual services delivered to that consumer.
- (i) The vendor shall submit to the Division invoices for Division authorized services on Division form(s) monthly.
- (j) The vendor shall report to the Division any significant changes in the proposed delivery of services from that stated in the approved application. These include, changes in personnel and ability to deliver anticipated volumes of services. Budgetary changes shall also be reported as they occur.
- (k) Vendors shall be monitored at a minimum of annually by the Division for assurance of compliance with the standards. Written reports shall be submitted to the vendor outlining the findings of monitoring.
- (l) Noncompliance:
 - (1) For findings of noncompliance as determined by Division staff responsible for monitoring, the vendor must submit a written corrective action plan including timelines to the Division.
 - (2) Serious findings may result in suspension of use of the vendor by the Division until the vendor has completed corrective action.
 - (3) The Division shall inform the provider in writing of the acceptance of completed corrective actions, closing out the plan.
 - (4) Within 120 days of the services provided by the vendor shall be reviewed by Division staff to ensure services are being provided in compliance with applicable standards. The vendor may appeal any disputes which cannot be settled by submitting a written statement of appeal describing the situation and submitted to the Division director. After investigating the dispute, the Division Director shall send a written decision to the provider and retain a

copy for the file along with all documents related to the appeal.

- (m) Either the vendor or the Division may terminate the vendor relationship upon a minimum of a 30 day written notice by either party or immediately upon notification of serious findings.

History Note: Authority G.S. 143-545.1; 34 C.F.R. 361.45; Eff. February 1, 1976; Amended Eff. April 1, 2007; July 1, 1997; October 20, 1979.

TITLE 11 – DEPARTMENT OF INSURANCE

11 NCAC 08 .0713 CONTINUING EDUCATION REQUIREMENTS

- (a) To be eligible to renew a certificate, whether active standard or active limited, a Code Enforcement Official (CEO) shall have completed the requisite number of credit hours by June 30, 2007, and each June 30 thereafter.
- (b) A credit hour is 50 minutes of class contact course instruction or 50 minutes of distance learning time.
- (c) A CEO with an active limited certificate shall complete six hours of continuing education courses per renewal year in each technical area for which the limited certificate is valid. A CEO with an active standard certificate shall complete six hours of continuing education courses per renewal year for each standard certificate. A CEO with a limited and a standard certificate valid for the same technical area shall complete only six hours for that technical area.
- (d) A CEO with only a probationary certificate and no standard or limited certificate is not required to complete any continuing education courses.
- (e) If a course exceeds the number of credit hours specified for renewal of a technical area certificate, the excess credit hours may be carried forward into the following renewal year of that technical area certificate. The number of carry-forward credit hours shall not exceed six.

History Note: Authority G.S. 143-151.13A(b); 143-151.13A(f)(1); 143-151.13A(f)(4); 143-151.13A(f)(5); 143-151.16(b); Eff. March 1, 2006; Amended Eff. April 1, 2007.

11 NCAC 08 .0720 APPROVED COURSES

- (a) To be approved for credit in the continuing education program, a course shall be directly related to State Building Codes, inspection, administration, or enforcement of State Building Codes; construction or design of buildings or electrical, mechanical, plumbing, or fire prevention systems; or certification courses approved for CEOs.
- (b) Credit shall be given only for courses that have been approved by the Board. Continuing education courses for other State occupational licenses must be specifically approved to satisfy the Board's continuing education requirements. Courses from approved sponsors must be specifically approved before being offered.

(c) Some courses shall be approved for credit in more than one area of certification. A CEO with multiple certificates may apply the credit to any certificate for which the course is approved. If the course hours are greater than required for one certificate, the remaining hours may be applied to other certificates for which the course is approved or the remaining hours may be carried over in accordance with 11 NCAC 08 .0713(e).

(d) A CEO shall only receive credit for the same course once within any three-year period.

(e) A course shall contain a minimum of one credit hour.

(f) A CEO may select a course other than one offered by an approved sponsor. In order to obtain approval for the course, the CEO shall, upon completion of the course, submit an application for approval on a form provided by the Board. The application shall include:

- (1) the topic;
- (2) content of lecture material;
- (3) date, time, and location of the course;
- (4) name and qualifications of the instructor; and
- (5) the number of course contact hours received upon completion of the course.

In lieu of the form, the CEO may submit a course brochure that contains all of the information required by the form. The CEO shall also provide verification of attendance from the course instructor. The Board shall not accept any applications for course approval under this paragraph after April 30 of each year.

(g) Instructors shall receive twice the number of course credit hours for each instructional hour in an approved course. An instructor shall only receive twice the number of course credit hours for the same course once within any two-year period.

History Note: Authority G.S. 143-151.13A(f)(1); 143-151.13A(f)(4); Eff. February 1, 2006; Amended Eff. April 1, 2007.

11 NCAC 11F .0801 MODEL REGULATION PERMITTING THE RECOGNITION OF PREFERRED MORTALITY TABLES FOR USE IN DETERMINING MINIMUM RESERVE LIABILITIES

(a) The North Carolina Department of Insurance incorporates by reference, including subsequent amendments and editions, the National Association of Insurance Commissioners Model No. 815, Model Regulation Permitting the Recognition of Preferred Mortality Tables for Use in Determining Minimum Reserve Liabilities. Copies of Model No. 815 may be obtained from: The National Association of Insurance Commissioners, 2301 McGee Street, Kansas City, MO 64108-1662; the North Carolina Department of Insurance, Actuarial Services Division, 1201 Mail Service Center, Raleigh, NC 27699-1201; and from the Department of Insurance web page at <http://www.ncdoi.com/>.

(b) For purposes of this Rule, Section 2 of Model No. 815 shall read as follows:

The purpose of this regulation is to recognize, permit and prescribe the use of mortality tables that reflect

differences in mortality between Preferred and Standard lives in determining minimum reserve liabilities in accordance with G.S. 58-58-50 (c)(2)(a), 11 NCAC 11F .0403(a), and 11 NCAC 11F .0403(b).

(c) For purposes of this Rule, Section 4 of Model No. 815 shall read as follows:

At the election of the company, for each calendar year of issue, for any one or more specified plans of insurance and subject to satisfying the conditions stated in this regulation, the 2001 CSO Preferred Class Structure Mortality Table may be substituted in place of the 2001 CSO Smoker or Nonsmoker Mortality Table as the minimum valuation standard for policies issued on or after January 1, 2007. No such election shall be made until the company demonstrates that at least 20% of the business to be valued on this table is in one or more of the preferred classes. A table from the 2001 CSO Preferred Class Structure Mortality Table used in place of a 2001 CSO Mortality Table, pursuant to the requirements of this regulation, shall be treated as part of the 2001 CSO Mortality Table only for purposes of reserve valuation pursuant to the requirements of 11 NCAC 11F .0601, 11 NCAC 11F .0602, 11 NCAC 11F .0603, and 11 NCAC 11F .0604.

(d) For purposes of this Rule, Paragraph C of Section 3, and Paragraph C of Section 5 of Model No. 815 are not applicable.

(e) For purposes of this Rule, Sections 1 and 7 of Model No. 815 are not applicable.

History Note: Authority G.S. 58-2-40; 58-58-50(k); Eff. April 1, 2007.

TITLE 13 – DEPARTMENT OF LABOR

13 NCAC 12 .0703 EXCEPTIONS TO CIVIL PENALTY

An employer may take an exception to a civil penalty determination by filing a written petition for a contested case hearing with the Office of Administrative Hearings (OAH) under Chapter 150B, Article 3 of the North Carolina General Statutes. The penalty shall be final unless the employer takes exception to the civil penalty determination within 15 days after the employer's receipt of notification of the civil penalty.

History Note: Authority G.S. 95-25.19; 95-25.23; Eff. November 1, 1980; Amended Eff. April 1, 2007; July 1, 1988.

13 NCAC 12 .0804 NOTIFICATION AT TIME OF HIRING

An employee's signature on an employer's written notice of the promised wages which bears the date on which the employee was provided with the notice shall be presumptive evidence of the employer's notification in accordance with G.S. 95-25.13(1).

History Note: Authority G.S. 95-25.13; 95-25.19; Eff. April 1, 1999;

Amended Eff. April 1, 2007.

13 NCAC 15 .0703 AMUSEMENT DEVICE INSPECTION FEE SCHEDULE

Inspection fees for amusement devices shall be as follows:

	Equipment	Unit Fee	Inspection Required
(1)	Inflatables	\$100.00	Annually
(2)	Rock Walls	\$100.00	Annually
(3)	Kiddie Rides (48 inch maximum height restriction)	\$45.00	Every setup, except in permanent parks, which shall be inspected annually
(4)	Go Karts	\$35.00	Every setup, except in permanent parks, which shall be inspected annually
(5)	Major Rides (any ride not otherwise listed herein) and Water Slides	\$90.00	Every setup, except permanent parks, which shall be inspected annually
(6)	Roller Coasters, other than mobile or portable roller coasters	\$250.00	Annually

*History Note: Authority G.S. 95-107; 95-111.4(19);
Temporary Adoption Eff. October 17, 2001;
Eff. July 1, 2003;
Amended Eff. April 1, 2007.*

**TITLE 14A – DEPARTMENT OF CRIME CONTROL
AND PUBLIC SAFETY**

14A NCAC 09H .0308 DEFINITIONS

The following definitions shall apply to the words and phrases found in this Chapter.

- (1) Applicant. A person or corporation owning a wrecker service and applying for inclusion on the Patrol Rotation Wrecker List.
- (2) Wrecker Service. A person or corporation engaged in the business of, or offering the services of, and owning a wrecker service or towing service whereby motor vehicles are or may be towed or otherwise removed from one place to another by the use of a motor vehicle manufactured and designed for the primary purpose of removing and towing disabled motor vehicles.
- (3) Car Carrier or "Rollback". A car carrier or rollback is a vehicle transport designed to tow or carry vehicles damage-free. The truck chassis shall have a minimum gross vehicle weight rating (GVWR) of 14,500 pounds. Two lift cylinders, minimum two and one-half inch bore; Individual power winch pulling capacity of not less than 8,000 pounds; a length of wire rope (cable) on winch drum with a working load limit (WLL) that meets or exceeds the pulling capacity of the power

winch utilized; and four tie down hook safety chains. The carrier bed shall be a minimum of 16 feet in length and a minimum of 84 inches in width inside side rails. A cab protector, constructed of aluminum or steel, must extend a minimum of 10 inches above the height of the bed. A "rollback" is not considered a small or large wrecker.

- (4) Computerized Rotation Wrecker List. The names of those Wrecker Services that have been approved by the District First Sergeant to be included on the Patrol Rotation Log and entered in the Computer Assisted Dispatch (CAD) System. There shall be separate rotation wrecker lists for large and small wreckers for each Rotation Wrecker Zone.
- (5) Debris. Includes any parts of a vehicle or material that may be strewn upon the surface of the roadway or highway right-of-way as a result of the collision and which may reasonably be cleared or removed. This definition shall also include any mud, soil, antifreeze, transmission, brake or other liquids/fluids that have been deposited onto the surface of the roadway as a result of a vehicle collision. Debris does not include cargo from property hauling vehicles or hazardous materials that are required to be handled by local hazardous materials teams.
- (6) Large Wrecker. A truck chassis having a minimum gross vehicle weight (GVWR) of 26,001 pounds and a boom assembly having a

- minimum lifting capacity of 40,000 pounds as rated by the manufacturer; tandem axles or cab to axle length of no less than 102 inches; a length of wire rope (cable) with a working load limit (WLL) that meets or exceeds the pulling capacity of the power winch utilized on each drum; airbrake so constructed as to lock wheels automatically upon failure; and additional safety equipment as specified by the rules in this Chapter.
- (7) Manual Rotation Wrecker List. A list of names of those wreckers that have been approved by the District First Sergeant to be included on the Patrol Rotation Wrecker List and entered into a Manual list that is to be used only when the CAD System is down. There shall be separate manual lists for large and small wreckers for each Rotation Wrecker Zone. These lists shall be maintained by the Troop Communications Center.
 - (8) Minor Violations. Violations of the rules in this Chapter which do not require removal for a definitive time, may be readily corrected, and do not involve a criminal act or pose a threat to the safety and well being of the public.
 - (9) Major Violations. All violations of the rules in this Chapter not determined to be minor.
 - (10) Open Enrollment Period. The period of time between November 1st and November 30th each calendar year in which applications or reapplications for inclusion to the Highway Patrol Rotation Wrecker List for the next calendar year may be submitted.
 - (11) Rotation Wrecker List. A list of wrecker services that have met the rules of the Patrol and whose vehicles are properly registered with the Division of Motor Vehicles.
 - (12) Removal. Being taken off the Patrol Rotation Wrecker List for a determinate or indeterminate period of time.
 - (13) Storage Facility. A lighted off street storage facility secured by a minimum 6 foot high chain link fence, or a fence of similar strength, or other barrier sufficient to deter trespassing or vandalism; and where all entrances and exits are secure from public access. The lot shall be of sufficient size to accommodate all vehicles towed by the wrecker service for the Patrol. Storage facilities shared by two or more wrecker services may not be used to satisfy the facility requirement in Rule .0321(a)(2) of this Section.
 - (14) Small Wrecker means a truck chassis having a minimum gross vehicle weight (GVWR) rating of 10,000 pounds and a maximum GVWR that does not exceed 26,000 pounds; a boom assembly having a minimum lifting power of 8,000 pounds as rated by the

- manufacturer; an 8,000 pound rated winch with a length of wire rope (cable) on winch drum with a working load limit (WLL) that meets or exceeds the pulling capacity of the power winch utilized; a belt-type tow plate or tow sling assembly; a wheel-lift with a retracted lifting capacity of no less than 3,500 pounds; dual rear wheels; and additional safety equipment as specified by the rules in this Chapter.
- (15) Rotation Wrecker Zone means a geographic area which may encompass all or part of a District of a Troop.
- (16) Member means all uniformed personnel of the Patrol who are charged with enforcement duties.

History Note: Authority G.S. 20-184; 20-185; 20-187; 20-188;
Temporary Adoption Eff. June 9, 2000;
Eff. April 1 2001;
Amended Eff. Pending Legislative Review.

14A NCAC 09H .0310 SECURING VEHICLES WHEN OPERATOR IS ARRESTED

Upon arresting or placing a vehicle operator in custody a member shall:

- (1) With consent of owner, operator, or legal possessor, allow another licensed, competent individual to drive or move the vehicle to a position off the roadway; or
- (2) If no licensed, competent operator is present, or if the owner, operator, or legal possessor will not consent to such removal:
 - (a) Move the vehicle, if necessary, to a position off the roadway, lock the vehicle and return the key to the owner, operator, or legal possessor, except that, in any case where the operator of the vehicle is arrested for DWI, a member shall either turn the keys over to the magistrate/jailer or to a sober, responsible person; or
 - (b) With or without consent of the owner, operator, or legal possessor, transport and store vehicle in accordance with 14A NCAC 09H .0311.

History Note: Authority G.S. 20-184; 20-185; 20-187; 20-188;
Temporary Adoption Eff. June 9, 2000;
Eff. April 1, 2001;
Amended Eff. Pending Legislative Review.

14A NCAC 09H .0311 VEHICLES TRANSPORTED AND STORED OVER OBJECTION OF OWNER

A member may transport and store a vehicle over the objection or without consent of the owner, operator, or legal possessor when:

- (1) The vehicle cannot be lawfully parked off the roadway; or
- (2) The vehicle is lawfully parked off the roadway but creates a hazard; or
- (3) The owner, operator, or legal possessor refuses or is unable to remove the vehicle from the roadway;
- (4) The vehicle is subject to seizure pursuant to G.S. 20-28.3 or other lawful authority.
- (5) The vehicle is being held pursuant to G.S. 20-96.

*History Note: Authority G.S. 20-184; 20-185; 20-187; 20-188;
Temporary Adoption Eff. June 9, 2000;
Eff. April 1, 2001;
Amended Eff. Pending Legislative Review.*

14A NCAC 09H .0313 TRANSPORTING AND STORING VEHICLES

- (a) A member shall arrange transportation and safe storage of a vehicle pursuant to this Rule.
- (b) A member who authorizes the transportation and storage of a vehicle shall, immediately notify the appropriate Communications Center and request a wrecker service in accordance with the rules in this Chapter and furnish information necessary to complete a Signal 4 (Report of Vehicle Stored or Recovered). The member shall notify the Communications Center in any case where a rollback should not be dispatched.
- (c) A member shall notify the Communications Center whenever he transports or stores a vehicle. If the vehicle is towed, stored, or removed to the shoulder of the road and left at the scene at the request of or with the consent of the owner, operator, or legal possessor, the member shall mark the applicable entries on the HP-305 and obtain the signature of the person making the request or giving the consent. Refusal to sign the HP-305 shall be deemed a withdrawal of the consent or request to tow. In such a situation, members shall be governed by Rule .0311 of this Section.
- (d) A member shall, when notified by a magistrate of a hearing regarding payment of towing or storage fees, appear in person at the hearing or file HP-305.1 "Affidavit" with the magistrate prior to the hearing.
- (e) When necessary for accident reconstruction or a criminal investigation in which multiple vehicles are involved in an incident, a single storage location shall be designated. The storage facility of the first wrecker service dispatched shall be used unless otherwise designated by a supervisor.
- (f) When necessary for an accident reconstruction or a criminal investigation, a member shall designate at which indoor or other storage facility a vehicle shall be stored to ensure preservation of the evidence. The storage facility shall be the first wrecker service dispatched unless otherwise designated by a supervisor.
- (g) DWI seized vehicles shall be towed and stored in accordance with instructions from the state or regional contractor.
- (h) Vehicles stored pursuant to G.S. 20-96 shall be held by the towing/storage company until all civil assessment(s) have been satisfied and release is approved by the investigating member.

*History Note: Authority G.S. 20-184; 20-185; 20-187; 20-188;
Temporary Adoption Eff. June 9, 2000;
Eff. April 1, 2001;
Amended Eff. Pending Legislative Review.*

14A NCAC 09H .0314 NOTIFICATION

(a) Unless exempted by vehicle seizure law, the Troop Communications Center must notify the registered owner when a vehicle is towed and stored. In order to accomplish this, the authorizing member shall immediately notify the appropriate Troop Communications Center of the following:

- (1) a description of the vehicle;
- (2) the place where the vehicle is stored;
- (3) the procedure the owner must follow to have the vehicle returned to him; and
- (4) the procedure the owner must follow to request a probable cause hearing on the towing.

(b) Upon notification by the member who authorized the towing or storage of a vehicle in the absence of the registered owner, the Troop Communications Center shall, as soon as practicable, attempt to notify the owner of such towing and/or storage. The Troop Communications Center shall attempt to contact the owner by telephone and provide the owner with the location of the vehicle. At least three attempts must be made for vehicles registered in North Carolina and one attempt for vehicles registered out-of-state. The Telecommunicator must record the person contacted or the attempts made.

(c) Whether or not the owner is reached by telephone, a copy of the HPC-305.2 (Vehicle Towing/Notification, which is computer-generated at the Troop Communications Center) shall be mailed to the last registered owner by the Troop Communications Center. In the absence of an HP-305 signed by the registered owner, Form HPC-305.2 shall be mailed to the owner within 24 hours. A duplicate copy of the HPC-305.2 is also computer-generated and will print automatically in the District office of the member.

(d) Whenever a vehicle with neither a valid registration plate nor registration is towed, in the absence of an HP-305 signed by the registered owner, the authorizing member shall attempt, including checking the vehicle identification number, to determine the last known registered owner of the vehicle and to notify him of the information listed in Paragraph (a) of this Rule.

(e) Whenever a vehicle is seized pursuant to G.S. 20-28.3, the charging officer shall complete and forward the appropriate DMV notification form to DMV and to the statewide contractor within 24 hours.

*History Note: Authority G.S. 20-184; 20-185; 20-187; 20-188; 20-28.3;
Temporary Adoption Eff. June 9, 2000;
Eff. April 1, 2001;
Amended Eff. Pending Legislative Review.*

14A NCAC 09H .0315 RELEASE OF VEHICLES

If no legal justification to hold the vehicle exists, a member shall immediately authorize the release of a stored vehicle to the owner upon proof of ownership.

History Note: Authority G.S. 20-184; 20-185; 20-187; 20-188;

Temporary Adoption Eff. June 9, 2000;

Eff. April 1, 2001;

Amended Eff. Pending Legislative Review.

14A NCAC 09H .0316 VEHICLE INVENTORY

(a) A member who authorizes the transportation and storage of a vehicle in the absence of Form HP-305 signed by the owner, operator, or legal possessor shall take precautions to protect all property in and on the vehicle prior to removal from the scene.

(b) An HP-305 signed by the owner, operator, or legal possessor is documentation that the vehicle was not removed from the possession of such person; therefore, the completion of a vehicle inventory is not required.

(c) The storage and security of the vehicle and its contents become the responsibility of the towing company when the vehicle is towed from the scene and stored at the wrecker service storage facility. If the vehicle is to be stored at a Patrol facility, the storing member shall conduct an inventory, itemizing all property contained in the vehicle.

(d) All vehicles which are inventoried pursuant to this Rule shall be inventoried at the time of storage unless an emergency situation dictates otherwise. The inventory must be complete, listing all items that are toxic, explosive, flammable, or of monetary value. Unless locked or securely wrapped, all containers in the vehicle, whether open or closed, shall be opened to determine contents unless evidence is discovered to indicate that opening the container may subject the member to exposure of toxic, flammable, or explosive substances. Locked or securely wrapped luggage, packages, and containers shall not be opened except as otherwise authorized by law or by owner consent, but shall be indicated on the inventory list as locked or securely wrapped items. Locked or securely wrapped containers (luggage, attaché cases, etc.) are considered as units of inventory and shall not be searched without obtaining consent or a search warrant unless there is evident danger to the member or public. The member shall seek to obtain a search warrant when there is probable cause for a search of the vehicle or its contents when time and conditions permit.

History Note: Authority G.S. 20-184; 20-185; 20-187; 20-188;

Temporary Adoption Eff. June 9, 2000;

Eff. April 1, 2001;

Amended Eff. Pending Legislative Review.

14A NCAC 09H .0317 REIMBURSEMENT OF WRECKER OPERATORS

(a) A member shall promptly obtain a statement of transportation and storage fees from the wrecker operator involved when the court orders the release of any vehicle without payment of transportation and storage costs. The member shall promptly transmit to the Director of Field Operations, through the chain-of-command, the statement and a

copy of the HP-305.1 in addition to any other relevant information.

(b) The Director of Field Operations shall, in consultation with the Patrol Commander, determine whether to appeal the action of the magistrate.

(c) The Patrol shall compensate the wrecker operator for reasonable transportation and storage fees in cases where no appeal is taken. When an appeal is taken, the Patrol shall not compensate wrecker operators until all appeals are exhausted.

History Note: Authority G.S. 20-184; 20-185; 20-187; 20-188;

Temporary Adoption Eff. June 9, 2000;

Eff. April 1, 2001;

Amended Eff. Pending Legislative Review.

14A NCAC 09H .0320 ROTATION, ZONE, CONTRACT, AND DEVIATION FROM SYSTEM

(a) The Troop Commander shall arrange for the Telecommunications Center to maintain a rotation wrecker system within each District of the Troop which shall include the following:

- (1) Separate computerized large and small rotation wrecker lists and manual rotation lists for the entire District whereby wrecker services are called in the order they appear on a list;
- (2) A zone system within the District with a rotation wrecker list being maintained in each Rotation Wrecker Zone;
- (3) A zone, contract or other system operated in conjunction with one or more local agencies; or
- (4) A combination of any such system.

(b) The Patrol shall use the wrecker service requested by the vehicle owner or person in apparent control of the motor vehicle to be towed. Patrol members shall not attempt to influence the person's choice of wrecker services, but may answer questions and provide factual information. If no such request is made, the Patrol system in place in the Rotation Wrecker Zone shall be used, absent an emergency.

(c) The Troop Commander may deviate from any provisions in this Rule in emergency situations if there are insufficient wrecker services of the type needed within a District to meet the needs of the Patrol.

(d) The Telecommunicator shall enter in the computerized log the name of the wrecker service contacted and the response by the service to the request. The date and time of the call is automatically recorded in the computerized log as well as the identification number of the Telecommunicator making the entry.

(e) In the event the computerized rotation wrecker list is not in service (CAD down), the member requesting wrecker service shall be notified by the Telecommunications Center and a wrecker from the manual rotation wrecker list shall be utilized. The Telecommunicator shall refer to the manual list that is maintained by the Telecommunicator Center Supervisor at each Communication Center. The wrecker service name shall be entered on the slip log, the slip log shall indicate CAD DOWN.

(f) Whenever vehicles are removed pursuant to G.S. 20-161(f), investigating member(s) may request the closest available zone rotation wrecker service or available Department of Transportation (DOT) resource for the purpose of removing the obstruction from the roadway. Members shall ensure that the requested wrecker service is capable of responding without delay, and is staffed and equipped to handle the request for service. All requests for assistance from DOT shall be made through the appropriate Telecommunications Center, where a list of on-duty/recall DOT personnel with the authority to concur with the decision to implement Quick Clearance shall be maintained.

*History Note: Authority G.S. 20-184; 20-185; 20-187; 20-188;
Temporary Adoption Eff. June 9, 2000;
Eff. April 1, 2001;
Amended Eff. Pending Legislative Review.*

14A NCAC 09H .0321 ROTATION WRECKER SERVICE REGULATIONS

(a) The Troop Commander shall include on the Patrol Rotation Wrecker List only those wrecker services which agree in writing to adhere to the provisions in this Rule.

- (1) A Highway Patrol Rotation Wrecker List shall be valid for the calendar year. A wrecker service desiring to be included on the Highway Patrol Rotation Wrecker List shall, on an annual basis complete a wrecker application on a form designated by the Patrol. Once included, wrecker services that desire to remain on the Highway Patrol Rotation Wrecker List shall reapply for inclusion annually on a form as may be designated by the Patrol. All initial applications and reapplications shall be submitted to the appropriate District First Sergeant during the annual "Open Enrollment" period of November 1st through November 30th each calendar year. Applications or reapplications for inclusion to the Highway Patrol Rotation Wrecker List shall be accepted during the annual "Open Enrollment" period.
- (2) In order to be listed on a rotation wrecker list within a zone, a wrecker service must have a full-time business office within that Rotation Wrecker Zone that is staffed and open during normal business hours of 8:00 a.m. to 5:00 p.m., Monday through Friday, excluding holidays, and a storage facility. The Wrecker service must have someone available to accept telephone calls from the Patrol, and to allow access to towed vehicles, or to retrieve towed vehicles by the registered owner, operator, or legal possessor during business hours. The business office may not be the same physical address as the owner's residence unless zoned for commercial purposes and advertised as a business property. A representative from the

wrecker service shall be available on call on a 24-hour basis, for emergencies. The wrecker service shall, at a minimum, allow vehicles to be retrieved between the hours of 8:00 a.m. to 5:00 p.m., seven days a week, excluding holidays. An individual (registered owner, legal possessor, or operator) shall not be charged a storage fee for days that he/she could not retrieve his/her vehicle as a result of an action or omission on the part of the wrecker service (such as where the wrecker service was not open, did not answer the telephone or a representative was not available to release the vehicle).

- (3) Wrecker service facilities and equipment, including vehicles, office, telephone lines, office equipment and storage facilities may not be shared with or otherwise located on the property of another wrecker service and must be independently insured. Vehicles towed at the request of the Patrol must be placed in the storage owned and operated by the wrecker service on the rotation list. A storage facility for a small wrecker shall be located within the assigned zone. For wrecker services with large wreckers the storage facility for vehicles towed with the large wrecker may be located anywhere within the county. To be listed on the large rotation wrecker list, a wrecker service must have at least one large wrecker. To be listed on the small rotation wrecker list, a wrecker service must have at least one small wrecker. In any case where husband and wife or other family members are engaged in the business of towing vehicles and desire to list each business separately on the Patrol wrecker rotation list, the wrecker service shall establish that it is a separate legal entity for every purpose, including federal and state tax purposes.
- (4) Each wrecker must be equipped with legally required lighting and other safety equipment to protect the public and such equipment must be in good working order.
- (5) Each wrecker on the Patrol Rotation Wrecker List must be equipped with the equipment required on the application list and such equipment must, at all times, be operating properly.
- (6) The wrecker service operator must remove all debris, other than hazardous materials, from the highway and the right-of-way prior to leaving the incident/collision scene. This service must be completed as a part of the required rotation service and shall not be charged as an extra service provided. Hazardous materials consist of those materials and amounts that are required by law to be handled by local Hazardous Materials Teams.

- Hazardous Materials or road clean-up other than debris may be billed in quarter hour increments after the first hour on scene.
- (7) The wrecker service must be available to the Patrol for rotation service on a 24-hour per day basis and accept collect calls (if applicable) from the Patrol. Calls for service must not go unanswered for any reason.
 - (8) The wrecker service shall respond, under normal conditions, in a timely manner. Failure to respond in a timely manner may result in a second rotation wrecker being requested. If the second wrecker is requested before the arrival of the first rotation wrecker, the initial requested wrecker shall forfeit the call and shall immediately leave the collision/incident scene.
 - (9) For Patrol-involved incidents, the wrecker service shall respond only upon request from Patrol authority or at the request of the person in apparent control of the vehicle to be towed.
 - (10) The wrecker service shall present one bill to the owner or operator of any towed vehicle. Towing, storage and related fees charged may not be greater than fees charged for the same service for non-rotation calls. Wrecker services may secure assistance from another rotation wrecker service when necessary, but only one bill shall be presented to the owner or operator of the vehicle for the work performed. A price list for recovery, towing and storage shall be established and kept on file at the place of business. A price list for all small wreckers and rollbacks with a GVWR of less than 26,001 pounds shall be furnished, in writing on a Patrol form, to the District First Sergeant during the annual "Open Enrollment" period with an effective date of January 1st of the following year. The District First Sergeant shall cause this price list to be filed under the appropriate wrecker service file located in the district office. Vehicle storage per day indicated on the price list for all small wreckers and rollbacks with a GVWR of less than 26,001 pounds shall not exceed the maximum amount allowed by G.S. 20-28.3. Storage fees shall not begin to accrue until the next calendar day following the initial towing of the vehicle. Wrecker service towing fees for recovery and transport of vehicles after 5:00 p.m. and on weekends may not exceed the towing fees for recovery and transport of vehicles charged during regular "Business Hours" by more than 10 percent. A mileage fee may only be charged if the customer requests the vehicle to be towed to a location outside of the assigned wrecker zone or county. If a mileage fee is warranted, the wrecker driver shall inform the owner, operator or legal possessor of the vehicle of any additional charge for mileage prior to towing. Each Troop Commander shall designate a Troop Lieutenant to serve as a Rotation Wrecker Liaison for their respective Troop. Price lists for all small wreckers and rollbacks with a GVWR of less than 26,001 pounds shall then be forwarded to the appropriate Rotation Wrecker Liaison Lieutenant who shall review all price lists submitted for consideration in their respective Troop based upon a median of all proposed fees submitted in that Troop. Wrecker Services that submit fees that are determined to exceed the median fee by more than 15 percent shall be notified by the appropriate District First Sergeant and may resubmit fees one additional time within five business days of notification. Re-submission of a price list that continues to exceed the median fee by more than 15 percent will disqualify the wrecker service from the Highway Patrol's Rotation Wrecker System until the next "Open Enrollment" which will commence on 1 November of the following year. The individual price list for each respective wrecker service shall be in effect beginning 1 January for the next calendar year and shall be made available to customers upon request. Copies of the approved price list shall be maintained within each wrecker and shall be given to the owner, operator or legal possessor of a vehicle being towed as a result of a Highway Patrol rotation wrecker call by the wrecker driver, if the owner, operator or legal possessor of the vehicle being towed is present at the scene. Prices indicated on this form shall be the maximum amount that will be charged for a particular service and may not be increased during the specific calendar year in which they were approved; however, this does not prevent charges of a lesser amount for said service.
 - (11) All wrecker operators shall have a valid drivers license for the type of vehicles driven; a limited driving privilege shall not be allowed.
 - (12) Wrecker owners, operators and employees shall not be abusive, disrespectful, or use profane language when dealing with the public or any member of the Patrol and shall cooperate at all times with members of the Patrol.
 - (13) The wrecker service shall adhere to all Federal and State laws and local ordinances and regulations related to registration and operation of wrecker service vehicles and have insurance as required by G.S. 20-309(a).
 - (14) The wrecker service shall employ only wrecker operators who demonstrate an ability

- to perform required services in a safe, timely, efficient and courteous manner and who satisfy all of the requirements for wrecker drivers established or referenced herein.
- (15) The wrecker service must immediately notify the District First Sergeant of any insurance lapse or change. Wrecker Services shall ensure the NC Highway Patrol is listed as "Certificate Holder" on the Certificate of Liability Insurance, in c/o the District First Sergeant, complete with the current mailing address for the Highway Patrol District Office tasked with the responsibility for ensuring compliance with Highway Patrol policy regarding the respective wrecker service.
 - (16) The wrecker service shall notify the Patrol without delay whenever the wrecker service is unable to respond to calls.
 - (17) Notification of rotation wrecker calls shall be made to the owner/operator or employee of the wrecker service. Notification shall not be made to any answering service, pager or answering machine.
 - (18) Wrecker service vehicles shall be marked on each side by printing the wrecker service name, city and state in at least three inch letters. No magnetic or stick-on signs shall be used. Decals are permissible. The wrecker service operator shall provide a business card to the investigating officer or person in apparent control of the vehicle before leaving the scene.
 - (19) Each wrecker service vehicle must be registered with the Division of Motor Vehicles in the name of the wrecker service and insured by the wrecker service. Dealer tags shall not be displayed on wreckers that respond to rotation calls.
 - (20) Secure all personal property at the scene of a collision to the extent possible, and preserve personal property in a vehicle which is about to be towed.
 - (21) Upon application to the Patrol Rotation Wrecker List, the owner shall ensure that the owner and each wrecker driver has not been convicted of, pled guilty to, or received a prayer for judgment continued (PJC):
 - (A) Within the last five years of:
 - (i) A first offense under G.S. 20-138.1, G.S. 20-138.2, G.S. 20-138.2A or G.S. 20-138.2B;
 - (ii) Any misdemeanor involving an assault, an affray, disorderly conduct, being drunk and disruptive, larceny or fraud;
 - (iii) Misdemeanor Speeding to Elude Arrest; or
 - (B) Within the last ten years of:
 - (i) Two or more offenses in violation of G.S. 20-138.1, G.S. 20-138.2, G.S. 20-138.2A or G.S. 20-138.2B;
 - (ii) Felony speeding to elude arrest; or
 - (iii) Any Class F, G, H or I felony involving sexual assault, assault, affray, disorderly conduct, being drunk and disruptive, fraud, larceny, misappropriation of property or embezzlement.
 - (C) At any time of:
 - (i) Class A, B1, B2, C, D, or E felonies;
 - (ii) Any violation of G.S. 14-34.2, Assault with deadly weapon on a government officer or employee, 14-34.5, Assault with firearm on a law enforcement officer; or G.S. 14-34.7, Assault on law enforcement officer inflicting injury;
 - (iii) Any violation of G.S. 20-138.5, Habitual DWI. For convictions occurring in federal court, another state or country or for North Carolina convictions for felonies which were not assigned a class at the time of conviction, the North Carolina offense which is substantially similar to the federal or out of state conviction or the class of felony which is substantially similar to the North Carolina felony shall be used to determine whether the owner or driver is eligible. Any question concerning a criminal record shall be discussed with the First Sergeant or his designee; or
 - (iv) Three felony offenses in any federal or state court or combination thereof. The commission of a felony shall not be considered to be a second or subsequent felony unless it is committed after the conviction or guilty plea to the previous felony.

- (22) Immediately upon employment or upon the request of the District First Sergeant, the owner of the wrecker service shall supply the Patrol with the full name, current address, date of birth, and photo copy of drivers license, valid work VISA, or other INS Documentation for all wrecker drivers and owner(s) in order for the Patrol to obtain criminal history information. The Wrecker Service shall also provide a certified copy of the driving record for the owner and each driver authorized to drive on rotation upon initial application and upon the hiring of a driver if hired after initial application. Following this initial request the Wrecker Service shall provide a certified copy of the driving record for the owner and each rotation wrecker driver under their employment at the time of periodic wrecker inspections. If the owner or a driver is charged with, convicted of, enters a plea of guilty or no contest to, or receives a prayer for judgment continued (PJC) for any of the crimes listed in Subparagraph (21) of this Paragraph. After a wrecker service is placed on the rotation, the wrecker service shall inform the District First Sergeant immediately. Upon notification that a driver or owner was charged with any of the crimes listed in this Rule. The Patrol may conduct an independent administrative investigation. Willful failure to notify the District First Sergeant as required herein shall result in removal from the rotation wrecker service for a minimum of 12 months.
- (23) Upon request or demand, the rotation wrecker shall return personal property stored in or with a vehicle, whether or not the towing, repair, or storage fee on the vehicle has been or will be paid. Personal property, for purposes of this provision, includes any goods, wares, freight, or any other property having any value whatsoever other than the functioning vehicle itself.
- (24) The wrecker service shall tow disabled vehicles to any destination requested by the vehicle owner or other person with apparent authority, after financial obligations have been finalized.
- (25) Unless the vehicle is being preserved by the Patrol as evidence, the wrecker service shall allow insurance adjusters access to and allow inspection of the vehicle at any time during normal working hours.
- (26) Being called by the Patrol, to tow a vehicle, does not create a contract with or obligation on the part of Patrol or Patrol personnel to pay any fee or towing charge except when towing a vehicle owned by the Patrol, a vehicle that is later forfeited to the Patrol, or if a court determines that the Patrol wrongfully authorized the tow and orders the Patrol to pay transportation and storage fees.
- (27) Being placed on the Patrol Rotation Wrecker List does not guarantee a particular number or quantity of calls, does not guarantee an equivalent number of calls to every wrecker service on the rotation wrecker list, nor entitle any wrecker service to any compensation as a consequence for not being called in accordance with the list or when removed from the rotation wrecker list.
- (28) The failure to respond to a call by the Patrol shall result in the wrecker service being placed at the bottom of any rotation wrecker list and the wrecker service shall then be "automatically by-passed" when that wrecker service comes up for its next rotation call.
- (29) The District First Sergeant or his designee shall periodically or unannounced subject rotation wreckers and facilities to inspections during normal business hours.
- (30) A rotation wrecker service, upon accepting a call for service from the Patrol, must use its wrecker. Wrecker companies shall not refer a call to another wrecker company or substitute for each other.
- (31) If a rotation wrecker service moves its business location or has a change of address, the owner of the wrecker service must notify the District First Sergeant of the new address or location. Notification shall be made in writing, no later than ten days prior to the projected move. The wrecker service shall not be entitled to receive rotation calls prior to inspection of the new facility.
- (32) A wrecker service may dispatch either a wrecker or a car carrier "rollback" in response to a Patrol rotation wrecker call, except where the wrecker service is advised that a particular type of recovery vehicle is needed due to existing circumstances.
- (33) A rotation wrecker driver or employee shall not respond to a Patrol related incident with the odor of alcohol on his/her breath or while under the influence of alcohol, drugs or any impairing substance.
- (34) A wrecker service shall have in effect a valid hook or cargo insurance policy issued by a company authorized to do business in the State of North Carolina in the amount of fifty thousand dollars (\$50,000) for each small wrecker and one hundred fifty thousand dollars (\$150,000) for each large wrecker or as otherwise required by Federal regulation, whichever is greater. In addition, each wrecker service shall have a garage keeper's insurance policy from an insurance company authorized to do business in the State of North Carolina covering towed vehicles in the

amount of one hundred thousand dollars (\$100,000).

(b) The District First Sergeant shall conduct an investigation of each wrecker service desiring to be placed on the Patrol Rotation Wrecker List and determine if the wrecker service meets the requirements set forth in this Rule. If the District First Sergeant determines that a wrecker service fails to satisfy one or more of the requirements set forth in this Rule, the First Sergeant shall notify the wrecker service owner of the reason(s) for refusing to place it on the rotation wrecker list. Once placed on the rotation wrecker list, a wrecker service shall remain on that list for the remainder of the calendar year. Any wrecker service that fails to comply with the requirements of these rules may be removed from the rotation wrecker list.

(c) The Troop Commander or designee shall ensure that a wrecker service will only be included once on each rotation wrecker list. Exceptions to this requirement may be made for specialized or large capacity wreckers when none are available for a County or zone.

(d) If the Troop Commander or designee chooses to use a contract, zone, or other system administered by a local agency, the local agency rules govern the system.

(e) If a wrecker service responds to a call it shall be placed at the bottom of the rotation wrecker list unless the wrecker service, through no fault of its own, is not used and receives no compensation for the call. In that event, it shall be placed back at the top of the rotation list.

History Note: Authority G.S. 20-184; 20-185; 20-187; 20-188;
Temporary Adoption Eff. June 9, 2000;
Eff. April 1, 2001;
Amended Eff. Pending Legislative Review.

14A NCAC 09H .0322 RECORDING WRECKER REQUESTS/INCIDENTS

(a) Members investigating collisions shall enter on the Collision Report Form the authorization for removal of vehicles from the scene.

(b) Members shall submit written verification of wrecker requests on Patrol Form HP-305.

(c) Members observing any violations of the rotation wrecker rules shall notify the District First Sergeant.

(d) Complaints concerning any wrecker service on the rotation wrecker list, whether instituted by the public or by a member, shall be investigated by the District First Sergeant or designee.

History Note: Authority G.S. 20-184; 20-185; 20-187; 20-188;
Temporary Adoption Eff. June 9, 2000;
Eff. April 1, 2001;
Amended Eff. Pending Legislative Review.

14A NCAC 09H .0323 SANCTIONS FOR VIOLATIONS

(a) If a District First Sergeant determines that a violation of the rules in this Section has occurred, the First Sergeant may:

- (1) Issue a written warning and request for compliance;

- (2) Remove the wrecker service from the rotation wrecker list until corrective measures have been taken to bring the wrecker service into compliance with the Rules in this Section and verification of such compliance has been demonstrated; or

- (3) Remove the wrecker service from the rotation wrecker list for a specific period of time.

(b) The severity of the sanction imposed shall be commensurate with the nature of the violation and prior record of the wrecker service.

(c) If a wrecker service owner commits, is convicted of, pleads guilty to or receives a prayer for judgment continued for any of the offenses specified in 14A NCAC 09H .0321(a)(21), the wrecker service shall be removed from the rotation wrecker list for the designated period of time as set out in that Rule. If a wrecker service owner is charged with any of the offenses specified in 14A NCAC 09H .0321(a)(21), the wrecker service may be removed from the rotation wrecker list for the designated period of time prior to conviction only if an administrative investigation by the Patrol corroborates the commission of the offense. In such cases, the period of ineligibility shall commence on the date of removal.

(d) A wrecker service shall not employ or continue to employ, as a driver, any person who commits, is convicted of, pleads guilty to or receives a prayer for judgment continued for any of the offenses specified in 14A NCAC 09H .0321(a)(21). This prohibition is for the designated period of time as set out in that Rule. A wrecker service that willfully violates this provision shall be removed from the rotation wrecker list for a minimum of 12 months.

(e) A wrecker service driver or owner who responds to a Patrol related incident with an odor of alcohol on his/her breath shall immediately be removed from the rotation wrecker list for not less than 12 months. If the owner was not the driver and had no knowledge that the driver had been drinking, the wrecker service shall not be removed if the driver is prohibited from responding to Patrol calls for not less than 12 months. This period of removal is in addition to any removal that may result as a consequence of a conviction, plea of guilty or prayer for judgment continued (PJC) pursuant to 14A NCAC 09H .0321(a)(21).

(f) A wrecker service driver or owner who responds to a Patrol related incident with an odor of alcohol on his/her breath, and who refuses to submit to any requested chemical analysis, shall immediately be removed from the rotation wrecker list for a period of five years. If the owner was not the driver and had no knowledge that the driver had been drinking, the wrecker service shall not be removed if the driver is prohibited from responding to Patrol calls for one year. This period of removal is in addition to any removal that may result as a consequence of a conviction, plea of guilty or prayer for judgment continued (PJC) pursuant to 14A NCAC 09H .0321(a)(21).

(g) A willful misrepresentation of any material fact may result in removal from the rotation wrecker list.

(h) For any violation of these rules for which no specific period of removal or disqualification is established, a wrecker service shall be removed, at a minimum, until the violation is corrected.

(i) A wrecker service that is removed from the rotation wrecker list remains ineligible for reinstatement even if ownership has been transferred to a family member.

(j) A wrecker service which is removed from the rotation list must demonstrate compliance with all rules in this Section in order to be reinstated.

History Note: Authority G.S. 20-184; 20-185; 20-187; 20-188;

Temporary Adoption Eff. June 9, 2000;

Eff. April 1, 2001;

Amended Eff. Pending Legislative Review.

14A NCAC 09H .0324 HEARING PROCEDURES

(a) If the District First Sergeant refuses to include a wrecker service on the rotation wrecker list, the wrecker service may appeal the First Sergeant's decision, in writing, to the Troop Commander or designee within 20 calendar days of receipt of the decision. The Troop Commander or designee may, conduct a hearing or review the record. In either event, the Troop Commander or designee shall render a decision, in writing, within 10 calendar days of receipt of the appeal. The Troop Commander or designee's decision, if unfavorable, may be appealed to the Office of Administrative Hearings (OAH), within 60 calendar days of receipt of the decision, pursuant to the provisions of G.S. 150B.

(b) If a District First Sergeant issues a written warning to a wrecker service for a violation of any of the rules in this Section, the wrecker service may, within 20 days of receipt of the warning, submit a written response to the First Sergeant in mitigation, explanation or rebuttal. After considering the mitigation, explanation or rebuttal, the First Sergeant may reconsider, and remove the written warning.

(c) If a District First Sergeant determines that a violation of the rules in this Section has occurred, and determines that removal from the rotation wrecker list may be warranted, the District First Sergeant shall notify the affected wrecker service, in writing, of this determination and afford the wrecker service an opportunity to be heard. The hearing shall take place within 10 calendar days of actual notice or, if notice is by first class mail, within 13 days of the date the notice is placed in the mail. The hearing shall take place within 10 calendar days of the request for hearing and not less than three days written notice. If a District First Sergeant removes a wrecker service from the rotation wrecker list, the wrecker service may appeal the removal to the Troop Commander or designee, in writing, within 20 calendar days of receipt of the notice. The Troop Commander or designee, may conduct a hearing or review the record. If the Troop Commander or designee decides to conduct a hearing, he shall give the wrecker service not less than 10 calendar days notice. The Troop Commander or designee shall render a decision, in writing, within 10 calendar days of receipt of the appeal or date of the hearing, whichever occurs last. The Troop Commander or designee's decision, if unfavorable, may be appealed to the Office of Administrative Hearings (OAH), within 60 calendar days, pursuant to the provisions of G.S. 150B.

(d) Hearings conducted by District First Sergeants or Troop Commanders or their designees shall be informal and no party shall be represented by legal counsel.

(e) A wrecker service that is removed from the rotation wrecker list and subsequently placed back on the list, for any reason, shall not be entitled to additional calls, priority listing or any other form of compensation.

(f) Ordinarily, a wrecker service may remain on the rotation wrecker list pending a final decision of the Troop Commander or designee. A District First Sergeant, with the concurrence of the Troop Commander or designee, may, however, summarily remove a wrecker service from the rotation wrecker list in those cases where there exists reasonable grounds to believe a violation enumerated in 14A NCAC 09H .0321(a)(12), (a)(20), or (a)(31) or any other violation relating to licensing, registration, insurance requirements or the safe and proper operation of the business or which may jeopardize the public health, safety or welfare.

History Note: Authority G.S. 20-184; 20-185; 20-187; 20-188;

Temporary Adoption Eff. June 9, 2000;

Eff. April 1, 2001;

Amended Eff. Pending Legislative Review.

TITLE 15A – DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

15A NCAC 07H .0306 GENERAL USE STANDARDS FOR OCEAN HAZARD AREAS

(a) In order to protect life and property, all development not otherwise specifically exempted or allowed by law or elsewhere in the CRC's Rules shall be located according to whichever of the following is applicable:

- (1) If neither a primary nor frontal dune exists in the AEC on or landward of the lot on which the development is proposed, the development shall be landward of the erosion setback line. The erosion setback line shall be set at a distance of 30 times the long-term annual erosion rate from the first line of stable natural vegetation or measurement line, where applicable. In areas where the rate is less than two feet per year, the setback line shall be 60 feet from the vegetation line or measurement line, where applicable.
- (2) If a primary dune exists in the AEC on or landward of the lot on which the development is proposed, the development shall be landward of the crest of the primary dune or the long-term erosion setback line, whichever is farthest from the first line of stable natural vegetation or measurement line, where applicable. For existing lots, however, where setting the development landward of the crest of the primary dune would preclude any practical use of the lot, development may be

located seaward of the primary dune. In such cases, the development shall be located landward of the long-term erosion setback line and shall not be located on or in front of a frontal dune. The words "existing lots" in this Rule shall mean a lot or tract of land which, as of June 1, 1979, is specifically described in a recorded plat and which cannot be enlarged by combining the lot or tract of land with a contiguous lot(s) or tract(s) of land under the same ownership.

- (3) If no primary dune exists, but a frontal dune does exist in the AEC on or landward of the lot on which the development is proposed, the development shall be set landward of the frontal dune or landward of the long-term erosion setback line, whichever is farthest from the first line of stable natural vegetation or measurement line, where applicable.
- (4) Because large structures located immediately along the Atlantic Ocean present increased risk of loss of life and property, increased potential for eventual loss or damage to the public beach area and other important natural features along the oceanfront, increased potential for higher public costs for federal flood insurance, erosion control, storm protection, disaster relief and provision of public services such as water and sewer, and increased difficulty and expense of relocation in the event of future shoreline loss, a greater oceanfront setback is required for these structures than is the case with smaller structures. Therefore, in addition to meeting the criteria in this Rule for setback landward of the primary or frontal dune or both the primary and frontal dunes, for all multi-family residential structures (including motels, hotels, condominiums and moteliminiums) of more than 5,000 square feet total floor area, and for any non-residential structure with a total area of more than 5,000 square feet, the erosion setback line shall be twice the erosion setback as established in Subparagraph (a)(1) of this Rule, provided that in no case shall this distance be less than 120 feet. In areas where the rate is more than 3.5 feet per year, this setback line shall be set at a distance of 30 times the long-term annual erosion rate plus 105 feet.
- (5) Structural additions or increases in the footprint or total floor area of a building or structure represent expansions to the principal structure and both shall meet the setback requirements established in Paragraph (a) of this Rule and Rule .0309(a) of this Section. The enclosure of existing roof covered porches shall be exempt from this requirement if the footprint is not expanded, modifications to existing foundations are not required and the

existing porch is located landward of the vegetation line or measurement line which ever is applicable. New development landward of the applicable setback may be cosmetically, but shall not be structurally, attached to an existing structure that does not conform with current setback requirements.

- (6) Established common-law and statutory public rights of access to and use of public trust lands and waters in ocean hazard areas shall not be eliminated or restricted. Development shall not encroach upon public accessways nor shall it limit the intended use of the accessways.
 - (b) In order to avoid weakening the protective nature of ocean beaches and primary and frontal dunes, no development shall be permitted that involves the removal or relocation of primary or frontal dune sand or vegetation thereon which would adversely affect the integrity of the dune. Other dunes within the ocean hazard area shall not be disturbed unless the development of the property is otherwise impracticable, and any disturbance of any other dunes shall be allowed only to the extent allowed by Rule .0308(b) of this Section.
 - (c) Development shall not cause irreversible damage to documented historic architectural or archaeological resources documented by the Division of Archives and History, the National Historical Registry, the local land-use plan, or other sources.
 - (d) Development shall comply with minimum lot size and set back requirements established by local regulations.
 - (e) Mobile homes shall not be placed within the high hazard flood area unless they are within mobile home parks existing as of June 1, 1979.
 - (f) Development shall comply with general management objective for ocean hazard areas set forth in Rule .0303 of this Section.
 - (g) Development shall not interfere with legal access to, or use of, public resources nor shall such development increase the risk of damage to public trust areas.
 - (h) Development proposals shall incorporate measures to avoid or minimize adverse impacts of the project. These measures shall be implemented at the applicant's expense and may include actions that:
 - (1) minimize or avoid adverse impacts by limiting the magnitude or degree of the action,
 - (2) restore the affected environment, or
 - (3) compensate for the adverse impacts by replacing or providing substitute resources.
 - (i) Prior to the issuance of any permit for development in the ocean hazard AECs, there shall be a written acknowledgment from the applicant to DCM that the applicant is aware of the risks associated with development in this hazardous area and the limited suitability of this area for permanent structures. By granting permits, the Coastal Resources Commission does not guarantee the safety of the development and assumes no liability for future damage to the development.
 - (j) All relocation of structures require permit approval. Structures relocated with public funds shall comply with the applicable setback line as well as other applicable AEC rules. Structures including septic tanks and other essential accessories

relocated entirely with non-public funds shall be relocated the maximum feasible distance landward of the present location; septic tanks may not be located seaward of the primary structure. In these cases, all other applicable local and state rules shall be met.

(k) Permits shall include the condition that any structure shall be relocated or dismantled when it becomes imminently threatened by changes in shoreline configuration as defined in 07H .0308(a)(2)(B). The structure(s) shall be relocated or dismantled within two years of the time when it becomes imminently threatened, and in any case upon its collapse or subsidence. However, if natural shoreline recovery or beach renourishment takes place within two years of the time the structure becomes imminently threatened, so that the structure is no longer imminently threatened, then it need not be relocated or dismantled at that time. This condition shall not affect the permit holder's right to seek authorization of temporary protective measures allowed under Rule .0308(a)(2) of this Section.

History Note: Authority G.S. 113A-107; 113A-113(b)(6); 113A-124; Eff. September 9, 1977; Amended Eff. December 1, 1991; March 1, 1988; September 1, 1986; December 1, 1985; RRC Objection due to ambiguity Eff. January 24, 1992; Amended Eff. March 1, 1992; RRC Objection due to ambiguity Eff. May 21, 1992; Amended Eff. February 1, 1993; October 1, 1992; June 19, 1992; RRC Objection due to ambiguity Eff. May 18, 1995; Amended Eff. April 1, 2007; November 1, 2004; June 27, 1995.

15A NCAC 13A .0106 IDENTIFICATION AND LISTING OF HAZARDOUS WASTES - PART 261

- (a) 40 CFR 261.1 through 261.9 (Subpart A), "General", are incorporated by reference including subsequent amendments and editions.
- (b) 40 CFR 261.10 through 261.11 (Subpart B), "Criteria for Identifying the Characteristics of Hazardous Waste and for Listing Hazardous Waste", are incorporated by reference including subsequent amendments and editions.
- (c) 40 CFR 261.20 through 261.24 (Subpart C), "Characteristics of Hazardous Waste" are incorporated by reference including subsequent amendments and editions.
- (d) 40 CFR 261.30 through 261.37 Subpart D), "Lists of Hazardous Wastes" are incorporated by reference including subsequent amendments and editions.
- (e) 40 CFR 261.38 through 261.41 (Subpart E), "Exclusions/Exemptions" are incorporated by reference including subsequent amendments and editions.
- (f) The Appendices to 40 CFR Part 261 are incorporated by reference including subsequent amendments and editions.

History Note: Authority G.S. 130A-294(c); 150B-21.6; Eff. November 19, 1980;

Amended Eff. June 1, 1988; February 1, 1988; December 1, 1987; August 1, 1987; Transferred and Recodified from 10 NCAC 10F .0029 Eff. April 4, 1990; Recodified from 15A NCAC 13A .0007 Eff. August 30, 1990; Amended Eff. January 1, 1996; April 1, 1993; February 1, 1992; December 1, 1990; Recodified from 15A NCAC 13A .0006 Eff. December 20, 1996; Amended Eff. April 1, 2007; August 1, 2000.

TITLE 18 – DEPARTMENT OF SECRETARY OF STATE

18 NCAC 07A .0101 LOCATION AND HOURS

History Note: Authority G.S. 143A-23; Eff. February 1, 1976; Amended Eff. August 1, 2000; January 1, 1995; September 1, 1986; Repealed Eff. April 1, 2007.

18 NCAC 07A .0202 INVESTIGATIONS

History Note: Authority G.S. 10A-4(c); 10A-13(d); Eff. February 1, 1976; Amended Eff. January 1, 1995; Repealed Eff. April 1, 2007.

18 NCAC 07A .0204 DISPOSITION OF COMMISSIONS

18 NCAC 07A .0205 FEE REQUIREMENTS FOR REAPPOINTMENT

18 NCAC 07A .0207 REVOCATION OF COMMISSIONS

18 NCAC 07A .0208 CERTIFICATES OF AUTHORITY

History Note: Authority G.S. 10A-6; 10A-7; 10A-8; 10A-9(f); 10A-13(d); 147-37; 150B-19(5); Eff. February 1, 1976; Amended Eff. August 1, 2000; January 1, 1995; September 1, 1976; Repealed Eff. April 1, 2007.

SECTION .0300 - NOTARY PUBLIC EDUCATION PROGRAM

18 NCAC 07A .0301 APPROVED COURSE OF STUDY
18 NCAC 07A .0302 INSTRUCTORS
18 NCAC 07A .0303 APPROVED MANUAL

History Note: Authority G.S. 10A-4(b)(3); 10A-7; Eff. September 1, 1986; Amended Eff. August 1, 2000; March 1, 1996; Repealed Eff. April 1, 2007.

18 NCAC 07B .0101 SCOPE

The rules in this Subchapter implement Chapter 10B of the General Statutes, the Notary Public and Electronic Notary Acts. The rules govern the qualification, commissioning, notarial acts, conduct and discipline of notaries as Constitutional officers of the State.

History Note: Authority G.S. 10B-2; 10B-14(f); 10B-102; 10B-125(b); Eff. April 1, 2007.

18 NCAC 07B .0102 DEFINITIONS

- (a) The definitions in G.S. 10B-3 apply to this Subchapter.
- (b) For purposes of Chapter 10B of the General Statutes and Subchapters 07B and 07C of this Chapter:
 - (1) "Applicant" means an individual who seeks appointment or reappointment to the office of notary public;
 - (2) "Appoint" or "Appointment" means the naming of an individual to the office of notary public after determination that the individual has complied with Chapter 10B of the General Statutes and Subchapter 07B of this Chapter. For the purposes of these Rules, the terms "appoint", "reappoint", "appointment", "reappointment", "commission", "recommission", "commissioning", and "recommissioning" all refer to the term "commission" as defined in G.S. 10B-3(4) or to the process of acquiring or maintaining such commission;
 - (3) "Appointee" means an individual who has been appointed or reappointed to the office of notary public but has not yet taken the oath of office to be commissioned;
 - (4) "Commissioning date" means the date of commissioning or recommissioning as entered on a commission certificate;
 - (5) "Crime" means a crime or:
 - (A) Attempt to commit a crime;
 - (B) Accessory to commission of a crime;
 - (C) Aiding and abetting of a crime;
 - (D) Conspiracy to commit a crime; or
 - (E) Solicitation to commit a crime.
 - (6) "Division" means the Notary Public Section of the North Carolina Department of the Secretary of State.

History Note: Authority G.S. 10B-14(f); Eff. April 1, 2007.

18 NCAC 07B .0103 LOCATION, HOURS AND CONTACT INFORMATION

- (a) Mailing Address. The mailing address for the Division of Certification and Filing, Notary Public Section is P.O. Box 29626, Raleigh, NC 27626-0626.
- (b) Hours. Office hours for the public are 8:00 a.m. to 4:00 p.m. Monday through Friday with the exception of state holidays.

(c) Contacting the Division. In addition to contacting the Division by mail as provided in Paragraph (a) of this Rule, contact with the Division may be by:

- (1) On-line information service: The Department provides on-line information services at its website: www.sosnc.com.
- (2) Electronic Mail: For basic information the Notary Public Section may be contacted by email at notary@sosnc.com. Electronic mail shall not be used for filing applications.
- (3) Telephone Number: The telephone number for Notary Customer Service is (919) 807-2219.
- (4) Fax Number: To send information to the Notary Public Section via fax, the number is (919) 807-2210.

History Note: Authority G.S. 10B-14(f); 147-34; Eff. April 1, 2007.

18 NCAC 07B .0104 FORMS

All forms issued pursuant to Chapter 10B of the General Statutes may be found on the Department's website or may be obtained by contacting the Department using one of the means set out in Rule .0103 of this Subchapter.

History Note: Authority G.S. 10B-2; 10B-14(f); Eff. April 1, 2007.

18 NCAC 07B .0105 FEES

- (a) Fees shall be paid by a personal or business check, a money order, or a cashier's check in U.S. dollars and cents made payable to the N.C. Department of the Secretary of State.
- (b) Fees for on-line applications may be paid by an automated clearinghouse debit account (ACH).
- (c) If a fee is paid with a check or other instrument which is returned by the institution upon which it was issued for "insufficient funds" or for other similar reason:
 - (1) The Division shall issue a notice of intent to deny the application or revoke the commission; and
 - (2) The Division shall issue a denial or revocation if the fee is not paid in full within 10 business days after the date on the notice of intent to deny or revoke.
 - (3) The Division shall charge a twenty-five dollar (\$25.00) fee for which payment has been refused by the payor's bank for insufficient funds or for no account.

History Note: Authority G.S. 10B-14(f); 25-3-506; 147-37; Eff. April 1, 2007.

18 NCAC 07B .0106 WAIVER

The Director may waive any rule in this Subchapter that is not statutorily required based on the factors set forth in Rule .0901 of this Chapter.

History Note: Authority G.S. 10B-14(f); 147-36;

Eff. April 1, 2007.

18 NCAC 07B .0107 CONTINUING OBLIGATIONS OF NOTARIES

(a) A notary shall notify the Director of changes in name, address or county as required by G.S. 10B-50, 10B-51, and 10B-53.

(b) A notary shall notify the Director that the notary has been convicted of a crime as set out in G.S. 10B-3(9) and Rule .0201 of this Subchapter, within 45 days of the date on which judgment is entered.

(c) A notary shall notify the Director of changes in:

- (1) Residency or place of work to a location outside the State of North Carolina;
- (2) Residency status in the United States;
- (3) Ability to speak, read and write the English language;
- (4) A finding or admission of liability in a civil lawsuit based upon the notary's deceit;
- (5) Revocation, suspension, restriction, or denial of a professional license by the State of North Carolina or any other state or nation;
- (6) A finding that the notary has engaged in official misconduct, whether or not disciplinary action resulted;
- (7) A finding or a charge that a notary has knowingly used false or misleading advertising in which the notary was represented as having powers, duties, rights or privileges that a North Carolina notary, by law, does not possess; or
- (8) The North Carolina State Bar or the courts of North Carolina or the bar or courts of any other state or nation finding that the notary has engaged in the unauthorized practice of law.

(d) A notary shall respond within the time period set out in a request from the Director for information, including a request for information regarding wrongful notarial acts alleged to have been performed by the notary.

History Note: Authority G.S. 10B-14(f); Eff. April 1, 2007.

18 NCAC 07B .0201 GENERAL

(a) Other Professional Licenses. An applicant shall list on his or her application all suspensions, revocations and other disciplinary actions taken against the applicant regarding the applicant's current or former professional licenses.

(b) Criminal Record. An applicant shall list on his or her application all misdemeanor and felony convictions related to crimes of dishonesty and moral turpitude. For purposes of this Chapter, those crimes include:

- (1) Arson;
- (2) Assault;
- (3) Battery;
- (4) Burglary;
- (5) Carrying a concealed weapon without a permit;
- (6) Child molestation;

- (7) Child pornography;
- (8) Discharge of a firearm in a public place or into a dwelling;
- (9) Domestic violence;
- (10) Driving under the influence;
- (11) Unlawful possession or sale of drugs;
- (12) Embezzlement;
- (13) Failure to comply with a court order;
- (14) Failure to pay child support;
- (15) Failure to return to confinement;
- (16) False financial statements;
- (17) Forgery;
- (18) Fraud;
- (19) Identity theft;
- (20) Impersonation of a law enforcement officer;
- (21) Hit and run;
- (22) Kidnapping;
- (23) Prostitutions;
- (24) Multiple worthless checks showing a pattern of behavior indicating moral turpitude and dishonesty;
- (25) A worthless check in excess of five hundred dollars (\$500.00);
- (26) Possession of an unregistered firearm;
- (27) Practicing law without a license;
- (28) Rape;
- (29) Receipt of stolen goods or property;
- (30) Resisting arrest;
- (31) Robbery;
- (32) Statutory rape;
- (33) Tax evasion;
- (34) Terrorist threats or acts;
- (35) Theft;
- (36) Threats to commit a crime or cause bodily injury;
- (37) Spousal abuse.

(c) In considering whether to appoint or reappoint an applicant to the office of notary public, the Director may consider the factors set forth in Rule .0901 of this Subchapter.

History Note: Authority G.S. 10B-5(d); 10B-7; 10B-11; 10B-14(f); Eff. April 1, 2007.

18 NCAC 07B .0301 INITIAL COMMISSION

(a) Application Form.

- (1) Applicants for initial appointment shall use the application form designated by the Division for that purpose and may download the application form from the Department's website.
- (2) Applicants for initial appointment who are members of the North Carolina State Bar may download the application form from the Department's website and may file the completed application without first obtaining a signature from a notary instructor.
- (3) All other applicants for initial appointment who download the application form from the

Department's website shall obtain a signature on the application from a notary instructor certifying that the applicant successfully completed the required course of instruction before the applicant may file the form with the Department.

(b) Submission of Application. An applicant for an initial appointment shall submit his or her application by:

- (1) U.S. mail;
- (2) In person delivery; or
- (3) Courier service.

History Note: Authority G.S. 10B-14(f); Eff. April 1, 2007.

18 NCAC 07B .0302 TIMING OF FILING OF INITIAL APPLICATION

(a) Submission deadline. An applicant for initial appointment who is not a licensed member of the North Carolina State Bar shall submit an application within three months after passing the examination required by G.S. 10B-8.

(b) An applicant who applies more than three months after compliance with G.S. 10B-8(a) shall

- (1) Comply again with G.S. 10B-8(a);
- (2) Submit an application for initial appointment; and
- (3) Pay the application fee.

History Note: Authority G.S. 10B-8; 10B-14(f); Eff. April 1, 2007.

18 NCAC 07B .0401 REAPPOINTMENT

(a) Application for Reappointment.

- (1) An applicant for reappointment shall submit an application for reappointment.
- (2) Applicants for reappointment may apply on-line on the Department's website.

(b) Timing of Application for Reappointment. An applicant for reappointment shall apply for reappointment no earlier than 10 weeks before the expiration date of the applicant's commission.

History Note: Authority G.S. 10B-11; 10B-14(f); Eff. April 1, 2007.

18 NCAC 07B .0402 REAPPOINTMENT TEST

(a) Attorneys who are licensed members of the North Carolina State Bar do not have to take a reappointment test.

(b) The reappointment test may be taken either:

- (1) By completing the on-line test on the Department's website;
- (2) By completing a paper test at the Department's offices at a time based upon:
 - (A) The availability of the Division's staff; and
 - (B) The availability of the applicant; or
- (3) By completing a paper test at a time and place mutually agreed upon by the applicant and a certified notary public instructor.

(c) An applicant for reappointment shall have 30 minutes to complete the test. An applicant needing accommodation pursuant to the Americans with Disabilities Act shall contact the Division and request the accommodation.

(d) If an applicant fails the reappointment test, the applicant may re-take the test no more than two times within 30 days of the date on which the test is first taken.

(e) If the applicant fails to pass the reappointment test within 30 days, the applicant shall not be reappointed and the application shall be denied.

History Note: Authority G.S. 10B-2; 10B-8; 10B-14(f); 168A-7; 42 USC 12132; Eff. April 1, 2007.

18 NCAC 07B .0403 APPLICATION AFTER REAPPOINTMENT DENIAL BASED ON FAILING TEST

An applicant for reappointment whose application is denied due to failure to pass the reappointment test may reapply by:

- (1) Complying with G.S. 10B-8(a);
- (2) Submitting an application for reappointment; and
- (3) Paying the application fee.

History Note: Authority G.S. 10B-2; 10B-5; 10B-6; 10B-8; 10B-13; 10B-14(f); Eff. April 1, 2007.

18 NCAC 07B .0501 APPOINTMENT AND ISSUANCE OF COMMISSIONING CERTIFICATE

(a) Upon determination that an applicant has complied with all requirements of the Act and this Subchapter, the Director shall appoint or reappoint the applicant to the office of notary public and issue a commissioning certificate.

(b) The Division shall send the commissioning certificate to the Register of Deeds in the county of commissioning.

(c) The Division shall send the appointee notice that:

- (1) The commissioning certificate has been issued; and
- (2) The appointee shall appear within 45 days of the commissioning date to take the oath of office before the Register of Deeds in the county of commissioning.

History Note: Authority G.S. 10B-2; 10B-5; 10B-10; 10B-11; 10B-14(f); Eff. April 1, 2007.

18 NCAC 07B .0502 COMMISSIONING CERTIFICATE DATE

(a) A commissioning certificate shall not be back-dated.

(b) Applications shall not be deemed received until complete.

History Note: Authority G.S. 10B-14(f); Eff. April 1, 2007.

18 NCAC 07B .0503 OATH OF OFFICE AND DELIVERY OF COMMISSIONING CERTIFICATE

(a) Before taking the oath of office, an appointee shall present to the Register of Deeds satisfactory evidence of the appointee's identity as set out in G.S. 10B-3(22).

(b) The Register of Deeds shall document the type of evidence provided by the appointee on the form provided by the Department.

(c) After administering the oath of office the Register of Deeds shall deliver the commissioning certificate to the notary public.

History Note: Authority G.S. 10B-2; 10B-3(22); 10B-9; 10B-10; 10B-11; 10B-14(f); Eff. April 1, 2007.

18 NCAC 07B .0504 REAPPOINTMENT IF OATH NOT TAKEN WITHIN 45 DAYS

(a) An appointee who fails to take the oath of office within 45 days of the commissioning certificate date may reapply for reappointment.

(b) Reapplication within one year of commission date. If an appointee seeks reappointment more than 45 days and less than one year after the commissioning certificate date, the appointee shall:

- (1) Apply for reappointment;
- (2) Submit another application fee; and
- (3) Pass the reappointment test.

(c) Reapplication one year or more after commissioning certificate date. If an appointee seeks reappointment one year or more after the commissioning certificate date, the appointee shall:

- (1) Comply with the requirements of G.S. 10B-8(a);
- (2) Apply for reappointment; and
- (3) Submit another application fee.

History Note: Authority G.S. 10B-11; 10B-14(f); Eff. April 1, 2007.

18 NCAC 07B .0505 TERM OF OFFICE

(a) A notary's commission or recommission shall not be effective until the oath of office has been administered.

(b) A notary's five year term of office begins on the date on the commissioning certificate.

History Note: Authority G.S. 10B-10; 10B-14(f); Eff. April 1, 2007.

18 NCAC 07B .0901 FACTORS CONSIDERED IN DISCIPLINARY ACTIONS

When determining whether to deny an application or take disciplinary action against a notary, the Director may consider a variety of factors including:

- (1) Nature, number and severity of any acts, offenses, official misconduct or crimes under consideration;
- (2) Evidence pertaining to the honesty, credibility, truthfulness, and integrity of the applicant or notary public;
- (3) Actual or potential monetary or other harm to the general public, group, individual, or client;

- (4) History of complaints received by the Department;
- (5) Prior disciplinary record or warning from the Department;
- (6) Evidence in mitigation;
- (7) Evidence in aggravation;
- (8) Occupational, vocational, or professional license disciplinary record;
- (9) Evidence of rehabilitation. NOTE: Examples include reference letters and proof of class attendance;
- (10) Criminal record;
- (11) Reports from law enforcement agencies;
- (12) Willfulness;
- (13) Negligence.

History Note: Authority G.S. 10B-14(f); 10B-60; Eff. April 1, 2007.

18 NCAC 07B .0902 GENERAL APPLICATION DENIAL

(a) Unqualified applicant. The Director shall deny the application of an applicant for a notary public commission who does not qualify for office based on the factors set forth in Chapter 10B of the General Statutes and this Subchapter.

(b) Current disciplinary action. The Director shall deny an application if the application is submitted before the expiration of a period of suspension or revocation of a commission previously held by the applicant.

(c) Information regarding convictions and judgments.

- (1) The Director shall deny an application which contains false information about the applicant's criminal record or record of civil lawsuit findings or admissions of liability based on the applicant's deceit; or
- (2) The Director may deny an application which contains misleading information, including:
 - (A) The applicant's criminal record, including whether all charges were dismissed or consolidated or whether all terms and conditions of a judgment have been completed;
 - (B) Misstatement or omission of a nonmaterial fact;
 - (C) Whether a civil lawsuit included findings based on the applicant's deceit; or
 - (D) Whether, in a civil lawsuit or settlement of a civil lawsuit, an applicant made admissions of liability related to the applicant's deceit.

(d) Applicant notarization. The Director shall deny an application if the applicant notarizes his or her own signature.

(e) The Director shall deny an application if the applicant:

- (1) Leaves three or more sections of the application incomplete;
- (2) Fails to submit an application for initial appointment within 90 days of class; or

- (3) Fails to submit complete and correct information on an application for initial appointment or reappointment after three submissions by the applicant.

History Note: Authority G.S. 10B-5; 10B-14(f); Eff. April 1, 2007.

18 NCAC 07B .0903 EXECUTED DOCUMENT VIOLATIONS

The Director shall revoke the commission of a notary who performs a notarial act knowing that the document or information contained in it is false or fraudulent, or that the intent of the executed document is dishonest. Acts of fraud or dishonesty include:

- (1) Notarizing a blank DMV vehicle title document;
- (2) Embezzlement;
- (3) Forgery;
- (4) Fraud;
- (5) Identity theft;
- (6) Impersonation of a law enforcement officer;
- (7) Receiving stolen goods or property; and
- (8) Theft.

History Note: Authority G.S. 10B-2; 10B-5(d); 10B-14(f); 10B-60; Eff. April 1, 2007.

18 NCAC 07B .0904 COMPLETE AND LAWFUL NOTARIAL ACT VIOLATIONS

(a) The Director may take disciplinary action against a notary for an offense relating to failure to meet the statutory requirements for a notarial act.

(b) Offenses relating to failure to meet the statutory requirements for a complete and lawful notarial act include:

- (1) Incomplete attestation;
- (2) Improper acknowledgment language;
- (3) Incorrect signature;
- (4) Incorrect expiration date;
- (5) Failure to administer an oath or affirmation;
- (6) Failure to verify identification;
- (7) Failure to require personal appearance;
- (8) Notarization of a document in which the notary is a named, interested, or signed party;
- (9) Notarization of a "non-signature" or a copy of a signature;
- (10) Charging a fee in excess of that which is set by law, including fees for mileage or travel;
- (11) Acting as a notary when not commissioned;
- (12) Unauthorized use of a seal.

History Note: Authority G.S. 10B-2; 10B-14(f); 10B-60; Eff. April 1, 2007.

18 NCAC 07B .0905 OTHER VIOLATIONS

The Director may take disciplinary action against a notary for violation of Chapter 07B of the General Statutes or this

Subchapter, including failure to provide information required by Rule .0107 of this Subchapter.

History Note: Authority G.S. 10B-2; 10B-14(f); 10B-60; Eff. April 1, 2007.

18 NCAC 07B .0906 MINIMUM SANCTION

(a) If a notary commits a combination of acts of official misconduct, the notary shall receive, at a minimum, the maximum penalty of the lesser of the acts committed.

(b) Nothing in this Section shall restrict the Secretary from using any other statutory penalty available.

History Note: Authority G.S. 10B-2; 10B-14(f); 10B-60; Eff. April 1, 2007.

18 NCAC 07B .0907 APPEAL PROCEDURES

(a) Applicants for commissioning or recommissioning whose applications have been denied and notaries who have received disciplinary action by the Director have the right to file a petition for a contested case hearing pursuant to Article 3 of Chapter 150B of the General Statutes.

(b) Petition forms may be obtained from the Office of Administrative Hearings, 424 North Blount Street, 6714 Mail Service Center, Raleigh, NC 27699-6714; (919) 733-2698; <http://www.oah.state.nc.us/>.

(c) A copy of a Petition filed with the Office of Administrative Hearings must also be served on the process agent for the Department of the Secretary of State.

History Note: Authority G.S. 10B-2; 10B-14(f); Eff. April 1, 2007.

18 NCAC 07B .1001 PUBLIC INFORMATION

(a) The information that the Department shall make available on individual notaries public include:

- (1) Full legal name;
- (2) County of Commission;
- (3) Employer's Name;
- (4) Employer's street and mailing addresses;
- (5) Employer's phone number;
- (6) Status of Commission;
- (7) Disciplinary action, if any.

(b) A request for confidential notary information shall be in writing and shall include documentation of the right of the requestor to receive the confidential notary information, including:

- (1) Authorization of the notary that the person is an agent of the notary authorized to request and receive the information;
- (2) Subpoena or court order;
- (3) Statement of authority from a law enforcement or government agency; or
- (4) N.C. State Bar applicant "Release of Information" form.

History Note: Authority G.S. 10B-2; 10B-7(b); 10B-14(f); Eff. April 1, 2007.

**TITLE 21 – OCCUPATIONAL LICENSING BOARDS
AND COMMISSIONS**

**CHAPTER 12 - LICENSING BOARD FOR GENERAL
CONTRACTORS**

21 NCAC 12 .0901 DEFINITIONS

The following definitions shall apply to the Board's administration of the Homeowners Recovery Fund established pursuant to Article 1A, Chapter 87 of the General Statutes:

- (1) "Constructing or altering" includes contracting for the construction or alteration of a single-family residential dwelling unit.
- (2) "Dishonest conduct" shall not include a mere breach of a contract.
- (3) "Incompetent conduct" is conduct which demonstrates a lack of ability or fitness to discharge a duty associated with undertaking to construct or alter a single-family residential dwelling or the supervision of such construction or alteration.
- (4) "Owner or former owner" includes a person who contracted with a general contractor for the construction or purchase of a single-family residential dwelling unit. "Owner or former owner" shall not include a person who is a spouse, child, parent, grandparent, sibling, partner, associate, officer, or employee of a general contractor whose conduct caused a reimbursable loss. In addition, the term shall not include general contractors or any financial or lending institution, or any owner or former owner of a single-family residential dwelling unit which has been the subject of an award from the Homeowners Recovery Fund resulting from the same dishonest or incompetent conduct. "Owner or former owner" shall not include the owner of real property who constructed or contracted for construction of a single-family residential dwelling unit without intending to occupy the single-family residential dwelling unit.
- (5) "Substantial completion" means that degree of completion of a project, improvement or specified area or portion thereof whereupon the owner can use the same for its intended use.
- (6) "Separately owned residence" means a building whose construction is governed by Volume VII of the North Carolina State Building Code.

History Note: Authority G.S. 87-15.6; Eff. January 4, 1993; Amended Eff. April 1, 2007; April 1, 2001; August 1, 2000; August 1, 1998.

21 NCAC 12 .0904 FILING DEADLINE AND SERVICE

(a) Applicants seeking recovery from the fund shall be forever barred unless application is made within one year after termination of all proceedings, including appeals, in connection with an unsatisfied judgment obtained against a general contractor. Claims based upon the bankruptcy, death, or dissolution of the general contractor shall be forever barred unless application is made within three years from the date of discovery by the applicant of the facts constituting the dishonest or incompetent conduct or within six years of substantial completion of the construction or alteration of the residence in question, whichever comes first.

(b) Applications shall be filed at the address shown in Rule .0101 of this Chapter. The Board shall serve a copy of the application upon the general contractor who allegedly caused the loss. Service shall be accomplished by certified mail, return receipt requested, or other methods authorized by G.S. 150B-38(c).

History Note: Authority G.S. 87-15.6; 87-15.7; 87-15.8; Eff. January 4, 1993; Amended Eff. April 1, 2007; August 1, 1998.

21 NCAC 12 .0906 PROCESSING OF APPLICATION

(a) Staff shall refer a properly filed application to the Recovery Fund Review Committee. The Recovery Fund Review Committee is a committee made up of the following individuals:

- (1) one member of the Board,
- (2) the legal counsel of the Board, and
- (3) the Secretary-Treasurer.

(b) The Committee shall determine, prior to a hearing, whether or not an application is meritless. The decision of the Committee is final. Within 30 days after service of a copy of the application upon the general contractor, the general contractor may file a response to the application setting forth answers and defenses. Responses shall be filed with the Board and copies shall be served on the applicant.

(c) If the general contractor denies the charges contained in the application, then, an investigator, retained by the Board, may perform a field investigation.

(d) The Committee may dismiss a claim if an applicant fails to respond to an inquiry from the Committee or its representative within six months of receipt of the inquiry.

(e) After all preliminary evidence has been received by the Committee, it shall make a threshold determination regarding the disposition of the application. From the evidence, it shall recommend to the Board that:

- (1) The application be dismissed as meritless; or
- (2) The application and charges contained therein be presented to the Board for a hearing and determination by the Board on the merits of the application.

(f) The Committee shall give notice of the threshold determination to the applicant and the general contractor within 10 days of the Committee's decision. The Committee is not

required to notify the parties of the reasons for its threshold determination.

History Note: Authority G.S. 87-15.6; 87-15.7; 87-15.8; Eff. January 4, 1993; Amended Eff. April 1, 2007.

CHAPTER 32 – MEDICAL BOARD

21 NCAC 32M .0112 DISCIPLINARY ACTION

(a) After notice and hearing in accordance with provisions of G.S. 150B, Article 3A, disciplinary action may be taken by the appropriate Board if one or more of the following is found:

- (1) violation of G.S. 90-18 and G.S. 90-18.2 or the joint rules adopted by each Board;
(2) immoral or dishonorable conduct pursuant to and consistent with G.S. 90-14(a)(1);
(3) any submissions to either Board pursuant to and consistent with G.S. 90-14(a)(3);
(4) the nurse practitioner is adjudicated mentally incompetent or the nurse practitioner's mental or physical condition renders the nurse practitioner unable to safely function as a nurse practitioner pursuant to and consistent with G.S. 90-14(a)(5) and G.S. 90-171.37(3);
(5) unprofessional conduct by reason of deliberate or negligent acts or omissions and contrary to the prevailing standards for nurse practitioners in accordance and consistent with G.S. 90-14(a)(6) and G.S. 90-171.35(5);
(6) Conviction in any court of a criminal offense in accordance and consistent with G.S. 90-14(a)(7) and G.S. 90-171.37(2) and G.S. 90-171.48;
(7) payments for the nurse practitioner practice pursuant to and consistent with G.S. 90-14(a)(8);
(8) lack of professional competence as a nurse practitioner pursuant to and consistent with G.S. 90-14(a)(11);
(9) exploiting the client pursuant to and consistent with G.S. 90-14(a)(12) including the promotion of the sale of services, appliances, or drugs for the financial gain of the practitioner or of a third party;
(10) failure to respond to inquires which may be part of a joint protocol between the Board of Nursing and Medical Board for investigation and discipline pursuant to and consistent with G.S. 90-14(a)(14);
(11) the nurse practitioner has held himself or herself out or permitted another to represent the nurse practitioner as a licensed physician; or
(12) the nurse practitioner has engaged or attempted to engage in the performance of

medical acts other than according to the collaborative practice agreement.

(b) The nurse practitioner is subject to G.S. 90-171.37; 90-171.48 and 21 NCAC 36 .0217 by virtue of the license to practice as a registered nurse.

(c) After an investigation is completed, the joint subcommittee of both boards may recommend one of the following:

- (1) dismiss the case;
(2) issue a private letter of concern;
(3) enter into negotiation for a Consent Order; or
(4) a disciplinary hearing in accordance with G.S. Chapter 150B, Article 3A. If a hearing is recommended, the joint subcommittee shall also recommend whether the matter should be heard by the Board of Nursing or the Medical Board.

(d) Upon a finding of violation, each Board may utilize the range of disciplinary options as enumerated in G.S. 90-14(a) or G.S. 90-171.37.

History Note: Authority G.S. 90-18(14); 90-171.37; 90-171.44; 90-171.47; Eff. February 1, 1991; Recodified from 21 NCAC 32M .0107 Eff. January 1, 1996; Amended Eff. August 1, 2004; May 1, 1999; January 1, 1996; Recodified from Rule .0111 Eff. August 1, 2004; Amended Eff. April 1, 2007.

CHAPTER 36 - BOARD OF NURSING

21 NCAC 36 .0812 DISCIPLINARY ACTION

(a) After notice and hearing in accordance with provisions of G.S. 150B, Article 3A, disciplinary action may be taken by the appropriate Board if one or more of the following is found:

- (1) violation of G.S. 90-18 and G.S. 90-18.2 or the joint rules adopted by each Board;
(2) immoral or dishonorable conduct pursuant to and consistent with G.S. 90-14(a)(1);
(3) any submissions to either Board pursuant to and consistent with G.S. 90-14(a)(3);
(4) the nurse practitioner is adjudicated mentally incompetent or the nurse practitioner's mental or physical condition renders the nurse practitioner unable to safely function as a nurse practitioner pursuant to and consistent with G.S. 90-14(a)(5) and G.S. 90-171.37(3);
(5) unprofessional conduct by reason of deliberate or negligent acts or omissions and contrary to the prevailing standards for nurse practitioners in accordance and consistent with G.S. 90-14(a)(6) and G.S. 90-171.35(5);
(6) conviction in any court of a criminal offense in accordance and consistent with G.S. 90-14(a)(7) and G.S. 90-171.37 (2) and G.S. 90-171.48;

- (7) payments for the nurse practitioner practice pursuant to and consistent with G.S. 90-14(a)(8);
- (8) lack of professional competence as a nurse practitioner pursuant to and consistent with G.S. 90-14(a)(11);
- (9) exploiting the client pursuant to and consistent with G.S. 90-14(a)(12) including the promotion of the sale of services, appliances, or drugs for the financial gain of the practitioner or of a third party;
- (10) failure to respond to inquires which may be part of a joint protocol between the Board of Nursing and Medical Board for investigation and discipline pursuant to and consistent with G.S. 90-14(a)(14);
- (11) the nurse practitioner has held himself or herself out or permitted another to represent the nurse practitioner as a licensed physician; or
- (12) the nurse practitioner has engaged or attempted to engage in the performance of medical acts other than according to the collaborative practice agreement.

(b) The nurse practitioner is subject to G.S. 90-171.37; 90-171.48 and 21 NCAC 36 .0217 by virtue of the license to practice as a registered nurse.

(c) After an investigation is completed, the joint subcommittee of both boards may recommend one of the following:

- (1) dismiss the case;
- (2) issue a private letter of concern;
- (3) enter into negotiation for a Consent Order; or
- (4) a disciplinary hearing in accordance with G.S. 150B, Article 3A. If a hearing is recommended, the joint subcommittee shall also recommend whether the matter should be heard by the Board of Nursing or the Medical Board.

(d) Upon a finding of violation, each Board may utilize the range of disciplinary options as enumerated in G.S. 90-14(a) or G.S. 90-171.37.

History Note: Authority G.S. 90-18(c)(14); 90-171.37; 90-171.44; 90-171.47; 90-171.48;

Recodified from 21 NCAC 36 .0227(k) Eff. August 1, 2004;

Amended Eff. April 1, 2007; August 1, 2004.

CHAPTER 46 - BOARD OF PHARMACY

21 NCAC 46 .1601 PHARMACY PERMITS

(a) Applications for pharmacy permits, whether original or renewal, shall be made upon forms provided by the Board. The Board shall not issue any original or annual renewal pharmacy permit until the Board is satisfied that:

- (1) The pharmacist-manager is sure that at all times adequate qualified personnel have been secured by the management of the store to

properly render pharmaceutical service in the manner prescribed by law.

(2) The pharmacy posts in a location conspicuous to the public the specific hours that a pharmacist is on duty in the pharmacy. This requirement does not apply to hospitals, nursing homes, and similar institutions subject to the provisions of Section .1400 of this Chapter.

(3) The pharmacist-manager shall be responsible for obtaining and maintaining equipment in the pharmacy adequate to meet the pharmaceutical care needs of the pharmacy's patients. The pharmacy's reference library shall include a medical dictionary and current editions of reference books on drug interactions, clinical pharmacology, USP Dispensing Information or its equivalent, and if IV admixture services are provided, a reference on Parenteral Incompatibilities.

(4) The pharmacy is equipped with sanitary appliances including lavatory facilities with hot and cold running water; is well lighted; and is kept in a clean, orderly, and sanitary condition.

(5) All prescription medications are labeled in accordance with G.S. 106-134 and 106-134.1.

(b) In addition to the requirements for issuance and renewal of a pharmacy permit imposed by statute and rules of the Board, a permit shall not be issued or renewed to any person to operate a pharmacy wherein the prescriptions of medical practitioners are compounded or dispensed and distributed when such distribution is effected by mail and the practitioner- pharmacist-patient relationship does not exist, until the Board is satisfied that:

(1) The pharmacy maintains records of prescriptions compounded or dispensed and distributed in manner that is readily retrievable;

(2) During the pharmacy's regular hours of operation but not less than six days per week, for a minimum of forty hours per week, a toll-free telephone service is provided to facilitate communication between patients and a pharmacist at the pharmacy who has access to the patient's records. This toll-free number must be disclosed on the label affixed to each container of dispensed drugs;

(3) The pharmacy complies with all lawful orders, directions, and requests for information from the Boards of pharmacy of all states in which it is licensed and all states into which it distributes prescription drugs;

(4) The pharmacy complies with all United States Pharmacopeia and Food and Drug Administration requirements regarding the storage, packaging, and shipping of prescription medications. The pharmacist-manager and all other pharmacists employed in the pharmacies permitted pursuant to this

Paragraph shall be subject to all Federal and State statutes and regulations concerning the dispensing of prescription medications including 21 NCAC 46 .1801 and .1805 and 21 CFR 1306.01, 1306.05, and 1306.21.

(c) The Board shall not issue an original or renewal permit to any person to operate a drugstore or pharmacy as a department in or a part of any other business serving the general public (except hospitals, nursing homes, and similar institutions subject to the provisions of Section .1400 of this Chapter) unless such pharmacy facility:

- (1) is physically separated from such other business;
- (2) is separately identified to the public both as to name and any advertising;
- (3) completes all transactions relative to such pharmacy within the registered facility; and
- (4) meets the same requirements for registration as all other pharmacies.

(d) In addition to all of the other requirements for issuance and renewal of a pharmacy permit imposed by statute and rules of the Board, the Board shall not issue any original or annual renewal pharmacy permit to any Internet pharmacy until the Board is satisfied that:

- (1) The Internet pharmacy is certified by the National Association of Boards of Pharmacy as a Verified Internet Pharmacy Practice Site (VIPPS);
- (2) The Internet pharmacy has certified the percentage of its annual business conducted via the Internet on a form required by the Board, when it applies for permit or renewal; and
- (3) The Internet pharmacy has provided the Board with the names, addresses, social security numbers, phone numbers, facsimile numbers, email addresses, and titles of all principal corporate officers of the Internet pharmacy; the names, addresses, social security numbers, phone numbers, facsimile numbers, email addresses, and titles of all principal officers of any company, partnership, association, or other business entity holding any ownership interest in the Internet pharmacy; the names, addresses, social security numbers, phone numbers, facsimile numbers, email addresses, and titles of any individual holding any ownership interest in the Internet pharmacy.

This Paragraph does not relieve an out-of-state pharmacy from compliance with all provisions of 21 NCAC 46 .1607 governing out-of-state pharmacies.

(e) Permits to operate pharmacies, whether original or renewal, shall be issued to the pharmacist-manager of such pharmacy pursuant to a joint application of the owner and pharmacist-manager for the conduct and management of said pharmacy. The issuance of said permit shall not be complete and the permit shall not be valid until it has been countersigned by the pharmacist-manager as represented in the application. The permit so issued is valid only so long as the pharmacist-manager

to whom it was issued assumes the duties and responsibilities of pharmacist-manager. Permits may be reissued at any time to a successor pharmacist-manager pursuant to the proper amendment of the application for the permit.

(f) Upon application, the Board may issue and renew separate permits for pharmacies operating at one location. Records for each permitted pharmacy must be maintained separately. Prior to issuance of an original permit, each pharmacy shall submit a plan to the Board that shall assure accountability for the actions of each pharmacy at the location.

History Note: Authority G.S. 90-85.6; 90-85.21; Eff. April 1, 1983;

Amended Eff. April 1, 2007; April 1, 2003; April 1, 1999; October 29, 1998; July 1, 1996; September 1, 1995; May 1, 1989; August 1, 1988; March 1, 1984.

21 NCAC 46 .1608 DEVICE AND MEDICAL EQUIPMENT PERMITS

(a) Applications for device and medical equipment permits, whether original or renewal, shall be made upon forms provided by the Board. The Board shall not issue any original or annual renewal device and medical equipment permit until the Board is satisfied that:

- (1) Adequate qualified personnel have been secured by the management of the facility to properly render device and medical equipment services in the manner prescribed by law.
- (2) Such personnel shall be maintained during the period for which the permit is issued.
- (3) If the applicant dispenses medical oxygen to a patient, then the applicant must reasonably ensure that the following medical equipment is maintained:
 - (A) Sufficient backup of oxygen in that patient's home and supplies for equipment serviced to maintain continuation of therapy for 24 hours; and
 - (B) An oxygen analyzer in the permitted facility, if concentrators are dispensed.
- (4) Suitable facilities shall be maintained to house inventory, to allow for fabrication work space, and to record and file prescription orders as required by law.
- (5) A copy of the pharmacy laws of North Carolina, including the North Carolina Pharmacy Practice Act and the rules of the Board shall be present in the facility at all times.
- (6) The facility is equipped with a functioning lavatory where hot and cold running water or hand washing appliances or waterless hand cleaner are available.
- (7) The facility is kept in a clean, orderly, and sanitary condition.
- (8) The applicants' services are accessible to its customer base.

- (9) All prescription medications are labeled in accordance with G.S. 106-134 and 106-134.1.
- (10) The applicant complies with all USP and FDA requirements regarding the storage, packaging, and shipping of prescription medications, including medical oxygen.
- (11) The applicant's services are available 24 hours, seven days per week when essential to the maintenance of life or when the lack of such services might reasonably cause harm.
- (12) The applicant implements and maintains a written procedure at each location for handling complaints and problems, which includes a complaint file documenting complaints and problems and resolution of the complaints or problems.
- (13) The applicant complies with local/state fire and building laws.
- (14) The applicant complies with current Occupational Safety and Health Administration (OSHA) laws and requirements as enforced by the NC Department of Labor/Division of OSHA, including the approach to infection control known as "Universal Precautions."

(b) Device and medical equipment permits, whether original or renewal, shall be issued to the person in charge of the facility pursuant to a joint application of the owner and person in charge. The issuance of said permit shall not be complete and the permit shall not be valid until it has been countersigned by the person in charge as represented in the application. The permit so issued is valid only so long as the person in charge to whom it was issued assumes his duties and responsibilities. Permits may be reissued at any time to a successor person in charge pursuant to the proper amendment of the application for the permit. The hours of operation shall be posted conspicuously at the facility for public viewing. The person in charge or the designee of the person in charge shall be present at the facility during the hours of operation of the facility. The person in charge shall notify the Board in writing of a change in the facility address within 30 days from the date of the change.

(c) When a device and medical equipment dispensing facility is to be closed permanently, the person in charge shall inform the Board of the closing and arrange for the proper disposition of devices and medical equipment and return the permit to the Board's offices within 10 days of the closing date. The person in charge, jointly with the owner (if the owner is someone other than the person in charge), shall provide for the orderly transfer of records to another permit holder for maintenance of patient therapy and inform the public of such transfer by posted notice or otherwise.

(d) Charitable organizations providing devices and medical equipment at no charge must register with the Board. The Board shall waive the fee for a permit upon a showing that the organization meets the Internal Revenue Service charitable purpose requirements for exemption from taxation and that at least 75 percent of the organization's funds are used for a charitable purpose. Loaner closets providing device and medical equipment at no charge, excluding oxygen or other life support

devices, must register with the Board but are exempt from the fee for device and medical equipment permits.

History Note: Authority G.S. 90-85.6; 90-85.22; Eff. September 1, 1995; Amended Eff. April 1, 2007.

21 NCAC 46 .2613 DEVICES AND MEDICAL EQUIPMENT IN POSSESSION OF PERMIT HOLDERS

Dispensed devices and medical equipment in the possession of permit holders shall bear a patient-specific prescription label. Permit holders may not collect prescription drugs from a patient or caregiver, nor may a permit holder store prescription drugs on behalf of a patient or caregiver.

History Note: Authority G.S. 90-85.6; 90-85.22; 90-85.32; Eff. April 1, 2007.

21 NCAC 46 .3101 CLINICAL PHARMACIST PRACTITIONER

(a) Definitions. As used in this Rule:

- (1) "Medical Board" means the North Carolina Medical Board.
- (2) "Pharmacy Board" means the North Carolina Board of Pharmacy.
- (3) "Joint Subcommittee" means the subcommittee composed of four members of the Pharmacy Board and four members of the Medical Board to whom responsibility is given by G.S. 90-6(c) to develop rules to govern the provision of drug therapy management by the Clinical Pharmacist Practitioner in North Carolina.
- (4) "Clinical Pharmacist Practitioner or CPP" means a licensed pharmacist who is approved to provide drug therapy management, including controlled substances, under the direction of, or under the supervision of a licensed physician who has provided written instructions for a patient and disease specific drug therapy which may include ordering, changing, substituting therapies or ordering tests. Only a pharmacist approved by the Pharmacy Board and the Medical Board may legally identify himself as a CPP.
- (5) "Supervising Physician" means a licensed physician who, by signing the CPP agreement, is held accountable for the on-going supervision and evaluation of the drug therapy management performed by the CPP as defined in the physician, patient, pharmacist and disease specific written agreement.
- (6) "Approval" means authorization by the Medical Board and the Pharmacy Board for a pharmacist to practice as a CPP in accordance with this Rule.
- (7) "Continuing Education or CE" is defined as courses or materials which have been

approved for credit by the American Council on Pharmaceutical Education.

- (8) "Clinical Experience approved by the Boards" means work in a clinical pharmacy practice setting which includes experience consistent with the components listed in Parts (b)(2)(A), (B), (C), (D), (E), (H), (I), (J), (N), (O), and (P) of this Rule. Clinical experience requirements must be met only through activities separate from the certificate programs referred to in Parts (b)(1)(B) of this Rule.

(b) CPP application for approval.

- (1) The requirements for application for CPP approval include that the pharmacist:

- (A) has an unrestricted and current license to practice as a pharmacist in North Carolina;
- (B) meets one of the following qualifications:
 - (i) has earned Certification from the Board of Pharmaceutical Specialties, is a Certified Geriatric Pharmacist as certified by the Commission for Certification in Geriatric Pharmacy or has completed an American Society of Health System Pharmacists (ASHP) accredited residency program, which includes two years of clinical experience approved by the Boards; or
 - (ii) has successfully completed the course of study and holds the academic degree of Doctor of Pharmacy and has three years of clinical experience approved by the Boards and has completed a North Carolina Center for Pharmaceutical Care (NCCPC) or American Council on Pharmaceutical Education (ACPE) approved certificate program in the area of practice covered by the CPP agreement; or
 - (iii) has successfully completed the course of study and holds the academic degree of Bachelor of Science in Pharmacy and has five years of clinical experience approved by the Boards and has completed two NCCPC or ACPE approved certificate programs with at

least one program in the area of practice covered by the CPP agreement;

- (C) submits the required application and the fee to the Medical Board;
- (D) submits any information deemed necessary by the Medical Board in order to evaluate the application; and
- (E) has a signed supervising physician agreement.

If for any reason a CPP discontinues working in the approved physician arrangement, the CPP shall notify both Boards in writing within 10 days and the CPP's approval shall automatically terminate or be placed on an inactive status until such time as a new application is approved in accordance with this Subchapter.

- (2) All certificate programs referred to in Subpart (b)(1)(B)(i) of this Rule must contain a core curriculum including the following components:

- (A) communicating with healthcare professionals and patients regarding drug therapy, wellness, and health promotion;
- (B) designing, implementing, monitoring, evaluating, and modifying or recommending modifications in drug therapy to insure effective, safe, and economical patient care;
- (C) identifying, assessing and solving medication-related problems and providing a clinical judgment as to the continuing effectiveness of individualized therapeutic plans and intended therapeutic outcomes;
- (D) conducting physical assessments, evaluating patient problems, ordering and monitoring medications and laboratory tests;
- (E) referring patients to other health professionals as appropriate;
- (F) administering medications;
- (G) monitoring patients and patient populations regarding the purposes, uses, effects and pharmacoeconomics of their medication and related therapy;
- (H) counseling patients regarding the purposes, uses, and effects of their medication and related therapy;
- (I) integrating relevant diet, nutritional and non-drug therapy with pharmaceutical care;
- (J) recommending, counseling, and monitoring patient use of non-prescription drugs, herbal remedies and alternative medicine practices;

- (K) using, ordering, and instructing on the use of devices, and durable medical equipment;
 - (L) providing emergency first care;
 - (M) retrieving, evaluating, utilizing, and managing data and professional resources;
 - (N) using clinical data to optimize therapeutic drug regimens;
 - (O) collaborating with other health professionals;
 - (P) documenting interventions and evaluating pharmaceutical care outcomes;
 - (Q) integrating pharmacy practice within healthcare environments;
 - (R) integrating national standards for the quality of healthcare; and
 - (S) conducting outcomes and other research.
- (3) The completed application for approval to practice as a CPP shall be reviewed by the Medical Board upon verification of a full and unrestricted license to practice as a pharmacist in North Carolina.
- (A) The application shall be approved and at the time of approval the Medical Board shall issue a number which shall be printed on each prescription written by the CPP; or
 - (B) The application shall be denied; or
 - (C) The application shall be approved with restrictions.
- (c) Annual Renewal.
- (1) Each CPP shall register annually on the anniversary of his or her birth date by:
 - (A) verifying a current Pharmacist license;
 - (B) submitting the renewal fee as specified in Subparagraph (j)(2) of this Rule;
 - (C) completing the Medical Board's renewal form; and
 - (D) reporting continuing education credits as specified by the Medical Board.
 - (2) If the CPP has not renewed within 30 days of the anniversary of the CPP's birth date, the approval to practice as a CPP shall lapse.
- (d) Continuing Education.
- (1) Each CPP shall earn 35 hours of practice relevant CE each year approved by the Pharmacy Board.
 - (2) Documentation of these hours shall be kept at the CPP practice site and made available for inspection by agents of the Medical Board or Pharmacy Board.
- (e) The supervising physician who has a signed agreement with the CPP shall be readily available for consultation with the CPP and shall review and countersign each order written by the CPP within seven days.
- (f) The written CPP agreement shall:
- (1) be approved and signed by both the supervising physician and the CPP and a copy shall be maintained in each practice site for inspection by agents of either Board upon request;
 - (2) be specific in regard to the physician, the pharmacist, the patient and the disease;
 - (3) specify the predetermined drug therapy which shall include the diagnosis and product selection by the patient's physician; any modifications which may be permitted, dosage forms, dosage schedules and tests which may be ordered;
 - (4) prohibit the substitution of a chemically dissimilar drug product by the CPP for the product prescribed by the physician without first obtaining written consent of the physician;
 - (5) include a pre-determined plan for emergency services;
 - (6) include a plan and schedule for weekly quality control, review and countersignature of all orders written by the CPP in a face-to-face conference between the physician and CPP;
 - (7) require that the patient be notified of the collaborative relationship; and
 - (8) be terminated when patient care is transferred to another physician and new orders shall be written by the succeeding physician.
- (g) The supervising physician of the CPP shall:
- (1) be fully licensed with the Medical Board and engaged in clinical practice;
 - (2) not be serving in a postgraduate medical training program;
 - (3) be approved in accordance with this Subchapter before the CPP supervision occurs; and
 - (4) supervise no more than three pharmacists.
- (h) The CPP shall wear a nametag spelling out the words "Clinical Pharmacist Practitioner".
- (i) A CPP may be censured or reprimanded, and his or her approval may be restricted, suspended, revoked, annulled, denied or terminated by the Medical Board or the Pharmacy Board. The pharmacist may be censured or reprimanded, and the pharmacist's license may be restricted, suspended, revoked, annulled, denied, or terminated by the Pharmacy Board, in accordance with provisions of G.S. 150B if either Board finds one or more of the following:
- (1) the CPP has held himself or herself out, or permitted another, to represent the CPP as a licensed physician;
 - (2) the CPP has engaged, or attempted to engage, in the provision of drug therapy management other than at the direction of, or under the supervision of, a physician licensed and

- approved by the Medical Board to be that CPP's supervising physician;
- (3) the CPP has performed, or attempted to provide, medical management outside the approved drug therapy agreement or for which the CPP is not qualified by education and training to perform;
 - (4) the CPP commits any act prohibited by G.S. 90-85.38 as determined by the Pharmacy Board or G.S. 90-14(a)(1), (a)(3) through (a)(14) and (c) as determined by the Medical Board; or
 - (5) the CPP has failed to comply with any of the provisions of this Rule.

Any modification of treatment for financial gain on the part of the supervising physician or CPP shall be grounds for denial of Board approval of the agreement.

(j) Fees:

- (1) An application fee of one hundred dollars (\$100.00) shall be paid at the time of initial application for approval and each subsequent application for approval to practice.
- (2) The fee for annual renewal of approval, due on the CPP's anniversary of birth date is fifty dollars (\$50.00).
- (3) No portion of any fee in this Rule is refundable.

History Note: Authority G.S. 90-6; 90-18; 90-18.4; 90-85.3; 90-85.18; 90-85.26A;

Eff. April 1, 2001;

Amended Eff. April 1, 2007; March 1, 2004; October 1, 2001.

RULES REVIEW COMMISSION

This Section contains information for the meeting of the Rules Review Commission on Thursday April 19, 2007 & May 17, 2007, 10:00 a.m. at 1307 Glenwood Avenue, Assembly Room, Raleigh, NC. Anyone wishing to submit written comment on any rule before the Commission should submit those comments to the RRC staff, the agency, and the individual Commissioners. Specific instructions and addresses may be obtained from the Rules Review Commission at 919-733-2721. Anyone wishing to address the Commission should notify the RRC staff and the agency at least 24 hours prior to the meeting.

RULES REVIEW COMMISSION MEMBERS

Appointed by Senate

Jim R. Funderburke - 1st Vice Chair
David Twiddy - 2nd Vice Chair
Thomas Hilliard, III
Robert Saunders
Jeffrey P. Gray

Appointed by House

Jennie J. Hayman - Chairman
John B. Lewis
Mary Beach Shuping
Judson A. Welborn
John Tart

RULES REVIEW COMMISSION MEETING DATES

May 17, 2007 June 21, 2007
July 19, 2007 August 16, 2007

Note: The following minutes have not yet been approved as final by the RRC and are subject to change until they are approved. They will be reviewed, corrected if necessary, and approved at the next monthly meeting of the RRC. If you have any questions or corrections concerning the minutes or action taken by the RRC please contact: Joe DeLuca at 919-715-8655, or Bobby Bryan at 919-733-0928.

RULES REVIEW COMMISSION

April 19, 2007

MINUTES

The Rules Review Commission met on Thursday, April 19, 2007, in the Assembly Room of the Methodist Building, 1307 Glenwood Avenue, Raleigh, North Carolina. Commissioners present were: Jim Funderburk; Jeff Gray; Jennie Hayman; Thomas Hilliard, III; Robert Saunders; Mary Shuping; John Tart; David Twiddy; and Judson Welborn.

Staff members present were: Joe DeLuca, Commission Counsel; Bobby Bryan, Commission Counsel; and Barbara Townsend, Administrative Assistant.

The following people attended the meeting:

Norman Young	Wildlife Resources Commission (DOJ)
Andy Wilson	DHHS/Division of Medical Assistance
Susan Ryan	DHHS/Division of Medical Assistance
Angela Floyd	DHHS/Division of Medical Assistance
Denise Bentley	Department of Environment and Natural Resources
David Edwards	Henderson County Dept. of Public Health
Larry Michael	Department of Environment and Natural Resources
Brent W. Stephens	NC Elder Law Section, NC Bar Assoc.
Jennifer Chrisohon	Dept. of Labor
Nancy Pate	Department of Environment and Natural Resources
Frank Johns	NC Elder Law Section
Marjorie Morris	DHHS/Division of Medical Assistance
Gretchen Aycock	Dept. of Administration
Belinda Smith	Dept. of Justice
J. Gregory Wallace	NC Elder Law Section
Joelle Burleson	DENR/Division of Air Quality
Sandra Kelly	Landscape Contractors Registration Board
Chris McCain	DHHS/Division of Services for the Deaf and Hard of Hearing

Thomas Goldsmith	News and Observer
Jan Withers	DHHS/Division of Services for the Deaf and Hard of Hearing
Wendy A. Craig	Elder Law Section, NCBA
Jeff Manning	DENR/Division of Water Quality
Barbara Williams	Board of Occupational Therapy
Brenda Kennell	Board of Occupational Therapy
Sheila Green	Dept. of Administration
Bill Wilson	AARP
Connie Brower	DENR/Division of Water Quality
Cynthia Mosely	State Energy Office
Bob Mason	Mason Law, PC
Larry Rocamora	McPherson & Rocamora, PLLC
Anne Tazewell	NC Solar Center/NCSU
Julian Mann	Office of Administrative Hearings
Tom Harris	SEANC
Jonathan Womer	Office of State Budget and Management
Julie Edwards	Office of Administrative Hearings
Felicia Williams	Office of Administrative Hearings
Molly Masich	Office of Administrative Hearings
Jim Edgerton	DHHS

APPROVAL OF MINUTES

The meeting was called to order at 10:03 a.m. with Ms. Hayman presiding. She reminded the Commission that all members have a duty to avoid conflicts of interest and the appearances of conflicts as required by NCGS 138A-15(e). Chairman Hayman asked for any discussion, comments, or corrections concerning the minutes of the March 15, 2007 meeting. There were none and the minutes were approved as distributed.

FOLLOW-UP MATTERS

10A NCAC 17C .0108: DHHS/Division of Services for the Deaf and Hard of Hearing – The Commission approved the rewritten rule submitted by the agency.

10A NCAC 17C .0204; .0205: DHHS/Division of Services for the Deaf and Hard of Hearing – The agency declined to satisfy the RRC objections and the rules will be returned to the agency.

10A NCAC 17D .0206; .0211; .0213; .0220; .0304: DHHS/Division of Services for the Deaf and Hard of Hearing – The Commission approved the rewritten rules submitted by the agency.

10A NCAC 17D .0219; .0302: DHHS/Division of Services for the Deaf and Hard of Hearing – The agency declined to satisfy the RRC objections and the rules will be returned to the agency.

10A NCAC 41B .0301; .0304; .0309; .0313: Department of Health and Human Services – The Commission approved the rewritten rules submitted by the agency.

13 NCAC 12 .0601: Department of Labor – The Commission approved the rewritten rule submitted by the agency.

23 NCAC 3A .0113: Board of Community Colleges - No action was taken. It is anticipated that the objection to this rule will be considered at the next meeting of the Board.

LOG OF FILINGS

Chairman Hayman presided over the review of the log of permanent rules. All rules were approved unanimously with the following exceptions:

Prior to the review of the rules from DHHS/Mental Health Commissioner Twiddy recused himself and did not participate in any discussion or vote concerning these rules because he is on the Board for Albemarle Mental Health. This written explanation is part of the record of the meeting.

Prior to the review of the rules for the Commission for Health Services regarding "resident camps" Commissioner Gray recused himself and did not participate in any discussion or vote concerning these rules because he was recently asked to serve on the Board of Trustees of Camp Albemarle.

12 NCAC 11 .0105: Alarm Systems Licensing Board - The Commission objected to this rule due to ambiguity. This rule on its face applies to a "licensee or registrant" and by extension does not seem to apply to an applicant or any other person who might potentially be an applicant. Yet it is hard to understand who the first item would apply to except someone who is not presently licensed or registered. There would not seem to be any reason a validly licensed person would do any of the prohibited actions in the first item. It appears that the rule is unclear either as to whom it applies or what it actually intends to prohibit.

15A NCAC 10B .0125: Wildlife Resources Commission – This rule was withdrawn by the agency.

15A NCAC 10C .0503: Wildlife Resources Commission – This rule was withdrawn by the agency.

15A NCAC 10G .0403: Wildlife Resources Commission - The Commission objected to this rule due to lack of statutory authority and ambiguity. On line 16, it is not clear when the Wildlife Service Agent agreement would provide that the appointment is valid for someone not named thereon, or applies to some other business or locations, or is transferable. This is a modification provision without specific guidelines as prohibited by G.S. 150B-19(6).

15A NCAC 10G .0405: Wildlife Resources Commission - The Commission objected to this rule due to lack of statutory authority and ambiguity. In what is currently called (a), it is not clear when an Agreement will allow an agent not to provide the services required by this item. This is a modification provision prohibited by G.S. 150B-19(6). In what is currently called (g), it is not clear when the Agreement will allow agents not to mail transaction documentation daily. This is a modification provision prohibited by G.S. 150B-19(6).

15A NCAC 18A .3611: Commission for Health Services - The Commission objected to this rule due to lack of statutory authority and ambiguity. In (a), it is not clear what standards the Department will use in approving a storage area for rubbish. There do not appear to be any such standards in the rules, and there is no authority cited for setting them outside rulemaking. In (c), it is not clear what other facilities or methods for cleaning garbage cans have been approved by the Department. There is no authority cited for setting the standards outside rulemaking.

15A NCAC 18A .3629: Commission for Health Services - The Commission objected to this rule due to lack of statutory authority and ambiguity. In (i), it is not clear what other means for pre-cleaning have been approved. There is not authority cited for setting the standards outside rulemaking.

21 NCAC 14H .0105: Board of Cosmetic Art Examiners - The Commission objected to this rule due to ambiguity. In (b), the rule is unclear as to whether the number of times a cosmetic art school or cosmetic art salon "may" be given a rating (four and one respectively are specified in the rule) are minimums, maximums, or simply the board's best guess as to what they would like to do. In (f), it is not clear what "sanitary rules" are included that, if violated, could result in the board's suspending or revoking its approval or permit. Presumably some of these "sanitary rules" are some of the same rules that could be broken and still allow the operator to receive a sanitary grade rating of 80 or greater. Under the second part of this rule, the operator has to receive a score of less than 80 in order for the approval or permit to be subject to suspension or revocation. It is unclear whether the board is stating that it could suspend or revoke an approval or permit for violation of a sanitary rule even if the operator scores 80 or more.

21 NCAC 14N .0115: Board of Cosmetic Art Examiners - The Commission objected to this rule due to ambiguity. The rule is not clear as to how many hours must actually be worked and how the hours are going to be applied to meet the statutory work equivalency requirements. G.S. 88B-11(b)(2) requires a cosmetology teacher applicant to have completed "a period equivalent to five years of full-time work [practicing cosmetic art]" prior to application. The rule implies but does not specify that part-time work would be equivalent to credit for only part of a year (presumably a half-year credit). It also does not specify whether any hours greater than 1,040, but less than full-time would be given any further equivalency. It raises, but does not answer the question whether any hours greater than 2,080 (considered as full-time) in a given year could be applied towards equivalency for another year's credit. It implies, but does not specify that it cannot be counted towards more than one year's credit since the rule uses the term "full-time minimum."

21 NCAC 28 .0304: Landscape Contractors Registration Board - The Commission objected to the rule due to lack of statutory authority and ambiguity. There is no authority for the provision in (a) allowing the board to reinstate or relicense an applicant without specifying the standards for granting the reinstatement or relicensing. The standard "cause justifying" relicensing or reinstatement is unclear since it is a vague standard.

21 NCAC 38 .0101: Board of Occupational Therapy - The Commission objected to this rule due to lack of necessity. As this rule is written, it is unnecessary. It neither requires nor restricts anybody to do or refrain from doing anything. It is not even descriptive of the scope or purpose of these rules, which the commission accepts a valid rule.

21 NCAC 38 .0201: Board of Occupational Therapy - The Commission objected to this rule due to lack of statutory authority. There is no authority for the provision in (4) requiring statements from two occupational therapy practitioners. Under the Board's definitions, an occupational therapy practitioner is an individual "currently licensed by the Board." On its face it is an additional qualification that is not within the qualifications set by statute since it could end up imposing a requirement that an applicant who does not know a licensed practitioner (to provide a character reference) may not be able to comply with. Although the board has wide latitude in its rulemaking authority, imposing this requirement goes beyond any "reasonable rule" as allowed by G.S. 90-270.69(4) in carrying out its rulemaking authority and requirements.

21 NCAC 38 .0302: Board of Occupational Therapy - The Commission objected to this rule due to lack of statutory authority and ambiguity. This rule when read as a whole is inconsistent and therefore unclear, if not somewhat incomprehensible. Paragraph (c) specifies that licenses not renewed by June 30 expire. From (b) in the rule and statutory law, it is clear that it is then illegal for the person to practice occupational therapy in North Carolina. That paragraph (c) then goes on to state that if the person was not engaged in practice in another state or country (and implying that the person is licensed in another state or country) the person has to present proof of completing 15 hours per year of continuing competence activities for up to 60 hours. It also implies that a person (legally – I presume) engaged in practice in another state or country does not have to present such proof. Then (d) states that licenses expired for more than 2 years are not renewable and the person must complete the requirements for a new license, which does not include either in the statutes or rules proof of completing continuing competency requirements once the education or fieldwork requirements have been completed. But then this rule appears to add in (d) that a person must complete up to 60 hours of continuing competency activities (equivalent to four licensed years worth of hours) and supervision and mentoring requirements. There are a number of problems with these provisions:

- Paragraphs (c), (d) and (e) seem to take different, apparently inconsistent, provisions regarding when or whether it is necessary to complete continuing competency activities after a license has expired;
- There is no authority to impose more stringent license qualification requirements on a licensee with an expired and non-renewable license, than there is on a new licensee applicant;
- The rule seems to imply that a licensee maintaining licensure in another jurisdiction with a less than two-year expired North Carolina license does not have to fulfill the same continuing competency activities the licensee would have had to complete if he had maintained his North Carolina license without expiration;
- It is implied although not clear whether the provisions in (d) actually indicate that the board intends to "renew" a license expired more than two years since the additional requirements are showing continuing competency activities and, in effect, proving continuing competency, something not required for new license applicants.

In (e) the rule states that the required hours shall be prorated "taking into consideration any months the person has not been practicing" meaning, I presume, that the person would not be required to fulfill those hours if they were not practicing. It is not clear if that is what is actually meant since it would be illegal for the person to practice without a license. If it means that persons licensed elsewhere have to complete the requirements, but persons licensed in this state and not practicing do not have to complete the requirements, that is illogical and inconsistent with the provisions of (c) and (d). A person continuing to practice would be more likely to have "continuing competency" than someone not practicing, it seems to me. It is also not clear whether this is meant as an exception to the requirement in (c) that a person renewing an expired license has to submit proof of continuing competency activities. Finally, it is unclear how many points, hours, or units a person must complete to show proof of sufficient continuing competency activities to be eligible to renew a license. This Rule .0302 refers to a required number of "hours" of continuing competency activities. In this section .0800, the section on continuing competence activity, the definitions in Rule .0801 and the activities in Rule .0805 refer to a certain number of contact hours being equal to a certain number of points or "continuing education units." They also refer to a certain number of maximum "points" in certain activities as being eligible for inclusion. One hour does not necessarily equal one point or one unit. When all these rules are read together, it is not clear whether it is hours, points, or units that are required to be completed each year.

21 NCAC 38 .0801: Board of Occupational Therapy – The Commission objected to this rule due to ambiguity. It is unclear how many points, hours, or units a person must complete to show proof of sufficient continuing competency activities to be eligible to renew a license. Rule .0302 refers to a required number of "hours" of continuing competency activities. In this section .0800, the section on continuing competence activity, the definitions in Rule .0801 and the activities in Rule .0805 refer to a certain number of contact hours being equal to a certain number of points or "continuing education units." They also refer to a certain number of maximum "points" in certain activities as being eligible for inclusion. One hour does not necessarily equal one point or one unit. When all these rules are read together, it is not clear whether it is hours, points, or units that are required to be completed each year.

21 NCAC 38 .0805: Board of Occupational Therapy - The Commission objected to this rule due to ambiguity. In addition to the above problem, the rule is not clear in (8) page 3 whether committee "and" board work can be combined to meet the minimum 10

hours per year requirement to gain the two points, although it is implied. More importantly, the rule is not clear whether work for multiple boards, committees, agencies, or organizations can be combined to meet the 10 hours or whether a licensee can be credited two points for work (for the minimum 10 hours) for each board, committee, agency, or organization the licensee is involved with.

21 NCAC 38 .0905: Board of Occupational Therapy - The Commission objected to this rule due to ambiguity. In (4)(a) page 2, the rule is unclear as to whether the occupational therapist must have this meeting without the therapist assistant's being present. In (2)(a), this plan must be "developed with the assistant and the client." Since this is not mandated in (4) and there is a separate requirement in (4)(c) that the assistant "contribute to the process" while not necessarily requiring or allowing the assistant to be present at the meeting with the client, it is not clear whether, as part of the supervisory or training process, the board might intend for this to be a mandatory meeting with the client without the assistant's being present.

21 NCAC 38 .1001: Board of Occupational Therapy - The Commission objected to rule .1001 due to lack of necessity. This rule is unnecessary. It does not actually define a "limited permit," perhaps because G.S. 90-270.74 sufficiently describes what a limited permit is and what it permits. The next rule makes the second sentence of this rule unnecessary since that rule sets out in detail the supervisory duties and role of an occupational therapist over a limited permittee.

23 NCAC 02E .0204: Board of Community Colleges - This rule was approved. However the requested technical changes have not been received and the rule will be removed from the approved rules list and carried over to the May meeting.

25 NCAC 01C .0216: State Personnel Commission - The Commission objected to this rule due to ambiguity. It is not clear whether the ability to "administer" a temporary employment service as allowed in (a) includes the ability to establish one. Presumably it does, otherwise where would the service that the agency administers come from or who would establish it? But this rule does not make that clear. Rule .0405 sets out certain limits on the use of temporary employees by a state agency, the primary one being a limit of 12 months in employing the same person. This rule allows the Office of State Personnel as well as any state agency to administer a temporary employment service. If any agency can establish and administer a temporary employment service, that would seem to be a way of avoiding the restrictions in Rule .0405. It is not clear in (c) whether the waiver or exemption from, or the non-applicability of (however it is termed), Rule .0405 applies to the employee, the temporary employment service, or the agency utilizing the temporary employee. It is not clear in at least two alternative aspects. It is not clear whether the rule means that an employee may work for the temporary service for a period longer than 12 months although not in the same position with the same agency or whether the employee can work in the same position with the same agency for greater than 12 months if the employee is part of a "temporary employment service."

25 NCAC 01C .0405: State Personnel Commission - The Commission objected to this rule due to ambiguity. For the same reasons as set out in the analysis of Rule .0216, this rule is unclear as to what the restrictions on the employer are in terms of the prohibition against hiring temporary employees for greater than 12 months.

25 NCAC 01C .0407: State Personnel Commission - The Commission extended the period of review on this rule in case the objections of rules .0216 and .0405 have an effect on this rule.

The Commission also has concerns whether these rules might violate the provisions of the Umstead Act and directed counsel to research this matter.

TEMPORARY RULES

10A NCAC 21B .0314: Division of Medical Assistance - The Commission found that the findings of need for the rule do not meet the criteria for a temporary rule listed in G.S. 150B-21.1(a) because it has not been shown that the immediate adoption of the rule is required by the effective date of a recent act of the General Assembly pursuant to G.S. 150B-21.1(a)(2).

COMMISSION PROCEDURES AND OTHER BUSINESS

Commissioners were reminded that they will have a hearing at 10:00 a.m. prior to the Commission's regular meeting Thursday, May 17, 2007. The hearing will last no longer than 45 minutes. The RRC will accept any written or oral comments, including proposed rules or amendments offered prior to or at the hearing.

The meeting adjourned at 12:59 p.m.

The next scheduled meeting of the Commission is Thursday, May 17, 2007 at 10:00 a.m.

Respectfully submitted,
Dana Sholes

**LIST OF APPROVED PERMANENT RULES
April 19, 2007 Meeting**

ADMINISTRATION, DEPARTMENT OF

<u>Purpose and Organization</u>	01	NCAC	41D	.0101
<u>Definitions</u>	01	NCAC	41D	.0102
<u>Banking</u>	01	NCAC	41D	.0201
<u>Selling</u>	01	NCAC	41D	.0202
<u>Proceeds and Distribution</u>	01	NCAC	41D	.0301
<u>Fund Disbursements</u>	01	NCAC	41D	.0302
<u>Reports</u>	01	NCAC	41D	.0401

HHS - DEAF AND HARD OF HEARING, DIVISION OF SERVICES FOR THE

<u>Classification</u>	10A	NCAC	17C	.0108
<u>Eligibility</u>	10A	NCAC	17D	.0206
<u>Eligibility for Reapplication</u>	10A	NCAC	17D	.0211
<u>Ownership: Lease: Liabilities</u>	10A	NCAC	17D	.0213
<u>Maintenance of Equipment Records</u>	10A	NCAC	17D	.0220
<u>Loan Period, Lease, and Liabilities</u>	10A	NCAC	17D	.0304

MENTAL HEALTH, COMMISSION OF

<u>Scope</u>	10A	NCAC	27G	.1501
<u>Staff</u>	10A	NCAC	27G	.1502
<u>Operations</u>	10A	NCAC	27G	.1503
<u>Physical Plant</u>	10A	NCAC	27G	.1504
<u>Firearms</u>	10A	NCAC	28I	.0401

HEALTH AND HUMAN SERVICES, DEPARTMENT OF

<u>Firearms</u>	10A	NCAC	28I	.0402
<u>Application for Initial Permit</u>	10A	NCAC	41B	.0301
<u>Conditions for Renewal of Permit</u>	10A	NCAC	41B	.0304
<u>Qualifications of Maintenance Personnel</u>	10A	NCAC	41B	.0309
<u>Breath-Testing Instruments: Reporting of Sequential Tests</u>	10A	NCAC	41B	.0313

LABOR, DEPARTMENT OF

<u>Complaints</u>	13	NCAC	12	.0601
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ENVIRONMENTAL MANAGEMENT COMMISSION

<u>Location of Sampling Sites and Mixing Zones</u>	15A	NCAC	02B	.0204
<u>Standards for Toxic Substances and Temperature</u>	15A	NCAC	02B	.0208
<u>Fresh Surface Water Quality Standards for Class C Waters</u>	15A	NCAC	02B	.0211
<u>Fresh Surface Water Quality Standards for Class WS-I Waters</u>	15A	NCAC	02B	.0212
<u>Fresh Surface Water Quality Standards for Class WS-II Waters</u>	15A	NCAC	02B	.0214
<u>Fresh Surface Water Quality Standards for Class WS-III Wa...</u>	15A	NCAC	02B	.0215
<u>Fresh Surface Water Quality Standards for Class Ws-IV Waters</u>	15A	NCAC	02B	.0216

RULES REVIEW COMMISSION

<u>Fresh Surface Water Quality Standards for Class WS-V Waters</u>	15A	NCAC	02B	.0218
<u>Tidal Salt Water Quality Standards for Class SC Waters</u>	15A	NCAC	02B	.0220
<u>Tidal Salt Water Quality Standards for Class SA Waters</u>	15A	NCAC	02B	.0221
<u>Tidal Salt Water Quality Standards for Class SB Waters</u>	15A	NCAC	02B	.0222
<u>Catawba River Basin</u>	15A	NCAC	02B	.0308
<u>Best Available Retrofit Technology</u>	15A	NCAC	02D	.0543

WILDLIFE RESOURCES COMMISSION

<u>Particular Offenses</u>	15A	NCAC	10A	.1001
<u>Migratory Game Birds</u>	15A	NCAC	10B	.0105
<u>Big Game Kill Reports</u>	15A	NCAC	10B	.0113
<u>Permitted Archery Equipment</u>	15A	NCAC	10B	.0116
<u>Bear</u>	15A	NCAC	10B	.0202
<u>Deer</u>	15A	NCAC	10B	.0203
<u>Wild Boar (Both Sexes)</u>	15A	NCAC	10B	.0204
<u>Raccoon and Opossum</u>	15A	NCAC	10B	.0205
<u>Wild Turkey</u>	15A	NCAC	10B	.0209
<u>Open Seasons</u>	15A	NCAC	10B	.0302
<u>Traps</u>	15A	NCAC	10B	.0304
<u>Public Mountain Trout Waters</u>	15A	NCAC	10C	.0205
<u>Fishing License Exemptions</u>	15A	NCAC	10C	.0216
<u>Open Seasons: Creel and Size Limits</u>	15A	NCAC	10C	.0305
<u>Manner of Taking Non-game Fishes</u>	15A	NCAC	10C	.0401
<u>Taking Non-game Fishes for Bait</u>	15A	NCAC	10C	.0402
<u>Special Device Fishing</u>	15A	NCAC	10C	.0404
<u>Permitted Special Devices and Open Seasons</u>	15A	NCAC	10C	.0407
<u>General Regulations</u>	15A	NCAC	10D	.0102
<u>Hunting On Game Lands</u>	15A	NCAC	10D	.0103
<u>Application for Certificate of Vessel Number</u>	15A	NCAC	10F	.0102
<u>Transfer of Ownership</u>	15A	NCAC	10F	.0103
<u>Certificate of Number</u>	15A	NCAC	10F	.0104
<u>Numbering Pattern</u>	15A	NCAC	10F	.0105
<u>Display of Vessel Numbers</u>	15A	NCAC	10F	.0106
<u>Validation Decal</u>	15A	NCAC	10F	.0107
<u>Temporary Certificate of Number</u>	15A	NCAC	10F	.0109
<u>Abandoned Vessels</u>	15A	NCAC	10F	.0110
<u>Durham and Wake Counties</u>	15A	NCAC	10F	.0350
<u>Purpose of Wildlife Service Agents</u>	15A	NCAC	10G	.0401
<u>Appointment of Wildlife Service Agents</u>	15A	NCAC	10G	.0402
<u>Customer Support System</u>	15A	NCAC	10G	.0404
<u>Supplement Feeding</u>	15A	NCAC	10H	.0110
<u>Definitions</u>	15A	NCAC	10H	.0801
<u>Commercial Take of Certain Turtles and Terrapins</u>	15A	NCAC	10H	.1301
<u>Possession of Reptiles and Amphibians</u>	15A	NCAC	10H	.1302
<u>General Regulations Regarding Use of Conservation Areas</u>	15A	NCAC	10J	.0102

HEALTH SERVICES, COMMISSION FOR

<u>Definitions</u>	15A	NCAC	18A	.3601
<u>Standards and Approval of Plans</u>	15A	NCAC	18A	.3602
<u>Permits</u>	15A	NCAC	18A	.3603
<u>Public Display of Grade Card</u>	15A	NCAC	18A	.3604
<u>Inspections and Reinspections</u>	15A	NCAC	18A	.3605
<u>Grading</u>	15A	NCAC	18A	.3606
<u>Procedure When Infections Suspected</u>	15A	NCAC	18A	.3607
<u>Site</u>	15A	NCAC	18A	.3608
<u>Water Supply</u>	15A	NCAC	18A	.3609
<u>Liquid Wastes</u>	15A	NCAC	18A	.3610
<u>Swimming Pools</u>	15A	NCAC	18A	.3612
<u>Camp Building Construction and Maintenance Requirements</u>	15A	NCAC	18A	.3613
<u>Lodging Facilities</u>	15A	NCAC	18A	.3614
<u>Toilet: Handwashing: Laundry: and Bathing Facilities</u>	15A	NCAC	18A	.3615
<u>Drinking Water Facilities</u>	15A	NCAC	18A	.3616
<u>Premises: Vermin Control and Miscellaneous</u>	15A	NCAC	18A	.3617
<u>Food Service Facilities</u>	15A	NCAC	18A	.3618
<u>Field Sanitation</u>	15A	NCAC	18A	.3619
<u>Food Service Employees</u>	15A	NCAC	18A	.3620
<u>Food Supplies</u>	15A	NCAC	18A	.3621
<u>Food Protection</u>	15A	NCAC	18A	.3622
<u>Milk and Milk Products</u>	15A	NCAC	18A	.3623
<u>Ice Handling</u>	15A	NCAC	18A	.3624
<u>Seafood</u>	15A	NCAC	18A	.3625
<u>Refrigeration: Thawing: and Preparation of Food</u>	15A	NCAC	18A	.3626
<u>Re-Serving of Food</u>	15A	NCAC	18A	.3627
<u>Food Service Utensils and Equipment</u>	15A	NCAC	18A	.3628
<u>Storage and Handling of Utensils and Equipment</u>	15A	NCAC	18A	.3630
<u>Food Service Area Storage Spaces</u>	15A	NCAC	18A	.3631
<u>Food Service Area Lighting</u>	15A	NCAC	18A	.3632
<u>Food Service Area Ventilation</u>	15A	NCAC	18A	.3633
<u>Food Service Area and Lavatory Facilities</u>	15A	NCAC	18A	.3634
<u>Food Service Area Toilet Facilities</u>	15A	NCAC	18A	.3635
<u>Food Service Area Floors</u>	15A	NCAC	18A	.3636
<u>Food Service Area Walls and Ceilings</u>	15A	NCAC	18A	.3637
<u>Kitchen Premises: Miscellaneous</u>	15A	NCAC	18A	.3638
<u>Informal Review Process and Appeals Procedure</u>	15A	NCAC	18A	.3639

COSMETIC ART EXAMINERS, BOARD OF

<u>Footspa Sanitation</u>	21	NCAC	14H	.0120
<u>Sanitation Prohibited Practices</u>	21	NCAC	14H	.0121
<u>Equipment for Beginner Department</u>	21	NCAC	14J	.0106
<u>Equipment in Advanced Department</u>	21	NCAC	14J	.0206
<u>Equipment</u>	21	NCAC	14J	.0302

RULES REVIEW COMMISSION

<u>Students' Personal Supplies</u>	21	NCAC	14J	.0303
<u>Initial Application and Fees</u>	21	NCAC	14N	.0102
<u>Re-examination</u>	21	NCAC	14N	.0113
<u>Application Criteria and Continuing Education Course Appr...</u>	21	NCAC	14R	.0102

LANDSCAPE CONTRACTORS REGISTRATION BOARD

<u>Authority: Name and Location of Board</u>	21	NCAC	28	.0101
<u>Applications and Examination</u>	21	NCAC	28	.0301

OCCUPATIONAL THERAPY, BOARD OF

<u>Board Office</u>	21	NCAC	38	.0102
<u>Definitions</u>	21	NCAC	38	.0103
<u>Fees</u>	21	NCAC	38	.0204
<u>License Number: Display of License</u>	21	NCAC	38	.0301
<u>Limited Permits</u>	21	NCAC	38	.0303
<u>Grounds for License Denial or Discipline</u>	21	NCAC	38	.0304
<u>Continuing Duty to Report Certain Crimes and Civil Suits</u>	21	NCAC	38	.0305
<u>Change of Address or Business Name</u>	21	NCAC	38	.0401
<u>Advertising</u>	21	NCAC	38	.0402
<u>Procedure for Adoption of Rules</u>	21	NCAC	38	.0502
<u>Authority and Definitions</u>	21	NCAC	38	.0701
<u>Prerequisites for Incorporation</u>	21	NCAC	38	.0702
<u>Certificate of Registration</u>	21	NCAC	38	.0703
<u>General and Administrative Provisions</u>	21	NCAC	38	.0704
<u>Continuing Competence Requirements for Licensure</u>	21	NCAC	38	.0802
<u>Approval of Activities for Maintaining Continuing Competence</u>	21	NCAC	38	.0803
<u>Scope of Qualified Activities for Maintaining Continuing ...</u>	21	NCAC	38	.0804
<u>Waiver of Requirements</u>	21	NCAC	38	.0806
<u>Documentation/Reporting Procedures</u>	21	NCAC	38	.0807
<u>Audit of Continuing Competence Activities</u>	21	NCAC	38	.0808
<u>Notification of Supervision Change</u>	21	NCAC	38	.0901
<u>Supervision is an Interactive Process</u>	21	NCAC	38	.0902
<u>Types of Supervision</u>	21	NCAC	38	.0903
<u>Documentation of Supervision</u>	21	NCAC	38	.0904
<u>Supervision of Limited Permittee</u>	21	NCAC	38	.1002
<u>Service Competency of Limited Permittee</u>	21	NCAC	38	.1003
<u>Signature of Limited Permittee</u>	21	NCAC	38	.1004
<u>Board Notification</u>	21	NCAC	38	.1005
<u>Responsibility of the Occupational Therapy Practitioner</u>	21	NCAC	38	.1101
<u>Delegation of Duties to Unlicensed Personnel</u>	21	NCAC	38	.1102

AGENDA
RULES REVIEW COMMISSION
Thursday, May 17, 2007, 10:00 A.M.

- I. Ethics reminder by the chair as set out in G.S. 138A-15(e)

- II. Approval of the minutes from the last meeting
- III. Follow-Up Matters:
 - A. DHHS/Medical Assistance (Temporary Rule)– 10A NCAC 21B .0314 (Bryan)
 - B. Alarm Systems Licensing Board – 12 NCAC 11 .0105 (DeLuca)
 - C. Wildlife Resources Commission – 15A NCAC 10G .0403; .0405 (Bryan)
 - D. Commission for Health Services – 15A NCAC 18A .3611; .3629 (Bryan)
 - E. Board of Cosmetic Art Examiners – 21 NCAC 14H .0105 (DeLuca)
 - F. Board of Cosmetic Art Examiners – 21 NCAC 14N .0115 (DeLuca)
 - G. Landscape Contractor Registration Board – 21 NCAC 28 .0304 (DeLuca)
 - H. Board of Occupational Therapy – 21 NCAC 38 .0101; .0201; .0302; .0801; .0805; .0905; .1001 (DeLuca)
 - I. Board of Community Colleges – 23 NCAC 2E .0204 (DeLuca)
 - J. Board of Community Colleges – 23 NCAC 3A .0113 (DeLuca)
 - K. State Personnel Commission – 25 NCAC 01C .0216; .0405; .0407 (DeLuca)
- IV. Review of Log of Permanent Rule filings for RRC review filed between March 21 and April 20, 2007 (attached)
- V. Review of Temporary Rules
- VI. Commission Business
 - Next meeting: June 21, 2007

**Commission Review
Log of Permanent Rule Filings
March 21, 2007 through April 20, 2007**

ADMINISTRATION, DEPARTMENT OF

The rules in Chapter 5 concern Purchase and Contract.

The rules in Subchapter 5C concern surplus property including general provisions (.0100); state surplus property (.0200); state surplus property (.0300); and federal surplus property forms (.0500).

<u>Responsibility</u>	01	NCAC	05C	.0101
Repeal/*				
<u>Organization</u>	01	NCAC	05C	.0102
Repeal/*				
<u>Transfer of Sale</u>	01	NCAC	05C	.0201
Repeal/*				
<u>Notification of Surplus</u>	01	NCAC	05C	.0202
Repeal/*				
<u>Trade-In</u>	01	NCAC	05C	.0203
Repeal/*				
<u>Order of Priority in Disposition</u>	01	NCAC	05C	.0204
Repeal/*				
<u>Public Sale</u>	01	NCAC	05C	.0205
Repeal/*				
<u>First-Come: First-Served</u>	01	NCAC	05C	.0206

Repeal/*				
<u>Request for Bids on State Surplus Property</u>	01	NCAC	05C	.0207
Repeal/*				
<u>Disposal By Other Means</u>	01	NCAC	05C	.0208
Repeal/*				
<u>Rejection of Bids</u>	01	NCAC	05C	.0209
Repeal/*				
<u>Receipt of Bids</u>	01	NCAC	05C	.0210
Repeal/*				
<u>Execution of Bids</u>	01	NCAC	05C	.0211
Repeal/*				
<u>Telefax Proposals (BIDS)</u>	01	NCAC	05C	.0212
Repeal/*				
<u>Inspection of Property</u>	01	NCAC	05C	.0213
Repeal/*				
<u>State Does Not Guarantee</u>	01	NCAC	05C	.0214
Repeal/*				
<u>Deposits</u>	01	NCAC	05C	.0215
Repeal/*				
<u>Failure to Pay</u>	01	NCAC	05C	.0217
Repeal/*				
<u>Bond</u>	01	NCAC	05C	.0218
Repeal/*				
<u>Demolition of State Buildings</u>	01	NCAC	05C	.0219
Repeal/*				
<u>Timber Sales and Pinestraw Sales</u>	01	NCAC	05C	.0220
Repeal/*				
<u>Surplus Weapons</u>	01	NCAC	05C	.0221
Repeal/*				
<u>Payment</u>	01	NCAC	05C	.0222
Repeal/*				
<u>Surplus Paper</u>	01	NCAC	05C	.0223
Repeal/*				
<u>Request for Bids on Sale of Surplus State Property</u>	01	NCAC	05C	.0301
Repeal/*				
<u>Invoice: State Surplus Property</u>	01	NCAC	05C	.0305
Repeal/*				

The rules in Subchapter 43A concern state surplus property including general provisions (.0100); and disposal of surplus property (.0300).

<u>Scope</u>	01	NCAC	43A	.0101
Adopt/*				
<u>Definitions</u>	01	NCAC	43A	.0102
Adopt/*				
<u>Transfer of Sale</u>	01	NCAC	43A	.0301
Adopt/*				
<u>Notification of Surplus</u>	01	NCAC	43A	.0302
Adopt/*				
<u>Trade In</u>	01	NCAC	43A	.0303
Adopt/*				
<u>Order of Priority in Disposition</u>	01	NCAC	43A	.0304

Adopt/*				
<u>Disposal By Executive Order</u>	01	NCAC	43A	.0305
Adopt/*				
<u>Bidding and Purchases Prohibited by Employees and Immedia...</u>	01	NCAC	43A	.0306
Adopt/*				
<u>Public Sale</u>	01	NCAC	43A	.0307
Adopt/*				
<u>First-Come First-Served</u>	01	NCAC	43A	.0308
Adopt/*				
<u>Rejection of Bids</u>	01	NCAC	43A	.0309
Adopt/*				
<u>Receipt of Bids</u>	01	NCAC	43A	.0310
Adopt/*				
<u>Inspection of Property</u>	01	NCAC	43A	.0311
Adopt/*				
<u>State Does Note Guarantee</u>	01	NCAC	43A	.0312
Adopt/*				
<u>Refunds</u>	01	NCAC	43A	.0313
Adopt/*				
<u>Extension to Pay or Remove Property</u>	01	NCAC	43A	.0314
Adopt/*				
<u>Failure to Pay or Remove Property</u>	01	NCAC	43A	.0315
Adopt/*				
<u>Bond</u>	01	NCAC	43A	.0316
Adopt/*				
<u>Demolition of State Buildings</u>	01	NCAC	43A	.0317
Adopt/*				
<u>Timber Sales, Pinestraw, and Forest Commodities Sales</u>	01	NCAC	43A	.0318
Adopt/*				
<u>Surplus Weapons and Firearms</u>	01	NCAC	43A	.0319
Adopt/*				
<u>Payment</u>	01	NCAC	43A	.0320
Adopt/*				

HHS - AGING AND ADULT SERVICES

The rules in Chapter 6 cover various programs for older adults.

The rules in Chapter 6E concern housing and home improvement services including scope of service (.0100); service delivery (.0200); general (.0300); and service provider responsibilities(.0400).

<u>Scope of Housing and Home Improvement Service</u>	10A	NCAC	06E	.0101
Repeal/*				
<u>Definitions</u>	10A	NCAC	06E	.0102
Repeal/*				
<u>Target Eligible Population</u>	10A	NCAC	06E	.0103
Repeal/*				
<u>Service Delivery</u>	10A	NCAC	06E	.0202
Repeal/*				
<u>Purpose</u>	10A	NCAC	06E	.0301
Adopt/*				
<u>Definitions</u>	10A	NCAC	06E	.0302

Adopt/*				
<u>Service Populations</u>	10A	NCAC	06E	.0303
Adopt/*				
<u>Application for Services</u>	10A	NCAC	06E	.0304
Adopt/*				
<u>Service Provider responsibilities</u>	10A	NCAC	06E	.0401
Adopt/*				
<u>Prohibited Service Activities</u>	10A	NCAC	06E	.0402
Adopt/*				
<u>Request for Waiver</u>	10A	NCAC	06E	.0403
Adopt/*				

INSURANCE, DEPARTMENT OF

The rules in Chapter 11 are from the Financial Evaluation Division. The rules in Subchapter 11A concern general provisions including definitions (.0100); personnel and records of the division (.0200); operational units (.0300); description of forms (.0400); cpa audits (.0500); and reinsurance intermediaries (.0600).

<u>Unsound Condition</u>	11	NCAC	11A	.0102
Repeal/*				
<u>Definitions</u>	11	NCAC	11A	.0502
Amend/*				

The rules in Subchapter 11B concern special programs including securities (.0100); insurance holding company systems (.0200); variable annuities (.0300); workers' compensation fund (.0400); promoting and holding companies (.0500); and workers' compensation self-insurance (.0600).

<u>Adequacy of Surplus</u>	11	NCAC	11B	.0223
Amend/*				

The rules in Subchapter 11C concern analysis and examinations including general provisions (.0100); investments (.0200); health maintenance organizations (.0300); mortgage guaranty insurance (.0400); reinsurance (.0500); and premiums in the course of collection (.0600).

<u>Accounting for Mortgage Guaranty Insurance</u>	11	NCAC	11C	.0403
Repeal/*				
<u>Contingency Reserve: Mortgage Guaranty Insurance</u>	11	NCAC	11C	.0404
Repeal/*				
<u>Report of Policyholders Position--Mortgage Guaranty Insurers</u>	11	NCAC	11C	.0407
Amend/*				

The rules in Subchapter 11D concern proxies: liquidations and mergers including general provisions (.0100); liquidation: general nature (.0200); and merger: general nature (.0300).

<u>Guaranty Capital Certificates: When Permitted</u>	11	NCAC	11D	.0168
Repeal/*				

EDUCATION, STATE BOARD OF

The rules in Subchapter 6G relate to education agency relations including rules about the school-based management and accountability program (.0300) and charter schools (.0500).

<u>Annual Performance Standards</u>	16	NCAC	06G	.0312
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REVENUE, DEPARTMENT OF

The rules in Chapter 1 are the departmental rules of the Department of Revenue.

Subchapter 1C rules deal with general administration and contain definitions (.0100); hearing procedures (.0200); forms (.0300); interest requirements (.0400); form of payment (.0500); substitution of forms (.0600); and electronic filing forms (.0700).

<u>EFT Definitions</u> Amend/*	17	NCAC	01C	.0503
<u>Methods of Electronic Funds Transfer</u> Amend/*	17	NCAC	01C	.0508

The rules in Chapter 10 are from the Ad Valorem Tax Division and concern organization of the division (.0100); general provisions (.0200); exclusion for property used for pollution abatement (.0300); exclusion for personal property used for cotton dust prevention or reduction (.0400); and training/certification for county assessors and ad valorem tax appraisals (.0500).

<u>Certification Requirements for County Assessors</u> Amend/*	17	NCAC	10	.0504
<u>Continuing Education Requirements for County Assessors</u> Amend/*	17	NCAC	10	.0505
<u>Continuing Education Requirements for County Appraisers</u> Amend/*	17	NCAC	10	.0507

MEDICAL BOARD

The rules in Chapter 32 are from the Board of Medical Examiners.

The rules in Subchapter 32B concern license to practice medicine including general (.0100); license by written examination (.0200); license by endorsement (.0300); temporary license by endorsement of credentials (.0400); resident's training license (.0500); special limited license (.0600); certificate of registration for visiting professors (.0700); medical school facility license (.0800); special volunteer license (.0900); and prescribing practices (.1000).

<u>Authority to Prescribe</u> Adopt/*	21	NCAC	32B	.1001
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RESPIRATORY CARE BOARD

The rules in Chapter 61 are from the Respiratory Care Board and concern organization and general provisions (.0100); application for license (.0200); licensing (.0300); continuing education requirements for license holders (.0400); general (.0500); rules (.0600) and administrative hearing (.0700) procedures.

<u>Continuing Education Requirements</u> Amend/*	21	NCAC	61	.0401
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BUILDING CODE COUNCIL

<u>NC Plumbing Code Shower Lining</u> Amend/*	417.5.2
<u>NC Fire/Building Code Group A-2 Sprinklers</u> Amend/*	903.2.1.2

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.
Selina Brooks
Melissa Owens Lassiter
Don Overby*

*Beecher R. Gray
A. B. Elkins II
Joe Webster*

<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>ALJ</u>	<u>DATE OF DECISION</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
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Carlos Salas T/A Boom Boom Boom Night Club, 1205 Elgin Avenue Hight Point, NC 27262 v. ABC Commission	06 ABC 0719	Chess	08/07/06	
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Charles Leon Champion v. Crime Victims Compensation Commission	06 CPS 0155	Elkins	06/08/06	
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Elaine B. Deloatch v. Crime Victims Compensation Commission	06 CPS 0736	Wade	08/15/06	
Christopher Lee Vess v. Crime Control Victims Compensation Services Division	06 CPS 0890	Gray	08/23/06	
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Brian Curlee v. Crime Victims Compensation Commission	06 CPS 1677	Wade	12/13/06	
A list of Child Support Decisions may be obtained by accessing the OAH Website: www.ncoah.com/decisions .				
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Clara Church v. Dept. of Agriculture and Consumer Services	06 DAG 1422	Wade	12/11/06	
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Gerald Wanamaker v. Ms Satana T. Deberry General Coun. DHHS	04 DHR 1513	Lassiter	06/14/06	
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James Woodrow Jacobs v. Sheriffs' Education and Training Standards Commission 06 DOJ 0229 Gray 07/12/06

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21:18 NCR 1682

STATE OF NORTH CAROLINA

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
06 DHR 1523

COUNTY OF RUTHERFORD

Tony and Dana Ledbetter
Petitioner

vs.

N. C. Department of Health and Human Services
Respondent

DECISION

On January 8, 2007, Administrative Law Judge Donald W. Overby conducted an administrative hearing in this contested case in Asheville, North Carolina.

APPEARANCES

For Petitioner: Daniel R Talbert
Teddy and Meekins, PLLC
1219 Fallston Road
Shelby, NC 28150

For Respondent: R Kirk Randleman
Assistant Attorney General
NC Department of Justice
932 Old Highway 70 Building 17, BMC Campus
Black Mountain, NC 28711

The Court, after considering the evidence presented makes the following:

FINDINGS OF FACT

1. The North Carolina Department of Health and Human Services, Division of Social Services, Licensing Section revoked the foster home license of the Petitioners, Tony and Dana Ledbetter on July 7, 2006.
2. The Ledbetters were licensed as foster parents by the State of North Carolina through the supervision of the Rutherford County Department of Social Services in August 2004 after having completed the necessary requirements of the Model Approach to Partnership and Parenting (MAPP) program.
3. Two children J, aged 3 at the time of placement (date of birth October 3, 2000), and M, age 3 months at the time of placement (date of birth July 8, 2004) were placed with the Petitioners on December 14, 2004 by the Rutherford County Department of Social Services where they remained until their removal on January 13, 2006.
4. The children did well in the home of the Petitioners until December 2005, when some problems arose due to a plan to place the children with a relative in Ohio.
5. By all indications the children received excellent care in the home of the Petitioners, and the Petitioners were especially attentive to the respective needs which had necessitated the children's placement. The Petitioners treated the minor children as though they were part of their family, including them in family outings and church attendance and by being involved in school and daycare activities.
6. The oldest child was in need of therapy as a result of the conditions which lead to placement. He attended therapy sessions at least once per week after being placed with the Petitioners, and he did not miss any therapy sessions during the placement until the issues arose concerning placement of the children in Ohio.
7. The Petitioners attended all appointments scheduled for and as necessary for the minor children's care, including but not limited to medical, dental and therapy appointments; however, social worker Casey Hill transported the older child to some therapy sessions beginning in November 2005.
8. Dana Ledbetter established contact with the birth father of these children, who was in prison, the paternal grandmother, and a maternal aunt.

9. On December 27, 2005 Dana Ledbetter refused to transport the oldest child, J. to a therapy appointment, as she had been doing. She opposed the plan of moving these children to be with relatives, and objected to the therapy sessions because the therapist was only preparing the child for his move to Ohio and not doing therapy. She did not object to a social worker transporting the child to the session as had previously been done.

10. The proposed move of the children to Ohio was to be a family placement and a home study had been performed in Ohio on the prospective family member with whom the children were to be placed. Paula Bowen, the foster care licensing social worker for the Rutherford County Department of Social Services, had explained to Dana Ledbetter that the law mandated an effort for reunification of the minor children with the biological family and the Petitioners understood this mandate.

11. As a result of the contacts she had with the biological family members, as well as the fear and anxiety expressed by the older child for the prospective move, Dana Ledbetter had concerns with the placement of the minor children in Ohio, and she consistently and repeatedly communicated those concerns to her social worker, Casey Hill, and other members of the Department of Social Services.

12. On January 13, 2006, Paula Bowen called Dana Ledbetter to discuss her concerns regarding the Ledbetters' foster parent problems.

13. Paula Bowen testified that Dana Ledbetter was very agitated during this phone call, told her to come and get these children if she wanted to and hung up on her.

14. Because of her concerns for the well-being of the minor children in the Ohio placement, Dana Ledbetter became very agitated and very frustrated and acted or reacted poorly, substituting her own judgment for that of the agency.

15. There was no further contact between the agency and the Petitioners between December 27, 2005 and January 13, 2006. At no time relevant to matters herein were the children in potential harm from the Petitioners.

16. The staff of the Rutherford County Department of Social Services met and decided to remove the children from the Ledbetter's home due to the refusal of the Ledbetters to cooperate with the Department and address the problems that existed in the placement of these children, and because they felt that the agency had no control over the foster care placement.

17. Social Worker Paula Bowen and Social Worker Angela Bumgardner went to the home of Tony and Dana Ledbetter, but discovered that Dana Ledbetter and the minor children were at the home of Mrs. Ledbetter's mother, Mrs. Myra Canipe, and proceeded to that home.

18. Upon arrival at Mrs. Ledbetter's mother's home, Mrs. Ledbetter asked Social Worker Bowen if she was there to pick up the children. Mrs. Bowen told her that they were there to pick up the children. Mr. Ledbetter was at work and not present.

19. Mrs. Ledbetter became very upset and agitated and began crying and yelling at Social Worker Bowen in front of the children, causing the children to become upset.

20. After Mrs. Ledbetter became agitated and either could not or would not calm down, Social Worker Bowen told Social Worker Angela Bumgardner to call law enforcement.

21. At this point, a relative of Mrs. Ledbetter's assisted Mrs. Bowen in carrying the children out to Social Worker Bowen's car. Social Workers Bowen and Bumgardner left the residence at this time with the foster children. The social workers did not have appropriate child restraint seats for removing the minor children.

22. On February 23, 2006, after the children had been removed from their home, the Petitioners filed a Motion to Intervene in the actions concerning these children which were pending before the District Court in Rutherford County, Juvenile Court Division, file numbers 04 J 135 and 04 J 136.

23. By Order entered on July 10th, 2006, by the Honorable Tommy Davis, District Court Judge Presiding in the above-mentioned juvenile matters, the Movants (Petitioners herein) are "allowed to participate in future permanency planning hearings and that they are to be heard and allowed to participate on matters relating to the custody and care of the minor child[ren]" although the Petitioners' Motion to Intervene was denied.

24. The minor children were, in fact, placed in Ohio on March 1, 2006. That placement was not successful and the children were returned to North Carolina on June 29, 2006.

25. Social worker Paula Bowen called Dana Ledbetter at a time after the children had been removed to compliment Mrs. Ledbetter on having done a good job as a foster parent to these children.

26. Angelina Spencer was a consultant for foster care licensing for the Respondent in July 2006. She was present and participated in the "staffing" of the complaint concerning the Petitioners' foster care license. In investigating the allegations, she did not talk with the Rutherford County DSS, but another consultant did. Neither consultant spoke with the Petitioners. Ms. Spencer felt that the most serious breach of the Agency/Foster Parent Agreement was the foster parents not cooperating with the agency and the foster parents not cooperating with the birth parents.

27. Ms. Spencer was not aware of how many therapy appointments the Petitioners had attended with the minor child nor how many they had missed.

28. There is no evidence that the Petitioners failed to cooperate with the birth parents (emphasis added) as required in the Agency/Foster Parent Agreement, although Mrs. Ledbetter did consistently and continuously express concerns with the family placement in Ohio, apparently with good reason.

29. There is no evidence that the Petitioners failed to treat the minor children as members of the family as required by the Agency/Foster Parent Agreement.

30. Because of the breakdown in communication between the Agency and the Petitioners, particularly Mrs. Ledbetter, little or no effort was made to ameliorate the situation between the two prior to the removal. The Foster parents were not made a part of the "decision-making team" as required by the contract due to the tension between the agency and Mrs. Ledbetter.

CONCLUSIONS OF LAW

1. The actions of Dana Ledbetter did not violate 10A NCAC 70E .0202 AGENCY FOSTER PARENT AGREEMENT "(3) to treat a child placed in the home as a member of the family and when so advised by the agency to make every effort to support, encourage and enhance the child's relationship with the child's birth parents." (emphasis added)

2. The actions of Dana Ledbetter did violate 10A NCAC 70E .0402 (g) "Relationship with responsible Agency. Foster parents must agree to work constructively with the Agency in the following ways . . . (1) Work with the child and the child's birth family when appropriate in the placement process, reunification process, adoption process or replacement process"; however, her violations in this regard were not sufficient to justify revocation of the Petitioners' foster care license

3. The North Carolina Department of Health and Human Services, Division of Social Services, Foster Parent Licensing Section did not act correctly in revoking the Foster Parent license of Tony and Dana Ledbetter.

DECISION

It is the decision of the undersigned that the revocation of the Foster Parent License of Tony and Dana Ledbetter by the Respondent be rescinded and the foster care license of the Petitioners be reinstated.

ORDER AND NOTICE

The North Carolina Department of Health and Human Services will make the Final Decision in this contested case. N.C. Gen. Stat. § 150B-36(b), (b1), (b2), and (b3) enumerate the standard of review and procedures the agency must follow in making its Final Decision, and adopting and/or not adopting the Findings of Fact and Decision of the Administrative Law Judge.

Pursuant to N.C. Gen. Stat. § 150B-36(a), before the agency makes a Final Decision in this case, it is required to give each party an opportunity to file exceptions to this decision, and to present written arguments to those in the agency who will make the Final Decision. N.C. Gen. Stat. 150B-36(b)(3) requires the agency to serve a copy of its Final Decision on each party, and furnish a copy of its Final Decision to each party's attorney of record and to the Office of Administrative Hearings, 6714 Mail Service Center, Raleigh, NC 27699-6714.

This the 13th day of February, 2007.

Donald W. Overby
Administrative Law Judge