

NORTH CAROLINA REGISTER

VOLUME 24 • ISSUE 18 • Pages 1585 - 1668

March 15, 2010

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Contact List for Rulemaking Questions or Concerns

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

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Rules Division
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Rule Review and Legal Issues

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Bobby Bryan, Commission Counsel bobby.bryan@oah.nc.gov (919) 431-3079

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Office of State Budget and Management
116 West Jones Street (919) 807-4700
Raleigh, North Carolina 27603-8005 (919) 733-0640 FAX
Contact: Anca Grozav, Economic Analyst osbmruleanalysis@osbm.nc.gov (919)807-4740

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: Erin L. Wynia ewynia@nclm.org

Governor's Review

Edwin M. Speas, Jr. edwin.speas@nc.gov
General Counsel to the Governor (919) 733-5811
116 West Jones Street
20301 Mail Service Center
Raleigh, North Carolina 27699-0301

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.cochrane-brown@ncleg.net
Jeff Hudson, Staff Attorney Jeffrey.hudson@ncleg.net

NORTH CAROLINA REGISTER
Publication Schedule for January 2010 – December 2010

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 31st legislative day of the session beginning:	270 th day from publication in the Register
24:13	01/04/10	12/09/09	01/19/10	03/05/10	03/22/10	05/01/10	05/12/10	10/01/10
24:14	01/15/10	12/22/09	01/30/10	03/16/10	03/22/10	05/01/10	05/12/10	10/12/10
24:15	02/01/10	01/08/10	02/16/10	04/05/10	04/20/10	06/01/10	01/26/11	10/29/10
24:16	02/15/10	01/25/10	03/02/10	04/16/10	04/20/10	06/01/10	01/26/11	11/12/10
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25:08	10/15/10	09/24/10	10/30/10	12/14/10	12/20/10	02/01/11	05/2012	07/12/11
25:09	11/01/10	10/11/10	11/16/10	01/03/11	01/20/11	03/01/11	05/2012	07/29/11
25:10	11/15/10	10/22/10	11/30/10	01/14/11	01/20/11	03/01/11	05/2012	08/12/11
25:11	12/01/10	11/05/10	12/16/10	01/31/11	02/21/11	04/01/11	05/2012	08/28/11
25:12	12/15/10	11/22/10	12/30/10	02/14/11	02/21/11	04/01/11	05/2012	09/11/11

EXPLANATION OF THE PUBLICATION SCHEDULE

This Publication Schedule is prepared by the Office of Administrative Hearings as a public service and the computation of time periods are not to be deemed binding or controlling. Time is computed according to 26 NCAC 2C .0302 and the Rules of Civil Procedure, Rule 6.

GENERAL

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

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

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

FILING DEADLINES

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

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

NOTICE OF TEXT

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

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

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

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

**EXECUTIVE ORDER NO. 48****TEMPORARY SUSPENSION OF MOTOR VEHICLE REGULATIONS
TO TRANSPORT ESSENTIAL FEED AND SUPPLIES TO POULTRY FARMS**

WHEREAS, I have determined that a state of emergency exists due to the after-effects of the winter storm in the North Carolina counties of Alexander, Surry, Wilkes and Yadkin justifying an exemption from 49 CFR Part 395 (Federal Motor Carrier Safety Regulations); and

WHEREAS, the uninterrupted supply of feed and supplies to our poultry industry is necessary for the economic well-being of persons and the industry to the State; and

WHEREAS, 49 CFR § 390.23 allows the governor of a state to suspend the rules and regulations under 49 CFR Part 395 for up to 30 days if the Governor determines that an emergency condition exists; and

WHEREAS, under N.C.G.S. §§ 166A-4 and 166A-6.03(b), the Governor may declare that the health, safety, or economic well-being of persons or property in this State require that the maximum hours of service for drivers proscribed by N.C.G.S. § 20-381 should be waived for persons transporting essential feed and supplies for the poultry farms in those impacted counties.

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

Section 1.

The Department of Crime Control and Public Safety in conjunction with the North Carolina Department of Transportation shall waive the maximum hours of service for drivers proscribed by the Department of Crime Control and Public Safety pursuant to N.C.G.S. § 20-381.

Section 2.

Notwithstanding the waiver set forth above, size and weight restrictions and penalties are not waived.

Section 3.

The waiver of regulations under 49 CFR Part 395 (Federal Motor Carrier Safety Regulations) does not apply to the commercial drivers' licenses and insurance requirements.

Section 4.

The North Carolina State Highway Patrol shall enforce the conditions set forth in Sections 1, 2, and 3 of this Executive Order in a manner which will implement this rule without endangering motorists in North Carolina.

Section 5.

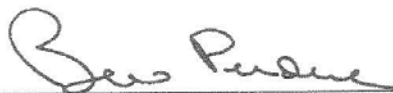
Upon request by law enforcement officers, exempted vehicles must produce documentation sufficient to establish their loads are being used for relief efforts associated with the winter storm in the impacted counties.

Section 6.

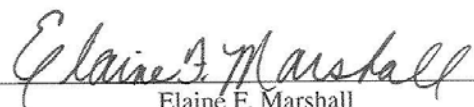
This Executive Order is effective immediately and shall remain in effect for thirty (30) days or the duration of the emergency, whichever is less.

IN WITNESS WHEREOF, I have hereunto signed my name and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh, this fifth day of February in the year of our Lord two thousand and ten, and of the Independence of the United States of America the two hundred and thirty-fourth.




Beverly Eaves Perdue
Governor

ATTEST:


Elaine F. Marshall
Secretary of State



EXECUTIVE ORDER NO. 49
NORTH CAROLINA MOTORSPORTS ADVISORY COUNCIL

WHEREAS, North Carolina is the “State of Racing” and home to the motorsports industry; and

WHEREAS, motorsports racing, including circle track and drag racing, is a part of the heritage of North Carolina; and

WHEREAS, the first NASCAR race was held in Charlotte in 1949, and North Carolina is home to 90 percent of NASCAR teams and the NASCAR Hall of Fame; and

WHEREAS, North Carolina hosts NASCAR events, National Hot Rod Association events, and International Hot Rod Association events; and

WHEREAS, the motorsports industry contributes over \$6 billion a year to the State’s economy, providing more than 27,000 direct and indirect jobs to our citizens; and

WHEREAS, the motorsports industry has had to adjust to the global economic recession and the reorganization of the American automotive industry; and

WHEREAS, the State of North Carolina must consider measures that will preserve, strengthen, and expand this historical industry in North Carolina.

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

Section 1. Establishment

The North Carolina Motorsports Advisory Council (“Advisory Council”) is hereby established. The Advisory Council shall consist of at least 15 members, but no more than 30 members, appointed by the Governor. The Governor shall designate a Chair and Vice Chair. Members shall include, but not be limited to, representatives of the motorsports industry and related industries.

Section 2. Term of Membership and Vacancies

All members shall be appointed for a term of two (2) years and shall serve at the pleasure of the Governor. A vacancy occurring during a term of appointment shall be filled by the Governor for the balance of the unexpired term.

Section 3. Meetings

The Advisory Council shall meet quarterly and at other times at the call of the Chair or the Governor.

- (a) A majority of the members of the Advisory Council shall constitute a quorum for the transaction of business.
- (b) No per diem allowance shall be paid to members of the Advisory Council. Members of the Advisory Council may receive necessary travel and subsistence expenses in accordance with State law and the policies and regulations of the Office of State Budget and Management.

Section 4. Staff Assistance

The Department of Commerce shall provide clerical support and other services required by the Advisory Council.

Section 6. Duties

The Advisory Council shall have the following duties:

- a. Recommend policy, procedures, and program initiatives to protect, strengthen, and expand the motorsports industry in North Carolina;
- b. Provide ongoing advice and consultation to State policy leaders as to how to recruit, retain and expand the motorsports industry in North Carolina;
- c. Conduct public hearings or input sessions regarding the motorsports industry when deemed necessary or beneficial;
- d. Encourage support for the motorsports industry and serve as a resource for the industry to the North Carolina General Assembly and State departments and agencies; and
- e. Perform such other duties as assigned by the Governor or the Chair.

Section 7. Conflicts of Interests

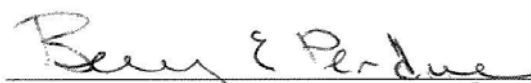
The Advisory Council shall comply with the requirements of Executive Order No. 35, *Ethics for Certain Boards* (issued December 9, 2009), regarding conflicts of interest standards for members of the Advisory Council.

Section 8. Duration

This Executive Order shall be effective immediately. It shall remain in effect until February 10, 2014, pursuant to N.C. Gen. Stat. § 147-16.2, or until rescinded.

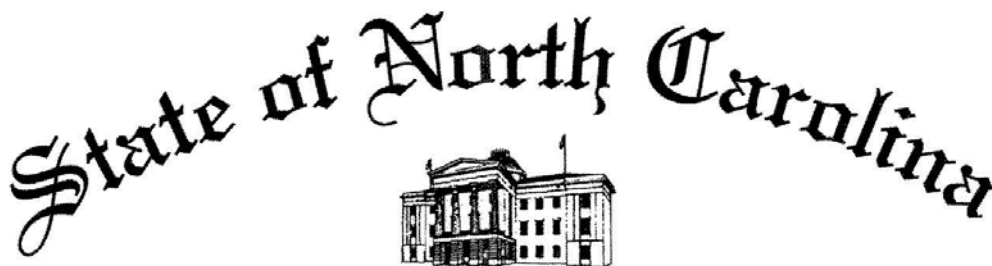
IN WITNESS WHEREOF, I have hereunto signed my name and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh, this eleventh day of February in the year of our Lord two thousand and ten, and of the Independence of the United States of America the two hundred and thirty-fourth.




Beverly Eaves Perdue
Governor

ATTEST:


Elaine F. Marshall
Secretary of State



BEVERLY EAVES PERDUE
GOVERNOR

EXECUTIVE ORDER NO. 50

ENHANCED PURCHASING OPPORTUNITIES
FOR NORTH CAROLINA BUSINESSES

WHEREAS, North Carolina is currently experiencing an unprecedented rate of unemployment; and

WHEREAS, North Carolina citizens continue to manufacture and produce some of the world's best and most economical products; and

WHEREAS, pursuant to N.C. Gen. Stat. § 143-59, the General Assembly has empowered the Secretary of Administration and appropriate state agencies to give preference as far as may be practicable to North Carolina products provided there is no sacrifice or loss in price or quality; and

WHEREAS, with the exception of furniture, the State of North Carolina does not currently employ any strategic efforts to purchase goods or equipment from North Carolina companies; and

WHEREAS, leveraging the buying power of the State of North Carolina could provide an immediate economic benefit to North Carolina citizens and companies during these difficult economic times and should be regarded as a business objective that is advantageous to the State in its procurement efforts.

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

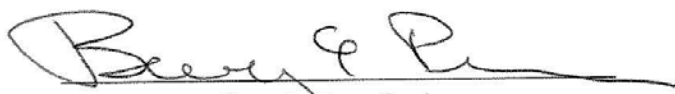
1. I hereby instruct the Secretary of Administration to examine the State's procurement laws and policies and identify and implement lawful and appropriate policies to use the buying

power of the State of North Carolina to encourage North Carolina companies to do the following: (a) do business with the State of North Carolina; (b) stimulate economic development; and (c) most importantly, create jobs in North Carolina.

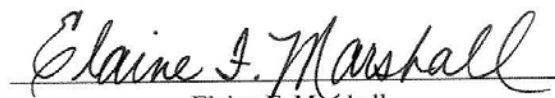
2. I particularly direct the Secretary of Administration, through the authority given to him by the General Assembly pursuant to N.C. Gen. Stat. § 143-59, to develop a price-matching preference for North Carolina resident bidders on contracts for the purchase of goods so that qualified North Carolina companies whose price is within five percent (5%) or \$10,000.00 of the lowest bid, whichever is less, may be awarded contracts with the State of North Carolina.
3. The Secretary of Administration shall take all appropriate steps to implement the terms of this Executive Order, consistent with the terms of N.C. Gen. Stat. § 143-59, and apply them to invitations for bids from the State of North Carolina by no later than March 1, 2010.

IN WITNESS WHEREOF, I have hereunto signed my name and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh, this seventeenth day of February in the year of our Lord two thousand and ten, and of the Independence of the United States of America the two hundred and thirty-fourth.




Beverly Haves Perdue
Governor

ATTEST:


Elaine F. Marshall
Secretary of State

NORTH CAROLINA BOARD OF EXAMINERS FOR SPEECH AND LANGUAGE PATHOLOGISTS AND AUDIOLOGISTS**Notice of Change of Location of Public Hearing**

Please note that the location of the public hearing concerning 21 NCAC 64.0219, proposed by the North Carolina Board of Examiners for Speech and Language Pathologists and Audiologists, as previously published in Volume 24, Issue 17 of the Register, has been changed to:

Sheraton Imperial Hotel
4700 Emperor Blvd.
Durham, NC 27703

The public hearing will still take place on April 23, 2010 at 1:30 p.m.

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 11 – DEPARTMENT OF INSURANCE

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Department of Insurance intends to adopt the rules cited as 11 NCAC 12 .0332 and .0714.

Proposed Effective Date: July 1, 2010

Public Hearing:

Date: April 16, 2010

Time: 10:00 a.m.

Location: Dobbs Building, 3rd Floor Hearing Room, 430 N. Salisbury Street, Raleigh, NC

Reason for Proposed Action:

11 NCAC 12 .0332 – To set the specifics of the certification submitted by insurers who contract with TPAs. These rules are based upon an amendment to G.S. 58-56-26 which was adopted in HB 1183 which became Session Law 2009-382.

11 NCAC 12 .0714 – To clarify that upon death premiums paid for coverages combined with the life coverage would be unearned from the date of death and must be refunded.

Procedure by which a person can object to the agency on a proposed rule: The Department of Insurance will accept written objections to these rules until the expiration of the comment period on May 14, 2010.

Comments may be submitted to: Karen E. Waddell, 1201 Mail Service Center, Raleigh, NC 27699-1201; phone (919) 733-4529; fax (919) 733-6495; email karen.waddell@ncdoi.gov

Comment period ends: May 14, 2010

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 after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule 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 919-431-3000.

Fiscal Impact:

☐

State

☐

Local

☐

Substantial Economic Impact (≥\$3,000,000)

☒

None

CHAPTER 12 - LIFE AND HEALTH DIVISION

SECTION .0300 - GENERAL PROVISIONS

11 NCAC 12 .0332 REVIEW/AUDIT OF THIRD PARTY ADMINISTRATORS

(a) Definitions. As used in this Rule:

- (1) "Certification" means the certification required by G.S. 58-56-26(c).
- (2) "Insurer" has the same meaning as in G.S. 58-56-2(4).
- (3) "Third party administrator" or "TPA" has the same meaning as in G.S. 58-56-2(5).

(b) For the certification submitted on July 1, 2010, the insurer shall submit a certification signed by an officer of the insurer, which certification identifies the name and federal tax identification number of the TPA that is the subject of the certification. The certification shall contain the following language:

"I, (name and title of the officer of the insurer), am familiar with the requirements of G.S. 58-56-26(c), and hereby certify that (insurance company full licensed name and federal tax identification number) performed a review, an on-site audit, or both in accordance with G.S. 58-56-26(c) for every third party administrator identified in or attached to this certification for calendar year 2009."

The certification shall contain the names of TPAs to which G.S. 58-56-26(c) does not apply and the reasons for the exception of each TPA.

(c) For certifications submitted on July 1, 2011 and each subsequent year, each insurer shall certify that the insurer's review and on-site audit include:

- (1) An assessment of the TPA's business practices and procedures and evaluations of all of the following:
 - (A) The TPA's compliance with provisions of the written agreement with the insurer.
 - (B) The TPA's compliance and adherence to the TPA's internal policies and procedures for contract management, claims administration, and general administration.

(C) The TPA's performance of claims adjudication and payment, if applicable.

(D) The TPA's performance of underwriting, if applicable.

(E) The TPA's performance of collecting premiums or other monies.

(2) A written summary of the objectives and scope of the review or on-site audit and the results of the review or on-site audit, including a corrective action plan addressing any deficiencies found during the review or on-site audit.

(d) An on-site audit shall include an inspection of the TPA's place of business and shall verify the accuracy, integrity, and completeness of the information received during a review conducted by the insurer under G.S. 58-56-26(c). An on-site audit shall also include a written assessment by an independent, disinterested person or entity of the reliability of the information provided to the insurer by the TPA.

(e) In addition to a statement certifying compliance with the requirements of Paragraphs (c) and (d) of this Rule, a certification submitted on or after July 1, 2011 and each subsequent year shall be dated and include:

(1) The insurer's name as it appears on the insurer's license or certificate of authority and the insurer's federal tax identification number.

(2) The name and federal tax identification number of every TPA with which the insurer has a written administrative agreement under G.S. 58-56-6.

(3) Any exceptions to the certification identifying each excepted TPA by name and federal tax identification number and an explanation for the exception of the TPA.

(4) The year for which the certification is made.

(5) The name, title and signature of an officer of the insurer making the certification.

(f) A sample format for the certification is available free of charge from the Life and Health Division at the Department of Insurance Web site at www.ncdoi.com.

(g) An insurer that did not have any written administrative agreements with TPAs during the reporting year for which the certification is required shall submit a report instead of a certification. This report shall include the information required under Paragraph (e) of this Rule; except the information required by Subparagraphs (e)(2) and (e)(3) of this Rule need not be included.

(h) A review may be conducted on the premises of the insurer or at another location designated by the insurer and may be conducted by electronic means. A review or on-site audit may be performed by either the insurer or the insurer's designated representative. The insurer's designated representative shall not be an employee of or independent contractor with the TPA and shall be an independent, disinterested person or entity.

(i) The certification shall be submitted annually to the Life and Health Division through the NAIC system for electronic rate and form filings ("SERFF" or its successor system or program). If an insurer is unable to use the NAIC system or program, the

insurer shall submit the certification by way of the U.S. Postal Service or other mail delivery service or by way of electronic mail, compressed in Adobe Acrobat (PDF).

Authority G.S. 58-2-40; 58-56-26.

SECTION .0700 - CREDIT INSURANCE AND CREDIT LIFE: ACCIDENT AND HEALTH INSURANCE

11 NCAC 12 .0714 REFUND OF UNEARNED PREMIUM FOR CREDIT INSURANCE

If credit life insurance coverage is sold together with any other credit insurance coverage, such as accident and health, and death occurs, then as of the date of death the credit life insurance premium is deemed to be fully earned, but the other credit insurance coverage(s) shall provide for a refund of unearned premium. Such refund shall be made in accordance with the provisions of G.S. 58-57-50.

Authority G.S. 58-2-40; 58-57-50.

TITLE 12 – DEPARTMENT OF JUSTICE

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Private Protective Services Board intends to amend the rules cited as 12 NCAC 07D .0203, .0706, .0806, .0904 and .0911.

Proposed Effective Date: *July 1, 2010*

Public Hearing:

Date: *March 30, 2010*

Time: *2:00 p.m.*

Location: *1631 Midtown Place, Suite 104, Raleigh, NC 27609*

Reason for Proposed Action: *The proposed rules are submitted in response to Session Law 2009-458, House Bill 1411, adopted by the North Carolina General Assembly in 2009, whereby occupational licensing boards were directed to adopt rules to postpone or waive conditions of licensure for certain individuals serving in the armed forces.*

Procedure by which a person can object to the agency on a proposed rule: *Objections to the proposed rule changes shall be submitted before the end of the comment period in writing to Terry Wright, Director, Private Protective Services Board, 1631 Midtown Place, Suite 104, Raleigh, NC 27609.*

Comments may be submitted to: *Terry Wright, PPSB Director, 1631 Midtown Place, Suite 104, Raleigh, NC 27609*

Comment period ends: *May 14, 2010*

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 after the adoption of the Rule. If the*

Rules Review Commission receives written and signed objections after the adoption of the Rule 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 919-431-3000.

Fiscal Impact:

- ☐ State
☐ Local
☐ Substantial Economic Impact (\geq \$3,000,000)
☒ None

CHAPTER 07 - PRIVATE PROTECTIVE SERVICES

SUBCHAPTER 07D - PRIVATE PROTECTIVE SERVICES BOARD

SECTION .0200 - LICENSES: TRAINEE PERMITS

12 NCAC 07D .0203 RENEWAL OR RE-ISSUE OF LICENSES AND TRAINEE PERMITS

(a) Each applicant for a license or trainee permit renewal shall submit an original and one copy of a renewal form. This form shall be submitted to the administrator not less than 30 days prior to expiration of the applicant's current license or trainee permit and shall be accompanied by:

- (1) a head and shoulders color photograph of the applicant of a quality sufficient for identification, one inch by one inch in size and taken within six months of the application;
- (2) statements of the result of a local criminal history records search by the city-county identification bureau or clerk of superior court in each county where the applicant has resided within the immediate preceding 12 months; and
- (3) the applicant's renewal fee; and
- (4) proof of liability insurance as set out in G.S. 74C-10(e).

(b) If a licensee in good standing with the Board has maintained a license at least two years and then allows the license to expire, the license may be re-issued if application is made within three years of the expiration date and the following documentation is submitted to the Board:

- (1) an Application For Reinstatement of an Expired License;
- (2) one set of classifiable fingerprints on an applicant fingerprint card;
- (3) one head and shoulders photograph(s) of the applicant of a quality sufficient for identification, one inch by one inch in size and taken within six months of the application;

- (4) statements of the result of a local criminal history records search by the city-county identification bureau or clerk of superior court in each county where the applicant has resided within the immediate preceding 60 months;
- (5) the applicant's non-refundable application fee;
- (6) proof of liability insurance as set out in G.S. 74C-10(e); and
- (7) a separate check or money order made payable to the State Bureau of Investigations to cover criminal record checks performed by the State Bureau of Investigations.

(c) Members of the armed forces whose license is in good standing and to whom G.S. 105-249.2 grants an extension of time to file a tax return are granted that same extension of time to pay the license renewal fee and to complete any continuing education requirements prescribed by the Board. A copy of the military order or the extension approval by the Internal Revenue Service or by the North Carolina Department of Revenue must be furnished to the Board.

Authority G.S. 74C-5; 74C-8; 74C-9.

SECTION .0700 - SECURITY GUARD REGISTRATION (UNARMED)

12 NCAC 07D .0706 RENEWAL OR REISSUE OF UNARMED SECURITY GUARD REGISTRATION

(a) Each applicant for renewal of a registration identification card or his employer, shall complete a form provided by the Board. This form should be submitted not less than 30 days prior to the expiration of the applicant's current registration and shall be accompanied by:

- (1) two recent head and shoulders color photographs of the applicant of acceptable quality for identification, one inch by one inch in size;
- (2) statements of any criminal record obtained from the appropriate authority in each area where the applicant has resided within the immediate preceding 12 months;
- (3) the applicant's renewal fee; and
- (4) actual cost charged to the Private Protective Services Board by the State Bureau of Investigation to cover the cost of criminal record checks performed by the State Bureau of Investigation, collected by the Private Protective Services Board.

(b) Each applicant for reissue of a registration identification card shall complete, and his employer shall sign a form provided by the Board. This form shall be submitted to the Board and accompanied by:

- (1) two recent head and shoulders color photographs of the applicant of acceptable quality for identification, one inch by one inch in size; and
- (2) the applicant's reissue fee.

(c) The employer of each applicant for a registration renewal or reissue shall give the applicant a copy of the application which

will serve as a record of application for renewal or reissue and shall retain a copy of the application in the individual's personnel file in the employer's office.

(d) Members of the armed forces whose registration is in good standing and to whom G.S. 105-249.2 grants an extension of time to file a tax return are granted that same extension of time to pay the registration renewal fee and to complete any continuing education requirements prescribed by the Board. A copy of the military order or the extension approval by the Internal Revenue Service or by the North Carolina Department of Revenue must be furnished to the Board.

Authority G.S. 74C-5; 74C-11.

SECTION .0800 - ARMED SECURITY GUARD FIREARM REGISTRATION PERMIT

12 NCAC 07D .0806 RENEWAL OF ARMED SECURITY GUARD FIREARM REGISTRATION PERMIT

(a) Each applicant for renewal of an armed security guard firearm registration permit identification card or his employer shall complete a form provided by the Board. This form shall be submitted not more than 90 days nor less than 30 days prior to expiration of the applicant's current armed registration and shall be accompanied by:

- (1) two recent head and shoulders color photographs of the applicant of acceptable quality for identification, one inch by one inch in size;
- (2) statements of any criminal record obtained from the appropriate area where the applicant has resided within the immediate preceding 12 months;
- (3) the applicant's renewal fee; and
- (4) actual cost charged to the Private Protective Services Board by the State Bureau of Investigation to cover the cost of criminal record checks performed by the State Bureau of Investigation, collected by the Private Protective Services Board.

(b) The employer of each applicant for a registration renewal shall give the applicant a copy of the application which will serve as a record of application for renewal and shall retain a copy of the application in the individual's personnel file in the employer's office.

(c) Applications for renewal shall be accompanied by a statement signed by a certified trainer that the applicant has successfully completed the training requirements of 12 NCAC 7D .0807.

(d) Members of the armed forces whose registration is in good standing and to whom G.S. 105-249.2 grants an extension of time to file a tax return are granted that same extension of time to pay the registration renewal fee and to complete any continuing education requirements prescribed by the Board. A copy of the military order or the extension approval by the Internal Revenue Service or by the North Carolina Department of Revenue must be furnished to the Board.

Authority G.S. 74C-5; 74C-11; 74C-13.

SECTION .0900 - TRAINER CERTIFICATE

12 NCAC 07D .0904 RENEWAL OF A FIREARMS TRAINER CERTIFICATE

Each applicant for renewal of a firearms trainer certificate shall complete a renewal form provided by the Board. This form shall be submitted not less than 30 days prior to the expiration of the applicant's current certificate and shall be accompanied by:

- (1) certification of the successful completion of a firearms trainer refresher course approved by the Board and the Attorney General consisting of a minimum of eight hours of classroom and practical range training in handgun and shotgun safety and maintenance, range operations, control and safety procedures, and methods of handgun and shotgun firing. This training shall be completed within 180 days of the submission of the renewal application;
- (2) a certified statement of the result of a criminal records search from the governmental authority housing criminal record information or clerk of superior court in each area where the applicant has resided within the immediate preceding 48 months;
- (3) the applicant's renewal fee; and
- (4) the actual cost charged to the Private Protective Services Board by the State Bureau of Investigation to cover the cost of criminal record checks performed by the State Bureau of Investigation, collected by the Private Protective Services Board.
- (5) Members of the armed forces whose certification is in good standing and to whom G.S. 105-249.2 grants an extension of time to file a tax return are granted that same extension of time to pay the certification renewal fee and to complete any continuing education requirements prescribed by the Board. A copy of the military order or the extension approval by the Internal Revenue Service or by the North Carolina Department of Revenue must be furnished to the Board.

Authority G.S. 74C-5; 74C-13.

12 NCAC 07D .0911 RENEWAL OF AN UNARMED GUARD TRAINER CERTIFICATE

Each applicant for renewal of an unarmed guard trainer certificate shall complete a board renewal form. This form shall be submitted not less than 30 days prior to the expiration of the applicant's current certificate. In addition, the applicant shall include the following:

- (1) the renewal fee set forth in 12 NCAC 07D .0903(a)(3);
- (2) certification of a minimum of 16 hours of Board approved armed or unarmed instruction

- performed during the current unarmed guard trainer certification period; and
- (3) statement verifying the classes taught during the current unarmed guard trainer certification period on a form prescribed by the Board.
- (4) Members of the armed forces whose certification is in good standing and to whom G.S. 105-249.2 grants an extension of time to file a tax return are granted that same extension of time to pay the certification renewal fee and to complete any continuing education requirements prescribed by the Board. A copy of the military order or the extension approval by the Internal Revenue Service or by the North Carolina Department of Revenue must be furnished to the Board.

Authority G.S. 74C-8; 74C-9; 74C-11; 74C-13.

TITLE 19A – DEPARTMENT OF TRANSPORTATION

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Department of Transportation intends to amend the rules cited as 19A NCAC 03D .0517-.0519.

Proposed Effective Date: July 1, 2010

Public Hearing:

Date: April 1, 2010

Time: 10:00 a.m.

Location: Environmental Resource Center (PDEA), Room 117, 4701-116 Atlantic Avenue, Raleigh, NC 27604

Reason for Proposed Action: *The purpose of the proposed revisions to the Administrative Code is to allow for the clarifications, technical correction, and procedure changes that meet the requirements of the Environmental Management Commission Specifications.*

Procedure by which a person can object to the agency on a proposed rule: *Any person objecting to said rule change may contact David Bradley at North Carolina Department of Transportation License and Theft Emissions Unit: physical address 1100 New Bern Avenue, Raleigh, NC 27697; mailing address 3130 Mail Service Center, Raleigh, NC 27699-3130; email dbradley@ncdot.gov.*

Comments may be submitted to: *David Bradley, North Carolina Department of Transportation, License & Theft Emissions Unit, 3130 Mail Service Center, Raleigh, NC 27699-3130; phone (919) 861-3132; fax (919) 715-0169; email dbradley@ncdot.gov*

Comment period ends: May 14, 2010

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 after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule 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 919-431-3000.

Fiscal Impact:

- ☐ State
- ☐ Local
- ☐ Substantial Economic Impact (≥\$3,000,000)
- ☒ None

CHAPTER 03 – DIVISION OF MOTOR VEHICLES LICENSE AND THEFT EMISSIONS

SUBCHAPTER 03D - ENFORCEMENT SECTION

SECTION .0500 - GENERAL INFORMATION REGARDING SAFETY INSPECTION OF MOTOR VEHICLES

19A NCAC 03D .0517 DEFINITIONS

For purposes of this Section, these words and phrases shall have the following meanings, except in those instances where the context clearly indicates a different meaning.

- (1) Abbreviations: Abbreviations used in these Rules shall have the following meanings:
 - (a) CO - Carbon Monoxide,
 - (b) G.V.W.R. - Gross Vehicle Weight Rating,
 - (c) HC - Hydrocarbons,
 - (d) PSI - Pounds Per Square Inch,
 - (e) NOx - Nitrogen Oxides,
 - (f) PPM - Parts Per Million,
 - ~~(g) % - Percent,~~
- (2) Ambient Air: That portion of the atmosphere surrounding human, animal and plant life.
- (3) Authorized Station: An established place of business duly licensed by the North Carolina Division of Motor Vehicles to conduct inspection of safety equipment, ~~exhaust~~ emissions, and air pollution control devices as required by the inspection laws.
- (4) Base: The place where a vehicle is most frequently dispatched from, garaged, serviced, maintained, operated or otherwise controlled. If any vehicle is located in or operated from a county participating in the safety emission program continuously for a period of 30 days,

- said vehicle shall be considered based within said county.
- (5) ~~Carbon Monoxide: (CO) A colorless, odorless, highly toxic gas that is a normal by-product of incomplete fuel combustion.~~
- (6)(5) Certified Inspection Mechanic: A person who has completed the required course(s), who has passed a written examination approved by the North Carolina Division of Motor Vehicles, and who has been issued an inspection mechanic license by the Division of Motor Vehicles.
- (7)(6) Crankcase Emissions: Air contaminants emitted into the atmosphere from any portion of the engine crankcase ventilation or lubrication system.
- (8)(7) Current Year Model: The production period of new motor vehicles as designated by the manufacturer in the calendar year in which the period ends. If the manufacturer does not designate a production period, the model year shall mean the 12-month period beginning January of the year in which production began.
- (9)(8) Diagnostic Equipment: Tools or machines used to diagnose engine performance.
- (10)(9) Emission: The act of a motor vehicle emitting into the atmosphere any air contaminants which may include carbon monoxide, hydrocarbons, or nitrogen oxides.
- (10) Emissions Analyzer: An approved device used to fully evaluate the vehicle emission control system for proper operation and electronically record and transmit emissions and safety inspection data to the state. An approved device is considered a device that meets the certification requirements as defined by the Environmental Management Commission Specifications for the North Carolina Analyzer System.
- (11) Established Place of Business for Safety/Emissions Inspection: A permanent structure owned either in fee or leased by a licensee, which has sufficient space to test and inspect one or more motor vehicles for which an inspection ~~sticker~~ is being sought and to accommodate the office or offices of an authorized station to provide a safe place for maintaining the records ~~and stickers~~ of such authorized station, and at which location the business shall be open during normal business hours to conduct safety inspections and ~~exhaust~~ emissions tests and make available to authorized agents of the Division of Motor Vehicles all records and required equipment for examination and testing.
- (12) Exhaust Emissions: Air contaminants emitted into the atmosphere from any opening downstream from the exhaust parts of a motor vehicle engine.
- (13) ~~Exhaust Gas Analyzer: A device for sensing and measuring the amount of air contaminants in the exhaust emitted from a motor vehicle.~~
- (14)(13) Heavy Duty Motor Vehicle: A motor vehicle which is designed primarily for:
- (a) The transportation of property and which is rated at more than 8,500 GVWR.
 - (b) The transportation of persons and which has a capacity of more than 12 persons.
 - (c) Use as a recreational motor vehicle which is rated at more than 8,500 GVWR.
 - (d) Use as an off-road utility vehicle.
- (15) ~~Hydrocarbons: A family of compounds containing carbon and hydrogen in various combinations found especially in fossil fuels.~~
- (16)(14) Inspection: The safety equipment or exhaust emissions inspection of motor vehicles required by G.S. 20, Part 2, Article 3A.
- (17) ~~Inspection Sticker: Sticker which when properly executed indicates that the vehicle to which it is attached has been inspected and found to meet the requirements of the inspection laws.~~
- (18)(15) Inspection Laws: G.S. 20, Part 2, Article 3A and rules duly adopted by the Commissioner of Motor Vehicles.
- (19)(16) Inspection/Maintenance (I/M): A strategy to reduce emissions from in-use motor vehicles by identifying vehicles that need emission related maintenance and requiring that such maintenance be performed.
- (20)(17) Inspection Period: The month during which the motor vehicle would normally be required to be inspected by G.S. 20-183.4C. The period of time a motor vehicle is required to be inspected. To be a current inspection, a motor vehicle may be inspected up to ninety days prior to the last day of the month in which the registration on the vehicle expires pursuant to G.S. 20-183.4C. For motor vehicles not previously registered in this State, the inspection period shall be a period of twelve months prior to the application for registration pursuant to G.S. 20, Part 3, Article 3 and G.S. 20-183.4C.
- (21)(18) License: Notwithstanding G.S. 20-4.01(17), the license issued by the Commissioner of Motor Vehicles which is required for a person to operate a safety equipment ~~exhaust~~ emission inspection station.
- (22)(19) Light Duty Motor Vehicle: A motor vehicle which is designed primarily for:
- (a) Transportation of property and which is rated at or less than 8,500 GVWR by the manufacturer; or

- (b) Use in the transportation of persons and which has a capacity of 12 persons or fewer.
- ~~(23)~~(20) Light Transmittance Measuring Device or Light Meter or Unit or Device: A photometer capable of measuring the net transmittance of a window or windshield for light at 560 nm with a variance of no more than 20 nm.
- (21) Motorcycle: A motor vehicle as defined under G.S. 20-4.01(22).
- ~~(24)~~(22) Multipiece Photometer: A photometer in which the light source and light detector are mechanically separate units that can be positioned on opposite sides of a fixed window or windshield.
- ~~(25)~~(23) Net Transmittance: The luminous transmittance over the 560 nm with a variance of 20 nm wavelength range, including the effects of Fresnel (surface) reflections.
- ~~(26)~~ Nitrogen Oxides: ~~A gas formed in great part from atmospheric nitrogen and oxygen when combustion occurs under high temperature and high pressure, as in an internal combustion engine.~~
- ~~(27)~~(24) Recreational Motor Vehicle: A vehicle which is designed primarily to provide temporary or permanent living quarters for travel, camping, or other recreational use.
- ~~(28)~~(25) Registered Owner of a Vehicle: The individual, group of individuals, partnership, firm, company, corporation, association, trust, estate, political subdivision, administrative agency, public or quasi-public corporation, or any other legal entity in whose name the license has been issued and whose name appears on the registration for such vehicle.
- ~~(29)~~(26) Revocation: Notwithstanding G.S. 20-4.01(36), the termination of a license issued by the Division of Motor Vehicles to a safety equipment exhaust emission inspection station.
- (27) Safety Inspection Analyzer: An approved device used to evaluate and electronically record and transmit safety inspection data to the state. An approved device is considered a device that meets the certification requirements as defined by the Environmental Management Commission Specifications for the North Carolina Analyzer System.
- ~~(30)~~(28) Section: ~~The Enforcement Section License and Theft Bureau~~ of the Division of Motor Vehicles.
- ~~(31)~~(29) Self-Inspector: A person, firm or corporation so designated by the Commissioner for the purpose of inspecting only those vehicles owned or operated by such person, firm or corporation.
- ~~(32)~~(30) Standard: A standard of performance adopted in these Rules.

- ~~(33)~~(31) Station: A place of business duly licensed by the Commissioner of Motor Vehicles to conduct inspections of motor vehicles as required by the inspection laws.
- ~~(34)~~(32) Suspension of Safety/Emission License: The temporary withdrawal of a license issued by the Division of Motor Vehicles to a safety equipment ~~exhaust~~ emission inspection station for a definite period of time.
- ~~(35)~~(33) Tampering: Rendering inoperative, or the intentional maladjustment of any device installed on a motor vehicle designed or intended to control the amount of emissions from a vehicle.
- ~~(36)~~(34) Waiver: A document issued by the Commissioner of Motor Vehicles or his designated agent exempting a particular motor vehicle from the requirements of the emission inspection.

Authority G.S. 20-2; 20-39; 20-127; 20-183.2; 20-183.6(a); 20-183.7(a).

19A NCAC 03D .0518 LICENSING OF SAFETY OR EMISSIONS INSPECTION STATIONS

(a) An application for licensing as a Safety Equipment or Safety Equipment ~~Exhaust~~ Emissions Inspection Station shall be made on forms furnished by the Division of Motor Vehicles and filed with the ~~Enforcement Section, Motor Vehicles Building, 1100 New Bern Avenue, Raleigh, North Carolina, 27697, telephone 919-733-0133.~~ License and Theft Bureau.

(b) An applicant for licensing for a Safety Equipment or Safety Equipment Emissions Inspection Station shall have:

- (1) A specified area used primarily for repair of motor vehicles.
- (2) At least 45 lineal feet of approximately level floor surface at least 10 feet wide when using a light chart for testing lights, or at least 25 lineal feet of approximately level floor surface at least 10 feet wide when using a light testing machine. Dirt floors are not acceptable.
- (3) Sufficient area enclosed to permit a thorough inspection at all times regardless of weather conditions. Trailers may be inspected outside of the enclosed area as long as attached to prime mover.
- (4) If a light chart is used to check lights, parallel lines at least 3 feet long painted on floor surface 25 feet from the chart.

(c) An applicant for licensing for a Safety Equipment Inspection Station inspecting only motorcycles shall have:

- (1) A specified area used primarily for repair of motorcycles.
- (2) Sufficient area enclosed to permit a thorough inspection at all times regardless of weather conditions. Dirt floors are not acceptable.
- (3) If a light chart is used to check lights, parallel lines at least 3 feet long painted on floor surface 25 feet from the chart.

Authority G.S. 20-2; 20-39; 20-183.4.

19A NCAC 03D .0519 STATIONS

(a) Licensed stations shall keep the area where vehicles are inspected and the area where inspection records are kept as required by G.S. 20-183.6A(b) free of spills, debris, hazardous materials or obstructions that inhibit proper inspection of vehicles or present a safety hazard for auditors or inspectors of the Division. All vehicles shall remain in the inspection area during the entire inspection.

(b) Stations with only a 25 foot lineal inspection lane shall not inspect trucks or other vehicles exceeding that length.

(c) Stations with mechanical aimers shall not inspect vehicles with headlamps that were not manufactured to be aimed with this device. These headlamps were manufactured to be aimed with photoelectric eyes, wall charts, computerized headlight test equipment, or on-board headlight aiming devices.

(d) Stations not equipped with an ~~exhaust~~ emission analyzer shall not inspect vehicles which are ~~1975~~ 1996 or newer gasoline powered motor vehicles registered or based in counties designated as non-attainment for air quality standards by either the North Carolina Department of Environment, ~~Health,~~ & Natural Resources (~~N.C. DEHNR~~) or U.S. Environmental Protection Agency (~~U.S. EPA~~). ~~Agency~~. However, they are permitted to perform the original safety equipment inspections on new vehicles, vehicles 1974 1995 model year or older, diesel powered vehicles, motorcycles and trailers.

(e) Each station shall have equipment and tools for the carrying out of inspections, which include but are not limited to the following:

- (1) 1 jack or lift with minimum capacity of two tons,
- (2) 1 headlight ~~tester~~ tester, wall chart, or aiming kit adapters to fit all headlights,
- (3) 1 workbench,
- (4) 1 creeper,
- (5) ~~1 hand paper punch (round, 1/4" cut),~~
- (6)(5) 1 tire tread depth gauge (calibrated in 32nds of an inch),
- (7)(6) 4 Emission Control System Application Manual (current edition), ~~edition issued by N.C. DEHNR~~;
- (8)(7) 1 ~~Exhaust Emission Analyzer~~, Analyzer with approved software or 1 Safety Inspection Analyzer with approved software,
- (9)(8) 1 Active telephone line with jack.

(f) Each station inspecting only motorcycles shall have equipment and tools for the carrying out of inspections, which include but are not limited to the following:

- (1) 1 jack or lift with minimum capacity of two tons,
- (2) 1 headlight tester or aiming kit adapters to fit all headlights,
- (3) 1 workbench,
- (4) 1 tire tread depth gauge (calibrated in 32nds of an inch),
- (5) 1 Safety Inspection Analyzer with approved software,
- (6) Active telephone line with jack.

Authority G.S. 20-2; 20-39; 20-183.4.

TITLE 21 – OCCUPATIONAL LICENSING BOARDS AND COMMISSIONS

CHAPTER 14 – BOARD OF COSMETIC ART EXAMINERS

Notice is hereby given in accordance with G.S. 150B-21.2 that the Board of Cosmetic Art Examiners intends to adopt the rules cited as 21 NCAC 14S .0101-.0112, amend the rules cited as 21 NCAC 14A .0101; 14B .0605; 16F .0107; 14G .0112; 14H .0110, .0117; 14I .0101, .0103; 14J .0203; 14K .0107; 14N .0107; 14P .0106, .0112; 14R .0101-.0103; and repeal the rule cited as 21 NCAC 14A .0103.

Proposed Effective Date: July 1, 2010

Public Hearing:

Date: March 30, 2010

Time: 8:00 a.m.

Location: 1201 Front Street, Suite 110, Raleigh, NC 27609

Reason for Proposed Action:

21 NCAC 14A .0101 - is proposed for amendment to eliminate definitions now listed in law.

21 NCAC 14B .0605 - is proposed for amendment to establish a standard for staggered license renewal.

21 NCAC 14F .0107 - is proposed for amendment to put the salon regulations in agreement with regulations of the schools as determined in 21 NCAC 14G.

21 NCAC 14G.0112; 14I .0101-.0103; 14J .0203; 14K .0107; 14P .0106 - is proposed for amendment to eliminate ambiguous language.

21 NCAC 14H .0110 - is proposed for amendment to put the regulation in agreement with other rules within the subchapter.

21 NCAC 14H .0117 - is proposed for amendment to allow more individuals with service animals permitted access to salons.

21 NCAC 14P .0106 - is proposed for amendment to change the rule back to former regulation that was published incorrectly due to error.

21 NCAC 14P .0112 - is proposed for amendment to put the penalty in accordance with the grading section of subchapter H sanitation.

21 NCAC 14R .0101 - is proposed for amendment to clarify CE credits earned and which licensees are eligible to earn CE.

21 NCAC 14R .0103 - is proposed for amendment to clarify what information the Board needs when a class date is changed.

21 NCAC 14R .0102 - is proposed for amendment to eliminate a reference to a rule that no longer exists.

21 NCAC 14S .0101-.0112 - is proposed for adoption to establish curriculum guidelines for natural hair care styling.

21 NCAC 14A .0103 - is proposed for repeal to allow for changes due to accommodation of flexible schedule.

Procedure by which a person can object to the agency on a proposed rule: *Written letter to 1201 Front Street, Suite 110, Raleigh, NC 27609*

Comments may be submitted to: *Stefanie Kuzdrall, 1201 Front Street, Suite 110, Raleigh, NC 27609*

Comment period ends: *May 14, 2010*

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 after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule 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 919-431-3000.

Fiscal Impact:

- ☐ State
☐ Local
☐ Substantial Economic Impact ($\geq \$3,000,000$)
☒ None

SUBCHAPTER 14A – DEPARTMENTAL RULES

SECTION .0100 – ORGANIZATION RULES

21 NCAC 14A .0101 DEFINITIONS

The following definitions apply in this Chapter:

- (1) "Beauty Establishment" refers to both cosmetic art schools and cosmetic art shops.
- (2) "Cosmetology School" is any cosmetic art school that teaches cosmetic art as defined by, G.S. 88B-2(5), but is not solely a manicurist or an esthetics school.
- (3) "Cosmetology Student" is a student in any cosmetic art school whose study is the full curriculum.
- (4) "Manicurist School" is a cosmetic art school that teaches only the cosmetic arts of manicuring.
- (5) "Manicurist Student" is a student in any cosmetic art school whose study is limited to the manicurist curriculum set forth in 21 NCAC 14K .0102.
- (6) "Successful Completion" is the completion of an approved cosmetic art curriculum with a minimum grade of "C" or 70%, whichever is deemed as passing by the cosmetic art school.

- (7) "Esthetician School" is any cosmetic art school that teaches only the cosmetic arts of skin care.
- (8) "Esthetician Student" is a student in any cosmetic art school whose study is limited to the esthetician curriculum set forth in 21 NCAC 14O. 0102.
- (9) ~~"Natural hair braiding" is a service that results in tension on hair strands or roots by twisting, wrapping, weaving, extending, locking, or braiding by hand or mechanical device, is not subject to regulation pursuant to G.S. 88B, provided that the service does not include hair cutting or the application of dyes, reactive chemicals, or other preparations to alter the color of the hair or to straighten, curl, or alter the structure of the hair.~~
- (10) ~~"Natural hair styling" is the provision of natural hair braiding services together with any of the other services or procedures included within the regulated practice of cosmetic art, and is subject to regulation pursuant to G.S. 88B, and those persons practicing natural hair styling shall obtain and maintain a cosmetologist license as applicable to the services offered or performed. Establishments offering natural hair styling services shall be licensed as cosmetic art shops.~~
- (11)(9) "Licensing cycle" for cosmetologists is the three-year period beginning on the first day of October 2004 and ending on the 30th day of September, September 2007, and continuing thereafter in three year intervals. For ~~estheticians~~ estheticians, natural hair care specialists and manicurists the licensing cycle is one year in length beginning on the first day of October and ending on the 30th day of September. For teachers, the licensing cycle is the two-year period beginning on the first day of October of an even-numbered year and ending on the 30th day of September of an even-numbered year.

Authority G.S. 88B-2; 88B-4.

21 NCAC 14A .0103 OFFICE HOURS

~~The office hours for the board are 8:00 a.m. to 5:00 p.m., Monday through Friday. The office is closed on state holidays.~~

Authority G.S. 88B-4.

SUBCHAPTER 14B - RULE-MAKING PROCEDURES

SECTION .0600 - FEES

21 NCAC 14B .0605 COSMETOLOGIST LICENSE FEE AND STAGGERED LICENSE RENEWAL SCHEDULE

All cosmetology licenses expiring on September 30, 2010 shall pay the renewal fee of thirty-nine dollars (\$39.00), processing

fee of ten dollars (\$10.00) and complete 24 hours of continuing education as required by G.S. 88B-21 to be eligible for license renewal. Upon renewal of the license expiring September 30, 2010 the Board shall issue a new license with staggered

expiration dates. Licensees shall be divided into renewal groups by birth month and shall pay prorated fees for renewal as follows:

<u>Birth date Month</u>	<u>Initial Expiration Date</u>	<u>Combined Fees/CE Hours Due</u>	<u>Staggered Renewal Date</u>
<u>January – April (including any licensee whose birth date the Board does not maintain)</u>	<u>October 1, 2011</u>	<u>\$23/0 hours</u>	<u>October 1, 2014</u>
<u>May - August</u>	<u>October 1, 2012</u>	<u>\$36/12 hours</u>	<u>October 1, 2015</u>
<u>September - December</u>	<u>October 1, 2013</u>	<u>\$49/24 hours</u>	<u>October 1, 2016</u>

The license fee and the renewal fee of a registered cosmetologist after September 30, 2012 shall be thirty-nine dollars (\$39.00) for three years payable in advance if the license is renewed before it becomes delinquent.

Authority G.S. 88B-20; 88B-21.

SUBCHAPTER 14F – RULES AND REGULATIONS GOVERNING THE LICENSING OF BEAUTY SHOPS

SECTION .0100 – RULES AND REGULATIONS GOVERNING THE LICENSING OF BEAUTY SHOPS

21 NCAC 14F .0107 DIMENSIONS OF BEAUTY SALON

A cosmetic art shop shall maintain at least five feet of space between each styling chair from the center to the center of each chair, and shall have at least two feet of space from each chair to the wall of the salon, front and back. ~~This dimension requirement does not apply to a non styling shampoo area.~~ Shampoo bowls must be at least 40 inches apart center of bowl to center of bowl.

Authority G.S. 88-23.

SUBCHAPTER 14G - REQUIREMENTS FOR THE ESTABLISHMENT OF COSMETIC ART SCHOOLS

SECTION .0100 - PERMANENT FILES

21 NCAC 14G .0112 CONDITION OF EQUIPMENT

All equipment in the school must be new or in good, workable, clean, safe condition. ~~All equipment must be kept clean and in first class condition.~~

Authority G.S. 88-23.

SUBCHAPTER 14H - SANITATION

SECTION .0100 – SANITATION

21 NCAC 14H .0110 BATHROOM FACILITIES

(a) Toilet and hand washing facilities consisting of at least one commode and one lavatory with hot and cold running water, liquid soap and individual towels shall be provided.

(b) A residential beauty salon shall furnish bathroom facilities separate and apart from the residence.

Authority G.S. 88-23.

21 NCAC 14H .0117 ANIMALS

Animals and birds shall not be kept in a beauty establishment. Trained animals accompanying ~~sightless or hearing impaired~~ disabled persons are exempt.

Authority G.S. 88B-4; 88B-17; 88B-23.

SUBCHAPTER 14I - OPERATIONS OF SCHOOLS OF COSMETIC ART

SECTION .0100 - RECORD KEEPING

21 NCAC 14I .0101 PERMANENT FILES

(a) A section of a cosmetic art school shall contain at least a ~~suitable~~ desk, chair and a permanent file suitable for permanent records of matriculations of all students enrolled.

(b) Permanent files shall be kept under lock and key, in the beauty establishment, subject to inspection by the Board or its authorized agents.

(c) Included in this file shall be permanent records of the matriculations of all students enrolled including the following:

- (1) names and addresses of students,
- (2) places and dates of birth,
- (3) Social Security number,
- (4) date students entered school,
- (5) number of hours earned,
- (6) complete breakdown of practical work performed by the student,
- (7) grades on all examinations taken by the student, and
- (8) date of graduation.

(d) The original copy of all enrollment forms is to be filed with the Board, and the duplicate is to be held by the school.

Authority G.S. 88-23; 88-30.

21 NCAC 14I .0103 INSPECTION REPORTS AND REPORTS OF STUDENTS HOURS

(a) In addition to such other reports as may be required by the Board, cosmetic art schools shall report to the Board or its authorized agent, upon inspection of the cosmetic art school and at other times upon specific request, the names of all students currently enrolled and the hours completed by each.

(b) The owner or manager of the cosmetic art school shall read each inspection report made of the school by an authorized agent of the Board to determine that the information on the inspection report is correct and shall sign the report. If any part of the information on the report is incorrect, it shall be corrected by the authorized agent of the Board or an exception to the report signed by the owner or manager shall be attached to the report.

(c) The Board shall be notified by ~~letter-written correspondence~~ prior to demonstrators, lecturers or observers being in the school.

Authority G.S. 88-23; 88-30.

SUBCHAPTER 14J - COSMETOLOGY CURRICULUM

SECTION .0200 - ADVANCED DEPARTMENT

21 NCAC 14J .0203 STORING AND LABELING OF COSMETICS

All bottles and jars in the advanced department containing supplies and cosmetics shall be kept securely covered and ~~carefully~~ labeled, stating contents and instructions for use.

Authority G.S. 88-23.

SUBCHAPTER 14K - MANICURIST CURRICULUM

SECTION .0100 - MANICURIST CURRICULUM

21 NCAC 14K .0107 LIVE MODEL PERFORMANCES

(a) In completing the 40 hours of live model performances required by 21 NCAC 14K .0102(b), all manicurist students shall complete the following minimum number of live model performances during the manicurist course under the supervision of a licensed cosmetic art teacher before taking the manicurist examination and submission of the license registration documentation:

- (1) 15 manicures, including trimming, filing, and shaping; decorating; and arm and hand massage;
- (2) 100 applications or repair of sculptured or other artificial nails; and
- (3) 4 pedicures.

(b) No manicurist student may perform any live model performances until he or she has completed 16 hours of classroom work.

(c) Live model performances are the rendering of the required service on a live person other than himself or ~~herself~~. herself ~~They do which, does~~ not include performing the service on a mannequin.

Authority G.S. 88B-4; 88B-10.

SUBCHAPTER 14N - EXAMINATIONS

SECTION .0100 – GENERAL PROVISIONS

21 NCAC 14N .0107 SPECIAL ARRANGEMENTS FOR DISABLED

(a) If a candidate has a disability which will require special arrangements to take an examination, the candidate shall request such arrangements with his or her application for examination. The request for special arrangements shall be in writing and shall set out in sufficient detail what special arrangements are needed. The Board shall make reasonable accommodations for candidates requesting assistance under this Section, including any assistance required by applicable provisions of the Federal Americans with Disabilities Act.

(b) If reading assistance, or a reader is required, the application for special arrangements shall also be accompanied by a letter from the candidate's cosmetic art school which documents the assistance the candidate required during classes there. In addition, the candidate shall submit a letter from a professional qualified to diagnose and document the disability.

(c) The application, accompanied by a letter from a professional qualified to diagnose shall document the disability.

~~(d) The candidate shall provide any special equipment or readers. A reader shall be 18 years of age or older.~~

~~(e) A reader shall not be:~~

- ~~(1) currently or formerly licensed by this state or any state, nor have received or is currently receiving any training, in any branch of cosmetic art;~~
- ~~(2) a current or former owner or employee of any beauty establishment;~~
- ~~(3) simultaneously a model for any candidate taking the examination.~~

~~(f) The application for permission to use a reader shall be made on a form provided by the Board.~~

Authority G.S. 88-10(2); 88-12(2); 88-16; 88-17; 88-21(a)(16); 88-23; 88-30(4).

SUBCHAPTER 14P – CIVIL PENALTY

SECTION .0100 – CIVIL PENALTY

21 NCAC 14P .0106 LICENSES REQUIRED

(a) The presumptive civil penalty for practicing cosmetic art without a license is:

- | | | |
|-----|-------------|-------------------------------------|
| (1) | 1st offense | \$100.00 <u>\$200.00</u> |
| (2) | 2nd offense | \$250.00 |
| (3) | 3rd offense | \$500.00 |

(b) The presumptive civil penalty for performing services which the practitioner is not licensed to perform is:

- | | | |
|-----|-------------------------|----------|
| (1) | 1 st offense | \$100.00 |
| (2) | 2 nd offense | \$250.00 |
| (3) | 3 rd offense | \$500.00 |

History Note: Authority G.S. 88B-4; 88B-29.

**21 NCAC 14P .0112 SANITARY RATINGS AND
POSTING OF RATINGS - APPLICABLE TO
ESTABLISHMENTS WITH A SANITATION GRADE OF
LESS THAN 70%**

The following regulations are applicable only to establishments
with a sanitation grade of less than 70%.

- (1) The presumptive civil penalty for failure to display an inspection grade card is:
 - (a) 1st offense \$50.00
 - (b) 2nd offense \$100.00
 - (c) 3rd offense \$200.00
- (2) The presumptive civil penalty for non-working toilet facilities is:
 - (a) 1st offense warning (\$50.00)
 - (b) 2nd offense \$100.00
 - (c) 3rd offense \$200.00
- (3) The presumptive civil penalty for failure to maintain equipment, furnishings and floor coverings is:
 - (a) 1st offense warning (\$25.00)
 - (b) 2nd offense \$50.00
 - (c) 3rd offense \$100.00
- (4) The presumptive civil penalty for failure to provide hot and cold running water is:
 - (a) 1st offense warning (\$50.00)
 - (b) 2nd offense \$100.00
 - (c) 3rd offense \$200.00
- (5) The presumptive civil penalty for keeping any animal or bird in a cosmetic art shop or school is: (Trained animals accompanying sightless or hearing impaired persons are exempt)
 - (a) 1st offense warning (\$25.00)
 - (b) 2nd offense \$50.00
 - (c) 3rd offense \$100.00
- (6) The presumptive civil penalty for failure to have students wear clean washable uniform is:
 - (a) 1st offense warning (\$50.00)
 - (b) 2nd offense \$100.00
 - (c) 3rd offense \$200.00
- (7) The presumptive civil penalty for failure of operators in cosmetic art shops to wear clean outer garments with sleeves is:
 - (a) 1st offense warning (\$50.00)
 - (b) 2nd offense \$100.00
 - (c) 3rd offense \$200.00
- (8) The presumptive civil penalty for failure to store used or clean protective drapes, linens or towels, or failure to launder used protective drapes, linens or towels is:
 - (a) 1st offense warning (\$50.00)
 - (b) 2nd offense \$100.00
 - (c) 3rd offense \$200.00
- (9) The presumptive civil penalty for failure to dispose of supplies or instruments which come in direct contact with a patron and which cannot be disinfected is:
 - (a) 1st offense warning (\$50.00)
 - (b) 2nd offense \$100.00
 - (c) 3rd offense \$200.00

- (10) The presumptive civil penalty for failure to disinfect non-electrical instruments and equipment is:
 - (a) 1st offense warning (\$50.00)
 - (b) 2nd offense \$100.00
 - (c) 3rd offense \$200.00
- (11) The presumptive civil penalty for failure to store and label creams, powders, and other cosmetic preparations is:
 - (a) 1st offense warning (\$25.00)
 - (b) 2nd offense \$50.00
 - (c) 3rd offense \$100.00
- (12) The presumptive civil penalty for failure to have necessary first aid equipment on hand is:
 - (a) 1st offense warning (\$25.00)
 - (b) 2nd offense \$50.00
 - (c) 3rd offense \$100.00
- (13) The presumptive civil penalty for failure to provide necessary lighting or ventilation is:
 - (a) 1st offense warning (\$50.00)
 - (b) 2nd offense \$100.00
 - (c) 3rd offense \$200.00
- (14) The presumptive civil penalty for windows and doors not effectively screened is:
 - (a) 1st offense warning (\$50.00)
 - (b) 2nd offense \$100.00
 - (c) 3rd offense \$200.00
- (15) The presumptive civil penalty for trash containers not covered is:
 - (a) 1st offense warning (\$25.00)
 - (b) 2nd offense \$50.00
 - (c) 3rd offense \$100.00
- (16) The presumptive civil penalty for failure to use EPA approved disinfectant is:
 - (a) 1st offense \$50.00
 - (b) 2nd offense \$100.00
 - (c) 3rd offense \$200.00
- (17) The presumptive civil penalty for failure to maintain a sanitary establishment (~~80%-70%~~ rating or better) is:
 - (a) 1st offense warning (\$25.00)
 - (b) 2nd offense \$50.00
 - (c) 3rd offense \$100.00

Authority G.S. 88B-4; 88B-29.

SUBCHAPTER 14R – CONTINUING EDUCATION

SECTION .0100 – CONTINUING EDUCATION

**21 NCAC 14R .0101 CONTINUING EDUCATION
REQUIREMENTS**

- (a) The continuing education requirement for all licensees is eight hours per year. Cosmetologists may complete the 24 hours of continuing education any time within the cosmetologist's three-year licensing cycle. No licensee shall receive credit for course duplication completed during the licensing cycle.
- (b) Courses completed prior to an individual being licensed by the Board shall not qualify for continuing education credit. A

licensee shall not receive continuing education credit for any course given in North Carolina that does not have the prior approval of the Board. Apprentices shall not earn continuing education credit for any class.

(c) ~~Estheticians and manicurists~~ All licensees must complete courses in their subject area. Only licensed teachers may complete courses in teacher training techniques.

(d) All providers shall allow any representative or employee of the Board entrance into any Board approved continuing education requirement course at no cost to the Board.

(e) The Board shall keep a current roster of approved continuing education courses. Copies of the roster shall be posted to the Board's website and updated monthly. Additional copies of the roster shall be available to licensees and the public upon request to the Board. Requesting individuals shall provide stamped, self-addressed envelopes.

(f) Out-of-state continuing education hours shall be submitted for approval to the Board within 30 days of completing the course in order to be acceptable in meeting the annual requirements.

(g) Licensees shall be exempt from 8 hours of continuing education requirements until the licensing period commencing after their initial licensure.

(h) CE Course instructors shall receive credit for any approved CE class taught once during the renewal period.

(i) Licensees may take internet and correspondence courses not to exceed 12 hours per renewal period for cosmetologists, four hours per renewal period for manicurists and estheticians and eight hours per renewal period for teachers.

Authority G.S. 88B-4; 88B-21(e).

21 NCAC 14R .0102 APPLICATION CRITERIA AND CONTINUING EDUCATION COURSE APPROVAL

(a) Application for course approval shall be completed on forms provided by the Board and shall demonstrate that the applicant is:

- ~~(1) A provider as defined in 21 NCAC 14A .0101;~~
- ~~(2)(1)~~ Submitting the form to the Board's office at least 30 days prior to the proposed initial date of the course offering.
- ~~(3)(2)~~ Proposing a course offering that must include at least 50% of subject matter in the cosmetic arts or cosmetic art teacher training techniques;
- ~~(4)(3)~~ Providing a resume for all course instructors.

(b) The following offerings shall not be approved by the Board for continuing education credit:

- (1) That portion of any offering devoted to any breaks including: breakfast, lunch and dinner or other refreshments;
- (2) Any application that fails to meet the standards of this Rule.

(c) A continuing education number shall be assigned to each approved course.

(d) Approved courses may be conducted as often as desired during the calendar year.

Authority G.S. 88B-4; 88B-21(e).

21 NCAC 14R .0103 CRITERIA FOR CONTINUING EDUCATION COURSES

(a) Programs shall not be approved by the Board in segments of less than two hours.

(b) Providers must use an attendance sign-in sheet provided by the Board, listing the licensee's name and teacher's license number, to verify attendance. Forms may be copied. Course monitors will be required at the rate of one monitor per 20 students with a maximum of 10 monitors at any course. Instructors may serve as the course monitor for courses with fewer than 20 students.

(c) No provider shall certify the attendance of a person who was not physically present during at least ninety per cent of the course time.

(d) A provider shall maintain for four years a record of attendance of each person attending a course including the following information:

- (1) Board approved continuing education number;
- (2) Name and license number of attendee;
- (3) Course title and description
- (4) Hours of attendance;
- (5) Date of course;
- (6) Name and signature of instructor/monitor in employ of provider;

The provider shall certify the items above and furnish a copy to the attendee upon completion of the course.

(e) Course attendance may be restricted to licensees due to valid course prerequisites for admission or by the maximum number of participants allowable as determined by the provider and fully disclosed during the application criteria and procedures for continuing education approval.

(f) Minimum attendance of a course for credit purposes is four attendees.

(g) Each provider shall notify the Board; at least one day in advance, of any additional course dates, or any changes including ~~locations, times, floor plan and changes of course instructors, within 10 days.~~

(h) Each provider shall submit to the Board, within ten days after completion of each course, an attendance list of licensees who completed the course. The list shall include for each licensee:

- (1) Course title;
- (2) Date conducted;
- (3) Address location where the course was conducted;
- (4) Licensee name;
- (5) Licensee's license number;
- (6) Course continuing education number;
- (7) Continuing education hours earned.

(i) The Board may suspend, revoke, or deny the approval of an instructor or provider, who fails to comply with any provision of the rules in this Subchapter. Written justification of the suspension, denial, or revocation shall be given.

(j) Random audits of CE course providers will be conducted and complete records must be provided to the Board upon request.

Authority G.S. 88B-4; 88B-21(e).

**SUBCHAPTER 14S - NATURAL HAIR CARE
CURRICULUM**

SECTION .0100 – NATURAL HAIR CARE

21 NCAC 14S .0101 UNIFORM

All students enrolled in only a natural hair care curriculum must wear a clean washable uniform and nametag, pin or something similar identifying academic status and "natural hair care."

Authority G.S. 88-23; 88-26(1).

**21 NCAC 14S .0102 TIME REQUIREMENTS
ACCORDING TO HOURS**

(a) The maximum time a student may earn in a natural hair care school in any one day is eight clock hours. The maximum time a student may earn in a natural hair care school in any one week is 40 clock hours.

(b) Hours earned on one day shall not be credited to another day.

(c) Each student must complete 300 hours in a natural hair care school before applying to the Board for the natural hair care specialist's examination.

Authority G.S. 88B-4.

21 NCAC 14S .0103 APPROVED FIELD TRIPS

Cosmetology Educational Field Trips include the following activities:

- (1) Beauty Shops;
- (2) Cosmetic Art Conventions;
- (3) Competition Training;
- (4) Other Schools;
- (5) State Board Office and Archives Museum;
- (6) Supply Houses;
- (7) College or Career Day at School;
- (8) Fashion Shows;
- (9) Rest Homes/Nursing Homes;
- (10) Hospitals; and
- (11) Funeral Homes.

An instructor must be present during these educational field trips, for credit to be given to student, with a ratio of one instructor per 20 students present. The maximum number of hours a student may earn for field trips is 40 credit hours for cosmetology students, 20 credit hours for esthetician students and 10 credit hours for natural hair care or manicurist students.

Authority G.S. 88B-4.

**21 NCAC 14S .0104 EQUIPMENT FOR BEGINNER
DEPARTMENT**

The beginner department shall be equipped with the following minimum equipment for every 20 students in the department:

- (1) two shampoo bowls and chairs;
- (2) styling equipment for the purpose of natural hair care;
- (3) visual aids;
- (4) one mannequin practice table to accommodate at least ten students;

Authority G.S. 88B-4.

**21 NCAC 14S .0105 STORING AND LABELING OF
COSMETICS**

All bottles and jars in the advanced department containing supplies shall be kept securely covered and carefully labeled, stating contents and instructions for use.

Authority G.S. 88-23.

21 NCAC 14S .0106 EQUIPMENT

(a) Each natural hair care school must be equipped with the following equipment:

- (1) for departments with 20 to 29 stations, five dryers and chairs;
- (2) for departments with 30 or more stations, eight dryers and chairs;
- (3) five shampoo bowls and chairs;
- (4) 10 dressing tables and styling chairs;
- (5) styling equipment for natural hair care.

(b) Each natural hair care school shall provide training in the decontamination methods used to prevent the growth of germs and bacteria. Each natural hair care school shall provide the following equipment or supplies for use in the training and teaching of all students:

- (1) containers of sufficient size for the purpose of disinfecting implements by the immersion of implements in an EPA recommended, hospital grade disinfectant solution;
- (2) covered containers for storage of disinfected implements until they are needed to prevent contamination.

Authority G.S. 88B-4.

21 NCAC 14S .0107 PERFORMANCES

All natural hair care students shall complete the following minimum number of live model performances during the natural hair care course under the supervision of a licensed cosmetologist or natural hair care teacher before taking the natural hair care examination

Requirement Description	Hours	-	Services
<u>Beginners: Sanitation, bacteriology, disinfection, shampooing, draping, anatomy, disorders of the hair and scalp</u>	<u>8</u>	<u>-</u>	<u>-</u>

<u>Styles and techniques of natural hair styling including twisting, wrapping, extending, locking</u>	220	-	-
<u>Performance Requirements</u>	-	-	-
<u>Braids</u>	-	-	10
<u>Twists</u>	-	-	10
<u>Knots</u>	-	-	10
<u>Corn rows</u>	-	-	10
<u>Hairlocking</u>	-	-	10
<u>Artificial hair and decorations</u>	-	-	10
<u>Braid Removal</u>	-	-	10

A minimum of 80 hours of technical and practical instruction in application areas are required prior to conducting performances on the public.

Authority G.S. 88B-4.

21 NCAC 14S .0108 STUDENTS' PERSONAL SUPPLIES

Each student shall have the following minimum supplies:

- (1) six combs;
- (2) six brushes;
- (3) sufficient clips;
- (4) mannequin;
- (5) cape;
- (6) one copy of "An Act to Regulate the Practice of Cosmetic Art in the State of North Carolina" and a copy of the course curriculum requirements, both of which shall be at no charge to the student for the first copy.

Authority G.S. 88B-4.

21 NCAC 14S .0109 TESTS

Written tests and examinations shall be given in all subjects.

Authority G.S. 88-4.

21 NCAC 14S .0110 APPROVAL OF CREDIT FOR NATURAL HAIR CARE INSTRUCTION/ANOTHER STATE

- (a) An applicant shall receive credit for instruction taken in another state if the conditions set forth in this Rule are met.
- (b) The applicant's record shall be certified by the state agency or department that issues licenses to practice natural hair care. If this agency or department does not maintain any student records or if the state does not give license to practice natural hair care, then the records may be certified by any state department or state agency that does maintain such records and is willing to certify their accuracy. If no state department or board will certify the accuracy of the student's records, then the Board shall review the student's records on a case-by-case basis.
- (c) If the requirements of Paragraph (b) of this Rule are met, then the Board shall give credit for hours of course work and for mannequin and live model performances to the extent certified, up to the amount of credit that the student would receive for

instruction in a school licensed by the Board. If the certification includes only total hours and does not specify what performances have been completed, this Board shall not give any credit for performances completed as part of the out-of-state instruction.

Authority G.S. 88B-16.

21 NCAC 14S .0111 SERVICES PERFORMED

No student enrolled in a course for natural hair care only, shall perform any service of cosmetic art except those directly related to the prescribed course in natural hair care unless otherwise licensed to do so.

Authority G.S. 88B-4.

CHAPTER 36 – BOARD OF NURSING

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Board of Nursing intends to amend the rule cited as 21 NCAC 36 .0404.

Proposed Effective Date: July 1, 2010

Public Hearing:

Date: May 14, 2010

Time: 1:00 p.m.

Location: NC Board of Nursing Office, 4516 Lake Boone Trail, Raleigh, NC 27607

Reason for Proposed Action: *The NA II Rules have not updated since 1995. This rule was revised to bring it more in line with the operating policies and procedures of the Board of Nursing regarding procedures that an employing agency or facility must follow.*

Procedure by which a person can object to the agency on a proposed rule: *Persons may submit objections to this rule by contacting Jean H. Stanley, APA Coordinator, NC Board of*

Nursing, P. O. Box 2129, Raleigh, NC 27602, fax (919) 781-9461, email jeans@ncbon.com.

Comments may be submitted to: *Jean H. Stanley, APA Coordinator, NC Board of Nursing, P. O. Box 2129, Raleigh, NC 27602; phone (919) 782-3211 Ext. 252; fax (919) 782-9461; email jeans@ncbon.com*

Comment period ends: *May 14, 2010*

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 after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule 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 919-431-3000.

Fiscal Impact:

- ☐ **State**
☐ **Local**
☐ **Substantial Economic Impact (\geq \$3,000,000)**
☒ **None**

SECTION .0400 - UNLICENSED PERSONNEL: NURSE AIDES

21 NCAC 36 .0404 LISTING AND RENEWAL

(a) All nurse aide II's, as defined in Rule .0403(b) of this Section, regardless of working title, employed or assigned in a service agency or facility for the purpose of providing nursing care activities shall be listed on the Board of Nursing Nurse Aide II Registry and shall meet the following requirements:

- (1) successful completion of a nurse aide II program or its Board approved equivalent;
- (2) GED or high school diploma;
- (3) listed as a Level I nurse aide on the DHHS Nurse Aide Registry with no substantiated findings of abuse, neglect, or misappropriation of property; and
- (4) submission of an application to the Board of Nursing for placement on the Board of Nursing Nurse Aide II Registry prior to working as a nurse aide II.

The application shall be submitted with the required fee within 30 business days of completion of the nurse aide II program. Application for initial listing received in the Board office shall show an expiration day of the last day of the birth month of the following year.

(b) Nursing students currently enrolled in Board of Nursing approved nursing programs desiring listing as a nurse aide II shall submit:

- (1) An application fee; and
- (2) A listing form completed by the nursing program director indicating successful completion of course work equivalent in content and clinical hours to that required for a nurse aide II.

(c) Registered nurses and licensed practical nurses who hold current, unrestricted licenses to practice in North Carolina, and registered nurses and licensed practical nurses in the discipline process by the Board of Nursing who do not have any findings as cited in G.S. 131E-256(a)(1)(a) – (e) may make application as a nurse aide II.

(d) An individual previously enrolled in a Board approved nursing program leading to licensure as RN or LPN may list with no additional testing provided the student withdrew from school in good standing within the last 24 months and completed the equivalent content and clinical hours. Such individual shall submit listing form as described in Paragraph (b)(2) of this Rule. If the student was in good standing upon withdrawal from the school and withdrew from the school in excess of 24 months, the student must complete an entire nurse aide II program.

(e) Individuals who have completed a training course equivalent in content and clinical hours to the nurse aide II program, may submit documentation of same to the Board of Nursing for review. If training is equivalent, the individual may submit the application with required fee and be listed on the Board of Nursing Nurse Aide Registry as a nurse aide II.

(f) An employing agency or facility may choose up to four nurse aide II tasks to be performed by nurse aide I personnel without the nurse aide I completing the entire nurse aide II program. These tasks are individual activities which may be performed after the nurse aide has received the approved training and competency evaluation as defined in Rule .0403(b) of this Section.

- (1) The agency may obtain the selected tasks curriculum model from the nearest Community College or the Board of Nursing. ~~Nursing or may submit a self-generated curriculum to the Board for approval. Board approval must be obtained prior to teaching the nurse aide II tasks.~~
- (2) ~~Once approval has been obtained, the~~ The Board of Nursing must be notified of the nurse aide II task(s) that will be performed by nurse aide I personnel in the agency and for which all Board stipulations have been met. The notification of nurse aide II task(s) form which may be requested from the Board office shall be used. Each agency shall receive a verification letter once the Board has been appropriately notified.
- (3) Documentation of the training and competency evaluation must be maintained for each nurse aide I who is approved to perform nurse aide II task(s) within the agency.

(g) Each nurse aide II shall renew listing with the Board of Nursing biennially on forms provided by the Board. The renewal application shall be accompanied by the required fee.

- (1) To be eligible for renewal, the nurse aide II must have worked at least eight hours for compensation during the past 24 months performing nursing care activities under the supervision of a Registered Nurse.
- (2) Any nurse aide II who has had a continuous period of 24 months during which no nursing care activities were performed for monetary compensation but who has performed patient care activities for monetary compensation shall successfully complete the competency evaluation portion of the nurse aide II program and submit application in order to be placed on the Board of Nursing Nurse Aide II Registry.
- (3) A nurse aide II who has performed no nursing care or patient care activities for monetary compensation within the past 24 months must successfully complete a nurse aide II program prior to submitting the application for renewal.
- (4) A nurse aide II who has substantiated findings of abuse, neglect, or misappropriation of funds on the DHSR Nurse Aide Registry shall not be eligible for renewal as a nurse aide II.

Authority G.S. 90-171.19; 90-171.20(2)(4)(7)d, e, g; 90-171.37; 90-171.43(4); 90-171.55; 90-171.83; 42 U.S.C.S. 1395i-3 (1987).

TITLE 23 – DEPARTMENT OF COMMUNITY COLLEGES

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina State Board of Community Colleges intends to amend the rule cited as 23 NCAC 02C .0503.

Proposed Effective Date: August 1, 2010

Instructions on How to Demand a Public Hearing: *(must be requested in writing within 15 days of notice): To demand a public hearing please send the written demand to Q. Shanté Martin, Rulemaking Coordinator, NC Community College System, 200 West Jones Street, 5001 Mail Service Center, Raleigh, NC 27699-5001 or by emailing the demand to publiccomments@nccommunitycolleges.edu. Demands must be received within 15 days of the publication of the proposed rule in the North Carolina Register.*

Reason for Proposed Action: *The reporting requirement to the Joint Legislative Education Oversight Committee has been repealed in Section 8.9 of Senate Bill 202. As such, colleges no longer need to provide an annual report to the State Board.*

Procedure by which a person can object to the agency on a proposed rule: *Written objections shall be addressed to*

President, NC Community College System office, 5001 Mail Service Center, Raleigh, NC 27699-5001 within the comment period and must be postmarked by 11:59 p.m. on the last day of the comment period.

Comments may be submitted to: Q. Shanté Martin, Rulemaking Coordinator, 200 West Jones Street, 5001 Mail Service Center, Raleigh, NC 27699-5001; email publiccomments@nccommunitycolleges.edu

Comment period ends: May 14, 2010

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 after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule 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 919-431-3000.

Fiscal Impact:

- ☐ State
☐ Local
☐ Substantial Economic Impact (≥\$3,000,000)
☒ None

CHAPTER 02 - COMMUNITY COLLEGES

SUBCHAPTER 02C - COLLEGES: ORGANIZATION AND OPERATIONS

SECTION .0500 - EQUIPMENT

23 NCAC 02C .0503 DONATED OR LOANED PROPERTY

- (a) A board of trustees may accept property donated to the college for any lawful educational purpose that is consistent with the mission and purpose of the community college system.
- (b) Prior to a board of trustees accepting any property that restricts the use of funds derived from the sale or lease of the property, the college shall submit to the Department System Office a copy of the document transferring the property for review.
- (c) Any funds derived from the sale or lease of property donated to a college for a specific educational purpose shall be used to accomplish that purpose.
- (d) A board of trustees may permit a private business enterprise that loans or donates instructional equipment to the college to use the college's facilities to demonstrate the donated or loaned

equipment to customers or potential customers of the private business enterprise provided that:

- (1) The board of trustees develop procedures to regulate the use of its facilities for this purpose;
- (2) The procedures must comply with G.S. 115D-15; and
- ~~(3) The college provides an annual report to the State Board regarding the use of its facilities for these purposes; and,~~
- ~~(3)(4)~~ The lender's or donor's use of the college facilities shall not interfere with the education of students.

Authority G.S. 115D-5; 115D-15; 115D-20.

TITLE 25 – OFFICE OF STATE PERSONNEL

Notice is hereby given in accordance with G.S. 150B-21.2 that the State Personnel Commission intends to amend the rules cited as 25 NCAC 01E .1601-.1602, .1604; and 01H .0632.

Proposed Effective Date: August 1, 2010

Public Hearing:

Date: May 19, 2010

Time: 10:00 a.m.

Location: Office of State Personnel, Administration Building, 3rd Floor, 121 West Jones Street, Raleigh, NC 27603

Reason for Proposed Action:

25 NCAC 01E .1601, .1602, .1604 - The current Community Service Leave Rule allows for paid leave to be used for volunteering for certain activities in a public school or a community service organization. By practice, we have also provided for time off to volunteer in a university or state agency. We believe that we should add this to the rules and propose to also include community colleges. The provision does require that the service is outside of the employee's normal scope of duties and responsibilities and that the employee is not receiving any form of compensation for the services rendered.

25 NCAC 01H .0632 - The current Applicant Information and Application Rule allows, at the discretion of the agency, a resume to be accepted in lieu of an application in the initial stages of the screening process. To ensure uniform opportunity to provide information, we are proposing to remove this provision. As such, applicants applying for a state vacancy would submit State Application Form (Form PD-107 or its equivalent) to the hiring authority.

Procedure by which a person can object to the agency on a proposed rule: A person may object to these proposed rules by one of the following methods: A written letter to Peggy Oliver, HR Policy Administrator, Office of State Personnel, 1331 Mail Service Center, Raleigh, NC 27699-1331; an email to peggy.oliver@osp.nc.gov; or a telephone call to Peggy Oliver at (919) 807-4832.

Comments may be submitted to: Peggy Oliver, HR Policy Administrator, Office of State Personnel, 1331 Mail Service Center, Raleigh, NC 27699-1331; phone (919) 807-4832; fax (919) 715-9750; email peggy.oliver@osp.nc.gov

Comment period ends: May 19, 2010

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 after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule 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 919-431-3000.

Fiscal Impact:

- ☐ State
- ☐ Local
- ☐ Substantial Economic Impact (≥\$3,000,000)
- ☒ None

CHAPTER 01 - OFFICE OF STATE PERSONNEL

SUBCHAPTER 01E - EMPLOYEE BENEFITS

SECTION .1600 - COMMUNITY SERVICES LEAVE

25 NCAC 01E .1601 PURPOSE

Community Service Leave may be granted to:

- (1) parents for child involvement in the ~~schools;~~ as defined in 25 NCAC 01E .1602;
- (2) any employee for volunteer activity in the schools or in a Community Service ~~Organization; or~~ Organization as defined in 25 NCAC 01E .1602;
- (3) any employee for tutoring and mentoring in the ~~schools;~~ schools; or
- ~~(4) any employee for volunteering in a State of North Carolina Public University, Community College System or State agency as defined in 25 NCAC 01E .1602 provided that the service is outside of the employee's normal scope of duties and responsibilities and that the employee is not receiving any form of compensation for the services rendered.~~

Authority G.S. 126-4.

25 NCAC 01E .1602 DEFINITIONS

When used in this Section, these terms have the following meaning:

- (1) School - One that is authorized to operate under the laws of the State of North Carolina and is an elementary school, a middle school, a high school, or a child care program.
- (2) Public University - A constituent institution of the University of North Carolina.
- (3) Community College - An educational institution that is a member of the North Carolina Community College System.
- (4) State Agency - A State government agency that is authorized to operate under the laws of the State of North Carolina.
- (5)(2) Child - A son or daughter who is a biological child, an adopted child, a foster child, a step-child, a legal ward, or a child of an employee standing in loco parentis.
- (6)(3) Community Service Organization - A non-profit, non-partisan community organization which is designated as an IRS Code 501(c)(3) agency, or a human service organization licensed or accredited to serve citizens with special needs including children, youth, and the elderly.

Authority G.S. 126-4.

25 NCAC 01E .1604 USES OF COMMUNITY SERVICE LEAVE

Community service leave may be used for:

- (1) meeting with a teacher or administrator concerning the employee's child;
- (2) attending any function sponsored by the school in which the employee's child is participating. This provision shall only be utilized in conjunction with nonathletic programs that are a part or supplement to the school's academic or artistic program;
- (3) donating time to perform school-approved volunteer work approved by a teacher, school administrator, or program administrator; ~~or administrator;~~
- (4) donating time to perform a service for a community service organization. It does not

include attendance or participation in an event in which no service is ~~performed~~; performed;

- (5) performing volunteer work for a public university that is approved by a university administrator or other authorized university official;
- (6) performing volunteer work for a community college that is approved by a community college administrator or other authorized community college official; or
- (7) performing volunteer work for a State agency that is approved by the agency head or his/her designee.

Authority G.S. 126-4.

SUBCHAPTER 01H - RECRUITMENT AND SELECTION

SECTION .0600 - GENERAL PROVISIONS

25 NCAC 01H .0632 APPLICANT INFORMATION AND APPLICATION

(a) Applicants applying for a state vacancy shall complete and submit a State Application Form (Form PD-107 or its equivalent) to the hiring authority. ~~At the discretion of the agency, a resume may be accepted in lieu of an application in the initial stages of the screening process. Applicants selected for an interview shall complete and submit a State application (Form PD-107 or its equivalent) at the time of the interview.~~

(b) In completing an Application Form, persons subject to registration under the Military Selective Service Act (50 United States Code, Appx Section 453) shall certify compliance with such registration requirements to be eligible for State employment, as required by G.S. 143B-421.1. The knowing and willful failure of a subject person to certify compliance with this Act when submitting an application for consideration, or to falsely certify compliance, may be grounds for dismissal from employment.

(c) Persons eligible for veteran's preference shall submit a DD Form 214, Certificate of Release or Discharge from Active Duty, with the ~~application or resume~~ application. The agency shall verify eligibility for veterans' preference.

Authority G.S. 96-29; 126-4(4); 126-4(6).

Note from the Codifier: The rules published in this Section of the NC Register are temporary rules reviewed and approved by the Rules Review Commission (RRC) and have been delivered to the Codifier of Rules for entry into the North Carolina Administrative Code. A temporary rule expires on the 270th day from publication in the Register unless the agency submits the permanent rule to the Rules Review Commission by the 270th day.

This section of the Register may also include, from time to time, a listing of temporary rules that have expired. See G.S. 150B-21.1 and 26 NCAC 02C .0500 for adoption and filing requirements.

TITLE 09 – OFFICES OF THE GOVERNOR AND LIEUTENANT GOVERNOR

Note: These temporary rules were adopted under the procedure set out in G.S. 150B-21.1B. Adoption of rules to implement the American Recovery and Reinvestment Act.

Rule-making Agency: Office of Economic Recovery and Investment

Rule Citation: 09 NCAC 07 .0101-.0102, .0201-.0204, .0301-.0302, .0401-.0403, .0501-.0504, .0601-.0602, .0701-.0702

Effective Date: February 26, 2010

Received by Codifier for entry into the NCAC on February 18, 2010. See G.S. 150B-21.1B.

Reason for Action: These rules are necessary pursuant to the enactment on February 17, 2009 of the American Recovery and Reinvestment Act (ARRA) by the President and U.S. Congress and pursuant to N.C. General Statute 150B-21B enacted by the North Carolina General Assembly on August 29, 2009. The ARRA sets forth in Title XII, Transportation and Housing and Urban Development and Related Agencies, H.R. 1-107 parameters for the expenditure of the \$1.5 billion allocated by the federal government under the ARRA for the newly created homelessness prevention and rapid re-housing program (HPRP). Sixty percent of the funds must be expended by grantees within two years of the date the funds become available for obligation and 100% of the funds must be expended within three years of such date. Based on this expedited timetable, OERI adhered to the requirements in N.C. General Statute 150B-21B and enacted the rules as required.

CHAPTER 07 – OFFICE OF ECONOMIC RECOVERY AND INVESTMENT

SECTION .0100 – GENERAL PROVISIONS

09 NCAC 07 .0101 FUNCTIONS AND RESPONSIBILITIES

The functions and responsibilities of the Office of Economic Recovery and Investment, hereinafter referred to as OERI, include:

- (1) to coordinate and monitor North Carolina's use of the federal stimulus funds under the ARRA;
- (2) to help ensure that the funds will be put to use quickly and efficiently, and with the transparency and accountability that North Carolinians expect;
- (3) to provide accountability for the use of the stimulus funds;

- (4) to track all federal dollars flowing into state and local governments as well as to private businesses and non-profit organizations;
- (5) to maximize the state's use of available federal stimulus funds;
- (6) to identify the most rapid ways to move the stimulus money into the economy and remove regulatory and other impediments;
- (7) to establish open and effective lines of communication with federal and state agencies, local governments and North Carolina's Congressional delegation to assist in efforts to effectively and rapidly use the federal stimulus funds;
- (8) to develop a communications network, using a variety of tools including the Internet, to keep the public informed about the status and progress of the recovery effort, along with funding opportunities;
- (9) to report to the General Assembly and the citizens on a regular basis about the status of the use of the stimulus funds, including federal, state and other non-federal money;
- (10) to measure progress of the recovery effort by tracking the state's economic condition.

History Note: Authority S.L. 2009-475; P.L. 111-5; Title XII, H.R. 1-107;

Emergency Adoption Eff. January 19, 2010;

Temporary Adoption Eff. February 26, 2010.

09 NCAC 07 .0102 HOW TO CONTACT OERI

The mailing address of OERI is:

Office of Economic Recovery and Investment

Office of the Governor

221 East Lane Street

Raleigh, North Carolina 27603

History Note: Authority S.L. 2009-475; P.L. 111-5; Title XII, H.R. 1-107;

Emergency Adoption Eff. January 19, 2010;

Temporary Adoption Eff. February 26, 2010.

SECTION .0200 – HOMELESSNESS PREVENTION AND RAPID RE-HOUSING PROGRAM

09 NCAC 07 .0201 PURPOSE AND OBJECTIVES

The purpose of the North Carolina Homelessness Prevention and Rapid Re-Housing Program (hereinafter referred to as "HPRP") is to provide "short-term or medium-term rental assistance; housing relocation and stabilization services including housing

search, mediation or outreach to property owners, credit repair, security or utility deposits, utility payments, rental assistance for a final month at a location, moving cost assistance, and case management; or other appropriate activities for homelessness prevention and rapid re-housing of persons who have become homeless. Consistent with this purpose, HPRP funds will assist private nonprofit organizations in improving the quality and availability of short-term housing and assist with housing relocation and stabilization for the homeless in their community.

History Note: Authority S.L. 2009-475; P.L. 111-5; Title XII, H.R. 1-107;
Emergency Adoption Eff. January 19, 2010;
Temporary Adoption Eff. February 26, 2010.

09 NCAC 07 .0202 DEFINITIONS

The following terms shall apply to the rules of this Chapter:

- (1) "ARRA" means the American Recovery and Reinvestment Act signed into law by the President on February 17, 2009.
- (2) "Applicant" means a private nonprofit organization or local government entity which makes an application pursuant to the provisions of this Chapter.
- (3) "HUD" means the United States Department of Housing and Urban Development.
- (4) "Recipient" means a non-profit or local government that has been awarded an HPRP grant and has executed a Grant Agreement with OERI.
- (5) "State" means the state of North Carolina.
- (6) "Obligated" means the recipient has submitted requisitions for reimbursement of expenses, incurred costs, or performed similar transactions that require payment from the HPRP grant amount.
- (7) "Expended" means purchases have been made and deliveries received for goods and services to be paid with HPRP funds.
- (8) "Homeless" - shall be defined as by Section 103 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11302).
- (9) "OERI" means the United States Office of Economic Recovery and Investment.
- (10) "Private nonprofit organization" means a secular or religious organization described in section 501(c) of the Internal Revenue Code of 1988 which:
 - (a) is exempt from taxation under Subtitle A of the Code;
 - (b) has an accounting system and a voluntary board; and
 - (c) practices nondiscrimination in the provision of assistance.

History Note: Authority S.L. 2009-475; P.L. 111-5; Title XII, H.R. 1-107;
Emergency Adoption Eff. January 19, 2010;
Temporary Adoption Eff. February 26, 2010.

09 NCAC 07 .0203

ELIGIBLE RECIPIENTS

(a) Direct Awards:

- (1) Required Services: The state reserves the right to directly contract for any federally required services or activities that can not be obtained through a competitive process. Such services include, but are not be limited to, the requirement for Homeless Management Information Services (HMIS).
- (2) Cost Effective Statewide Coverage: The state reserves the right to directly contract for any eligible activities that cannot be obtained through a competitive process that would benefit the entire state and/or effectively prevent duplication among funded applicants in the competitive process.
- (3) Existing Services: The state reserves the right to directly contract with previously existing programs providing housing stability services as part of the Mental Health Initiative funded by the Mental Health Trust Fund. Existing funding for these Housing Support Teams ended in June 2009.

(b) Competitive Awards: The remainder of funds will be administered through a competitive process.

History Note: Authority S.L. 2009-475; P.L. 111-5; Title XII, H.R. 1-107;
Emergency Adoption Eff. January 19, 2010;
Temporary Adoption Eff. February 26, 2010.

09 NCAC 07 .0204

ELIGIBLE APPLICANTS

- (a) Units of general local government in the state, which may include metropolitan cities and urban counties that receive grant amounts directly from HUD, but may not include public housing authorities.
- (b) Private non-profit organizations. If the non-profit is located in an entitlement area not covered by the state's Consolidated Plan, the local government for the area in which the office of the non-profit organization is physically located must certify in writing to OERI that it approves of the program.

History Note: Authority S.L. 2009-475; P.L. 111-5; Title XII, H.R. 1-107;
Emergency Adoption Eff. January 19, 2010;
Temporary Adoption Eff. February 26, 2010.

SECTION .0300 - ELIGIBLE AND INELIGIBLE ACTIVITIES

09 NCAC 07 .0301

ELIGIBLE ACTIVITIES

This Chapter, in accordance with the ARRA, adopts by reference as eligible activities those Operations/Services activities described as such in the ARRA. Copies of these sections of federal law are available for public distribution from OERI.

History Note: Authority S.L. 2009-475; P.L. 111-5; Title XII, H.R. 1-107;

*Emergency Adoption Eff. January 19, 2010;
Temporary Adoption Eff. February 26, 2010.*

09 NCAC 07 .0302 INELIGIBLE ACTIVITIES

This Chapter, in accordance with the ARRA, adopts by reference as ineligible activities those Operations/Services activities described as such in the ARRA. Copies of these sections of federal law are available for public distribution from OERI.

*History Note: Authority S.L. 2009-475; P.L. 111-5; Title XII, H.R. 1-107;
Emergency Adoption Eff. January 19, 2010;
Temporary Adoption Eff. February 26, 2010.*

SECTION .0400 - GENERAL REQUIREMENTS

09 NCAC 07 .0401 APPLICATION REQUIREMENTS

(a) Private nonprofit organizations and units of local governments are required to submit applications in a manner prescribed by OERI in order to be considered for funding. Selection of applications for funding will be based on information contained in the application.

(b) OERI shall designate specific dates for submission of HPRP grant applications. Grant application submission dates will be announced by OERI a minimum of 20 days before the date applications are due.

(c) Applications must be received by OERI in Raleigh before 5:00 p.m. on the submission date.

(d) The applicant shall certify to OERI that it will comply with all applicable federal and state laws, regulations, rules and executive orders. Copies of these federal and state documents are available for public distribution from OERI.

(e) Applicants must comply with the ARRA, all applicable federal and state laws, regulations, rules, executive orders and guidance, as well as all directives and guidelines issued by OERI.

*History Note: Authority S.L. 2009-475; P.L. 111-5; Title XII, H.R. 1-107;
Emergency Adoption Eff. January 19, 2010;
Temporary Adoption Eff. February 26, 2010.*

09 NCAC 07 .0402 SIZE OF GRANTS

(a) The maximum amount which may be applied for shall be determined by OERI in accordance with the provisions of the ARRA.

(b) The minimum grant which may be applied for shall be determined by the OERI.

(c) OERI reserves the right to award grants for less than the requested amount in the event that the total amount of funds requested exceeds the total amount of funds available; OERI also reserves the right to award grants exceeding the amount requested if the total amount of funds requested is less than the total amount of funds available.

*History Note: Authority S.L. 2009-475; P.L. 111-5; Title XII, H.R. 1-107;
Emergency Adoption Eff. January 19, 2010;*

Temporary Adoption Eff. February 26, 2010.

09 NCAC 07 .0403 OPERATIONS/SERVICE S/HOMELESS PREVENTION

Applications for HPRP funds must be complete and show that:

- (1) The application was duly authorized by the local governing body, or that such authorization is imminent.
- (2) Grant funds will be expended pursuant to the rules of this Chapter.
- (3) Funds will be expended within three years of the date of the grant award.
- (4) All federal and state requirements and guidance, the provisions of the ARRA and the provisions of OERI Management Directives will be met. Furthermore, Recipients will comply with any future changes to the program or its administration.

*History Note: Authority S.L. 2009-475; P.L. 111-5; Title XII, H.R. 1-107;
Emergency Adoption Eff. January 19, 2010;
Temporary Adoption Eff. February 26, 2010.*

SECTION .0500 - GRANT ADMINISTRATION

09 NCAC 07 .0501 GRANT AGREEMENT

(a) Upon approval of the application by OERI, a written grant agreement will be executed between the recipient and OERI. The rules in this Chapter, application guidelines, subsequent guidelines prepared by OERI, the approved application, and any subsequent amendments to the approved application shall become a part of the grant agreement.

(b) A copy of the grant agreement in its original form along with any and all modifications thereto shall be kept on file in the office of the recipient.

(c) HPRP Program amendments. Recipients shall request prior OERI approval for all amendments to the grant agreement.

(d) OERI reserves the right to disallow any proposed amendment to the grant agreement.

*History Note: Authority S.L. 2009-475; P.L. 111-5; Title XII, H.R. 1-107;
Emergency Adoption Eff. January 19, 2010;
Temporary Adoption Eff. February 26, 2010.*

09 NCAC 07 .0502 METHOD OF ADMINISTRATION

(a) Recipients have the responsibility of undertaking or carrying out HPRP activities. This does not prohibit the designation of an administering agency.

(b) OERI shall make payments of HPRP funds to recipients on a cost-reimbursement or cost-incurred basis. Recipients shall request payment of HPRP funds in a manner prescribed by OERI and in accordance with the ARRA.

(c) All payments of HPRP funds to recipients must be for costs incurred during the period of the grant. Recipients will not receive payment for costs incurred before the execution of the Grant Agreement unless specified in the grant agreement.

History Note: Authority S.L. 2009-475; P.L. 111-5; Title XII, H.R. 1-107;
Emergency Adoption Eff. January 19, 2010;
Temporary Adoption Eff. February 26, 2010.

09 NCAC 07 .0503 RECORDKEEPING

(a) OERI, Office of State Budget and Management (OSBM), Government Accountability Office (GAO), the Inspector General, Comptroller General and any other duly authorized state or federal representatives, shall have access to any and all records or may interview any employee, staff or officers working on these contracts. These officials have the authority to examine any record and interview any employee, staff or officer of the contractor, its subcontractors or other firms working on this contract. Nothing in this section shall be interpreted to limit or restrict in any way any existing authority of OERI, OSBM, GAO, the Inspector General, Comptroller General and any other duly authorized state or federal representatives.

(b) Financial records, supporting documents and all other reports and records required under this Chapter, and all other audits and records pertinent to the HPRP shall be retained by the recipient for a period of at least three years from the date of the closeout of the program, except that records shall be retained until all litigations, claims, or audit findings involving the records have been resolved.

(c) All records shall be sufficient to determine compliance with the requirements and primary objectives of the HPRP Program and all other applicable laws and regulations. All accounting records shall be supported by source documentation.

History Note: Authority S.L. 2009-475; P.L. 111-5; Title XII, H.R. 1-107;
Emergency Adoption Eff. January 19, 2010;
Temporary Adoption Eff. February 26, 2010.

09 NCAC 07 .0504 GRANT CLOSEOUTS

HPRP grants will be closed out by OERI in the following circumstances:

- (1) OERI will initiate closeout procedures after OERI determines, in consultation with the recipient, that there are no impediments to closeout and that all HPRP funds have been expended or returned to OERI.
- (2) Termination of grant for mutual convenience. Grant assistance provided under this Chapter may be cancelled, in whole or in part, by OERI or the recipient, prior to the completion of the approved HPRP, when both parties agree that the continuation of the program no longer is feasible or would not produce beneficial results commensurate with the further expenditure of funds. Termination of grant shall be in writing.
- (3) Termination for cause. OERI may terminate the recipient's entire grant, or the remaining balance thereof, in accordance with Rule .0603 of this Chapter.

History Note: Authority S.L. 2009-475; P.L. 111-5; Title XII, H.R. 1-107;
Emergency Adoption Eff. January 19, 2010;
Temporary Adoption Eff. February 26, 2010.

SECTION .0600 - COMPLIANCE AND REPORTING REQUIREMENTS

09 NCAC 07 .0601 COMPLIANCE

Recipients shall have responsibility for ensuring that HPRP funds are expended as stated in their grant agreement and in conformance with all applicable federal and state laws, regulations, directives and guidelines. OERI may prescribe procedures for ensuring compliance with the provisions of this Rule.

History Note: Authority S.L. 2009-475; P.L. 111-5; Title XII, H.R. 1-107;
Emergency Adoption Eff. January 19, 2010;
Temporary Adoption Eff. February 26, 2010.

09 NCAC 07 .0602 REPORTING

OERI shall require recipients to provide interim performance reports in a form prescribed by OERI and in compliance with the ARRA. Recipients are responsible for compliance with all reporting deadlines.

History Note: Authority S.L. 2009-475; P.L. 111-5; Title XII, H.R. 1-107;
Emergency Adoption Eff. January 19, 2010;
Temporary Adoption Eff. February 26, 2010.

SECTION .0700 - REMEDIES

09 NCAC 07 .0701 REMEDIES/COURSES OF ACTION

When OERI determines on the basis of a review of a recipient's performance that the objectives of an HPRP program described in the grant agreement have not been met, OERI may take one or more of the following actions as OERI deems appropriate:

- (1) Issue a warning letter that further failure to comply with such requirements will result in a more serious sanction;
- (2) Require successful corrective action and any specific monitoring conditions for continuation of this or any future grant;
- (3) Direct the recipient to cease the expenditure of all grant funds, stop the incurring any costs or obligations with respect to HPRP;
- (4) Require that some or all of the grant amounts be remitted to OERI;
- (5) Reduce the level of funds the recipient would otherwise be entitled to receive; or
- (6) Bar the recipient from participation in future grant proposals. Elect not to provide future grant funds to the recipient until appropriate actions are taken to ensure compliance.

History Note: Authority S.L. 2009-475; P.L. 111-5; Title XII, H.R. 1-107;
Emergency Adoption Eff. January 19, 2010;
Temporary Adoption Eff. February 26, 2010.

09 NCAC 07 .0702 OTHER REMEDIES

Nothing in this section on remedies shall limit the rights of the grantor from any other relief in law or equity.

History Note: Authority S.L. 2009-475; P.L. 111-5; Title XII, H.R. 1-107;
Emergency Adoption Eff. January 19, 2010;
Temporary Adoption Eff. February 26, 2010.

TITLE 10A – DEPARTMENT OF HEALTH AND HUMAN SERVICES

Rule-making Agency: *Division of Health Service Regulation*

Rule Citation: *10A NCAC 14C .1701*

Effective Date: *March 1, 2010*

Date Approved by the Rules Review Commission: *February 18, 2010*

Reason for Action: *Each year, changes to existing Certificate of Need rules are required to compliment or to ensure consistency with the State Medical Facilities Plan (SMFP). The effective date of the 2010 SMFP is January 1, 2010.*

CHAPTER 14 – DIRECTOR, DIVISION OF HEALTH SERVICE REGULATION

SUBCHAPTER 14C - CERTIFICATE OF NEED REGULATIONS

SECTION .1700 - CRITERIA AND STANDARDS FOR OPEN-HEART SURGERY SERVICES AND HEART-LUNG BYPASS MACHINES

10A NCAC 14C .1701 DEFINITIONS

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

- (1) "Capacity" of a heart-lung bypass machine means 400 adult-equivalent open heart surgical procedures per year. One open heart surgical procedure on persons age 14 and under is valued at two adult open heart surgical procedures. For purposes of determining capacity, one open heart surgical procedure is defined to be one visit or trip by a patient to an operating room for an open heart operation.
- (2) "Cardiac Surgical Intensive Care Unit" means a distinct intensive care unit as defined in 10A

NCAC 14C .1201(2) and which is for exclusive use by post-surgical open heart patients.

- (3) "Heart-lung bypass machine" shall have the same meaning as defined in G.S. 131E-176(10a).
- (4) "Open heart surgery service area" means a geographical area defined by the applicant, which has boundaries that are not farther than 90 road miles from the facility, except that the open heart surgery service area of an academic medical center teaching hospital designated in ~~10A NCAC 14B~~ the State Medical Facilities Plan shall not be limited to 90 road miles.
- (5) "Open heart surgery services" shall have the same meaning as defined in G.S. 131E-176(18b).
- (6) "Open heart surgical procedures" means ~~highly~~ specialized surgical procedures which:
 - (a) utilize a heart-lung bypass machine (the "pump") to perform extra-corporeal circulation and oxygenation during surgery;
 - (b) are designed to correct congenital and acquired cardiac and coronary disease; and
 - (c) are identified by Medicare Diagnostic Related Group ("DRG") numbers 104, 105, 106, ~~407, and 408.~~ 108, 547, 548, 549, and 550.
- (7) "Primary open heart surgery service area" means a geographical area defined by the applicant, which has boundaries that are not farther than 45 road miles from the facility, except that the primary open heart surgery service area of an academic medical center teaching hospital designated ~~to be in 10A NCAC 14B,~~ the State Medical Facilities Plan shall not be limited to 45 road miles.

History Note: Filed as a Temporary Amendment Eff. September 1, 1993 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;
Authority G.S. 131E-177(1); 131E-183;
Eff. January 1, 1987;
Amended Eff. November 1, 1996; January 4, 1994; November 1, 1989;
Temporary Amendment Eff. January 1, 1999;
Temporary Eff. January 1, 1999 Expired on October 12, 1999;
Temporary Amendment Eff. January 1, 2000 and shall expire on the date on which the permanent amendment to this Rule, approved by the Rules Review Commission on November 17, 1999, becomes effective;
Amended Eff. July 1, 2000;
Temporary Amendment Eff. March 1, 2010.

RULES REVIEW COMMISSION

This Section contains information for the meeting of the Rules Review Commission on Thursday, November 19, 2009 9:00 a.m. at 1711 New Hope Church Road, RRC Commission 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 919-431-3100. Anyone wishing to address the Commission should notify the RRC staff and the agency no later than 5:00 p.m. of the 2nd business day before the meeting. Please refer to RRC rules codified in 26 NCAC 05.

RULES REVIEW COMMISSION MEMBERS

Appointed by Senate

Jim R. Funderburk - 1st Vice Chair
David Twiddy - 2nd Vice Chair
Ralph A. Walker
Jerry R. Crisp
Jeffrey P. Gray

Appointed by House

Jennie J. Hayman - Chairman
John B. Lewis
Clarence E. Horton, Jr.
Daniel F. McLawhorn
Curtis Venable

COMMISSION COUNSEL

Joe Deluca (919)431-3081
Bobby Bryan (919)431-3079

RULES REVIEW COMMISSION MEETING DATES

March 18, 2010 April 15, 2010
May 20, 2010 June 17, 2010

RULES REVIEW COMMISSION

February 18, 2010 MINUTES

The Rules Review Commission met on Thursday, February 18, 2010, in the Commission Room at 1711 New Hope Church Road, Raleigh, North Carolina. Commissioners present were: Jerry Crisp, Jim Funderburk, Jeff Gray, Jennie Hayman, Clarence Horton, Dan McLawhorn, Curtis Venable and Ralph Walker.

Staff members present were: Joseph DeLuca and Bobby Bryan, Commission Counsel; Tammara Chalmers, Julie Edwards and Dana Vojtko.

The following people were among those attending the meeting:

Anca Grozav	Office of State Budget and Management
Nancy Pate	Department of Environment and Natural Resources
Karen Waddell	Department of Insurance
Jeff Babb	NC State Highway Patrol
Joe Dugdale	NC State Highway Patrol
Rebecca Lem	Attorney General's Office
Cady Thomas	NC Association of Realtors
Bob Potter	Department of Insurance
Mike Hejduk	Home Inspector Licensure Board
Phil Joyner	Home Inspector Licensure Board
John Hoomani	Department of Labor
Kris Horton	DHHS/Division of Medical Assistance
Teresa Smith	DHHS/Division of Medical Assistance
Lisa Weeks	DHHS/Division of Medical Assistance
Glenda Adams	DHHS/Division of Medical Assistance
Bob Martin	DHHS/Division of Public Health
Rose Williams	Department of Insurance
Craig Smith	DHHS/Division of Health Service Regulation
Gloria Hale	DHHS/Division of Health Service Regulation
Jean Holliday	Department of Justice

Patrick Knowlson
Fleda Anderson
Kevin O'Barr
Kelly Braam

DENR/Division of Air Quality
Department of Labor
Department of Labor
Board of Barber Examiners

APPROVAL OF MINUTES

The meeting was called to order at 9:03 a.m. with Ms. Hayman presiding. She reminded the Commission members that they 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 January 21, 2010 meeting. There were none and the minutes were approved as distributed.

FOLLOW-UP MATTERS

12 NCAC 09B .0203 – Criminal Justice Education and Training Standards Commission. No rewritten rule has been submitted and no action was taken.

15A NCAC 13B .0835, .0836, .0841, .0842 – Commission for Public Health. No rewritten rules have been submitted and no action was taken.

LOG OF FILINGS

Chairman Hayman presided over the review of the log of permanent rules.

All permanent rules were approved unanimously with the following exceptions:

10A NCAC 22M .0102: Division of Medical Assistance - The Commission objected to this rule based on ambiguity. Paragraph (a) limits membership on the Drug Use Review Board to three one year terms. One of the members is required to be the Division Drug Use Review Coordinator. It is not clear what happens if the same person holds this position more than three years. He would not be eligible for membership but would be required to be a member.

10A NCAC 22O .0118: Division of Medical Assistance - The Commission objected to this rule based on lack of statutory authority and ambiguity. Sub-paragraph (a)(5) references the "CMS Drug Efficacy Study Implementation List." There is no such list. The FDA conducts the drug efficacy studies and periodically publishes a DESI notice in the Federal Register. The language is either wrong or misleading. It is thus unclear. In (b), it is not clear what the agency is trying to accomplish by saying "the Division may use a certification form." There does not appear to be any authority for the agency to set the requirements in (d) and (e). These are rules about the practice of pharmacy and are more appropriate for adoption by the Pharmacy Board. In (h), it is not clear what drugs are documented on the NC DMA Pharmacy Benefit Management website. There is no authority cited for the agency to set this requirement without going through rulemaking. In addition S.L. 2009-451, s.10.58(d)(28) prohibits the agency from imposing prior authorization requirements on medications prescribed for treatment of mental illness and HIV/AIDS. There is therefore no authority to adopt a rule not exempting them.

11 NCAC 08 .1004: Home Inspector Licensure Board - The Commission objected to this rule based on ambiguity. In (c), it is not clear what standards the Board will use in approving a home inspection course or training. The only standard in the rule is 120 hours of instruction, but it is not clear that the Board intends that to be the only standard. It is also not clear what other educational formats have been approved.

11 NCAC 12 .1901: Department of Insurance - The Commission objected to this rule based on ambiguity. In (1)(b), it is not clear what constitutes "proper authority."

12 NCAC 07D .0405: Private Protective Services Board - This rule was withdrawn by the agency and refiled for next month's meeting.

13 NCAC 07A .0901: Department of Labor – The Commission objected to this rule based on ambiguity. In (g), it is not clear what is meant by "shall be handled with discretion and care."

13 NCAC 07A .0904: Department of Labor – The Commission objected to this rule based on ambiguity. In (e), it is not clear what is meant by "with a minimum of medical information taken off-site."

The Commission granted the Request for Waiver of Rule 26 NCAC 05 .0108(a) or (d) submitted by the Department Labor and approved re-written rules 13 NCAC 07A .0901 and .0904. Commissioner Venable voted against the motion to object to the original rules .0901 and .0904, approve the remaining rules from the Department of Labor, grant the waiver, and approve the re-written rules.

14A NCAC 09H .0321: Department of Crime Control and Public Safety - The Commission objected to this rule based on ambiguity. In (a)(10), it is not clear what the Rotation Wrecker Liaison Lieutenant is looking for when he reviews a price list, nor when a price list will be approved. In (a)(15), it is not clear what is meant by "immediately." In (a)(22), it is not clear what is mean by "immediately."

15A NCAC 12: Department of Environment and Natural Resources – These rules were withdrawn by the agency and refiled for next month's meeting.

Prior to the review of the rules from the Board of Barber Examiners, Commissioner Gray recused himself and did not participate in any vote concerning these rules because he represents the Board.

21 NCAC 06K .0112: Board of Barber Examiners – This rule was withdrawn by the agency.

21 NCAC 06L .0111: Board of Barber Examiners - The Commission objected to this rule based on lack of statutory authority. The definition of "medical necessity" in (b)(1) (an undefined statutory term) seems to limit the meaning beyond the ordinary meaning of the term. The rule limits medical necessity to a "procedure." This would not include persons who are physically unable to leave their homes due to a medical condition but have no particular procedure being performed. This seems to limit the exception beyond that envisioned by the statute.

21 NCAC 06L .0116: Board of Barber Examiners - The Commission objected to this rule based on lack of statutory authority. There does not appear to be any authority for the first sentence in (c). The closest authority seems to be G.S. 86A-15(b) which allows the Board to make additional rules governing barbers and barber shops for the proper administration and enforcement of G.S. 86A-15. But this rule does not appear to have anything to do with the administration and enforcement of that statute.

21 NCAC 06N .0101: Board of Barber Examiners - The Commission objected to this rule based on lack of statutory authority. Subparagraph (a)(23) seems to violate G.S. 132-6.2. While G.S. 86A-25 authorizes the Board to set reasonable charges for duplication services and materials, G.S. 132-6.2(b) limits that charge to the actual cost to the agency for making the copy. Actual cost is limited to direct chargeable costs related to the reproduction of a public record as determined by generally accepted accounting principles and does not include costs that would have been incurred by the public agency if a request to reproduce the public record had not been made. Five dollars (\$5.00) for the first page and twenty-five cents (\$.25) for each additional seems to exceed the actual cost.

R313: Building Code Council - The Commission objected to this rule based on ambiguity. In R313.1.1, it is not clear what amounts to "immediate vicinity." Is this six inches, six feet, six yards or what?

TEMPORARY RULES

Chairman Hayman presided over the review of the log of temporary rules.

The temporary rule was unanimously approved by the Commission.

COMMISSION PROCEDURES AND OTHER BUSINESS

There was no other business.

The meeting adjourned at 10:51 a.m.

The next scheduled meeting of the Commission is Thursday, March 18 at 9:00 a.m.

Respectfully Submitted,

Dana Vojtko
Publications Coordinator

LIST OF APPROVED PERMANENT RULES
February 18, 2010 Meeting**HHS - MEDICAL ASSISTANCE, DIVISION OF**

<u>Pharmacy of Record</u>	10A NCAC 21C .0103
<u>Patient Counseling</u>	10A NCAC 22M .0201
<u>Applicability</u>	10A NCAC 22M .0301
<u>Prescribed Drugs</u>	10A NCAC 22O .0407

HOME INSPECTOR LICENSURE BOARD

<u>Meetings</u>	11 NCAC 08 .1002
<u>Purpose and Scope</u>	11 NCAC 08 .1103

INSURANCE, DEPARTMENT OF

<u>Actuarial Memorandum with Asset Adequacy Analysis</u>	11 NCAC 11F .0307
<u>Basic and Premium Deficiency Reserves</u>	11 NCAC 11F .0403
<u>Model Regulation Permitting the Recognition of Preferred ...</u>	11 NCAC 11F .0801
<u>Unfair or Deceptive Acts or Practices</u>	11 NCAC 12 .1902
<u>Justification of Adverse Insurance Decisions</u>	11 NCAC 12 .1903

SHERIFFS EDUCATION AND TRAINING STANDARDS COMMISSION

<u>Instructors</u>	12 NCAC 10B .2004
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LABOR, DEPARTMENT OF

<u>Incorporation by Reference</u>	13 NCAC 07A .0301
<u>Scope and Application</u>	13 NCAC 07A .0901
<u>Responsible Persons</u>	13 NCAC 07A .0902
<u>Security Procedures; Retention and Destruction of Records</u>	13 NCAC 07A .0903
<u>Intra-Agency Use and Transfer</u>	13 NCAC 07A .0904
<u>Inter-Agency Transfer and Public Disclosure</u>	13 NCAC 07A .0905

ENVIRONMENTAL MANAGEMENT COMMISSION

<u>Toxic Air Pollutant Guidelines</u>	15A NCAC 02D .1104
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COASTAL RESOURCES COMMISSION

<u>Coastal Shorelines</u>	15A NCAC 07H .0209
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BARBER EXAMINERS, BOARD OF

<u>Manager</u>	21 NCAC 06F .0102
<u>Roster and Student Records</u>	21 NCAC 06F .0110
<u>Students with Criminal Records</u>	21 NCAC 06F .0116
<u>Renewal as Registered Apprentice</u>	21 NCAC 06J .0103
<u>Separation From Other Businesses; Residential Shops; Mobi...</u>	21 NCAC 06L .0106
<u>Inspections of Shops</u>	21 NCAC 06L .0115
<u>Barber Failing to Maintain or Produce Exemption Log</u>	21 NCAC 06O .0117

RULES REVIEW COMMISSION

Registered Sex Offender

21 NCAC 06Q .0103

BUILDING CODE COUNCIL

NC Building Code - Exit Stairways

1007.3

NC Building Code - Referenced Standards

Chapter 35

NC Energy Conservation Council - Piping Insulation

503.2.8

NC Fire Code - Retail Display and Sale, Fireworks

3308.11

NC Residential Code - Alterations, Repairs and Additions...

R313.2.1

NC Residential Code - Side Hinge and Garage Doors

R614

LIST OF APPROVED TEMPORARY RULES
February 18, 2010 Meeting

HHS - HEALTH SERVICE REGULATION, DIVISION OF
Definitions

10A NCAC 14C .1701

AGENDA
RULES REVIEW COMMISSION
Thursday, March 18, 2010 9:00 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-Division of Medical Assistance – 10A NCAC 22M .0102 (Bryan)
 - B. DHHS-Division of Medical Assistance – 10A NCAC 22O .0118 (Bryan)
 - C. Home Inspector Licensure Board – 11 NCAC 08 .1004 (Bryan)
 - D. Department of Insurance – 11 NCAC 12 .1901 (Bryan)
 - E. Criminal Justice Education and Training Standards Commission – 12 NCAC 09B .0203 (Bryan)
 - F. Department of Crime Control and Public Safety – 14A NCAC 09H .0321 (Bryan)
 - G. Commission for Public Health – 15A NCAC 13B .0835, .0836, .0841, .0842 (DeLuca)
 - H. Board of Barber Examiners – 21 NCAC 06L .0111, .0116 (Bryan)
 - I. Board of Barber Examiners – 21 NCAC 06N .0101 (Bryan)
 - J. Building Code Council – 2009 NC Residential Code R313 (Bryan)
 - IV. Review of Log of Filings (Permanent Rules) for rules filed between January 21, 2010 and February 22, 2010
 - V. Review of Log of Filings (Temporary Rules)
 - VI. Commission Business
 - Next meeting: April 15, 2010
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Commission Review
Log of Permanent Rule Filings
January 21, 2010 through February 22, 2010

INSURANCE, DEPARTMENT OF

The rules in Chapter 22 concern Professional Employer Organization trusts.

<u>Scope</u>	11	NCAC	22	.0101
Adopt/*				
<u>Definitions</u>	11	NCAC	22	.0102
Adopt/*				
<u>General Eligibility</u>	11	NCAC	22	.0103
Adopt/*				
<u>Permanent Requirements</u>	11	NCAC	22	.0104
Adopt/*				
<u>Financial Requirements</u>	11	NCAC	22	.0105
Adopt/*				
<u>Administrative, Provider, and Management Contracts</u>	11	NCAC	22	.0106
Adopt/*				
<u>Trust Submittal and Plan of Operation</u>	11	NCAC	22	.0107
Adopt/*				
<u>Power of Attorney</u>	11	NCAC	22	.0108
Adopt/*				
<u>Claims Payments</u>	11	NCAC	22	.0109
Adopt/*				
<u>Dissolution</u>	11	NCAC	22	.0110
Adopt/*				
<u>Minimum Reserve Standards</u>	11	NCAC	22	.0111
Adopt/*				
<u>Claim Reserves</u>	11	NCAC	22	.0112
Adopt/*				
<u>Premium Reserves</u>	11	NCAC	22	.0113
Adopt/*				
<u>Maximum Net Retention Standard</u>	11	NCAC	22	.0114
Adopt/*				
<u>Qualified Actuary; Maximum Net Retention Filing</u>	11	NCAC	22	.0115
Adopt/*				
<u>Certification of Reserves Filing</u>	11	NCAC	22	.0116
Adopt/*				
<u>Definitions and Certification of Rates Filing</u>	11	NCAC	22	.0117
Adopt/*				

PRIVATE PROTECTIVE SERVICES BOARD

The rules in Subchapter 7D cover organization and general provisions (.0100); licenses and trainee permits (.0200); security guard patrol and guard dog service (.0300); private investigator and counterintelligence (.0400); polygraph (.0500); psychological stress evaluator (PSE) (.0600); unarmed security guard registration (.0700); armed security guard firearm registration permit (.0800); trainer certificate (.0900); recovery fund (.1000); training and supervision for private investigator associates (.1100); courier (.1200); and continuing education (.1300).

<u>Private Investigator's Use of a Badge</u>	12	NCAC	07D	.0405
Adopt/*				
<u>Fees for Unarmed Security Guard Registration</u>	12	NCAC	07D	.0702
Amend/**				

COASTAL RESOURCES COMMISSION

The rules in Chapter 7 are coastal management rules.

The rules in Subchapter 7H are the state guidelines for areas of environmental concern including introduction and general comments (.0100); the estuarine system (.0200); ocean hazard areas (.0300); public water supplies (.0400); natural and cultural resource areas (.0500); development standards (.0600); general permits for: construction or maintenance of bulkheads and the placement of riprap for shoreline protection in estuarine and public trust waters (.1100); piers, docks and boat houses in estuarine and public trust waters (.1200); boat ramps along estuarine shorelines and into estuarine and public trust waters (.1300); groins in estuarine and public trust waters (.1400); excavation within or connecting to existing canals, channels, basins, or ditches in estuarine waters, public trust waters, and estuarine shoreline AECs (.1500); aerial and subaqueous utility lines with attendant structures in coastal wetlands, estuarine waters, public trust waters and estuarine shorelines (.1600); emergency work requiring a CAMA or a dredge and fill permit (.1700); beach bulldozing landward of the mean high-water mark in the ocean hazard AEC (.1800); temporary structures within the estuarine and ocean hazard AECs (.1900); authorizing minor modifications and repair to existing pier/mooring facilities in estuarine and public trust waters and ocean hazard areas (.2000); construction of sheetpile sill for shoreline protection in estuarine and public trust waters (.2100); construction of freestanding moorings in established waters and public trust areas (.2200); replacement of existing bridges and culverts in estuarine waters, estuarine shorelines, public trust areas and coastal wetlands (.2300); placement of riprap for wetland protection in estuarine and public trust waters (.2400); replacement of structures, the reconstruction of primary or frontal dune systems, and the maintenance excavation of existing canals, basins, channels, or ditches, damaged, destroyed, or filled in by hurricanes or tropical storms (.2500); construction of wetland, stream and buffer mitigation sites by the North Carolina Ecosystem Enhancement Program or the North Carolina Wetlands Restoration Program (.2600); and the construction of riprap sills for wetland enhancement in estuarine and public trust waters (.2700).

<u>Use Standards</u>	15A	NCAC	07H	.0208
Amend/**				
<u>Use Standards for Ocean Hazard Areas: Exceptions</u>	15A	NCAC	07H	.0309
Amend/*				
<u>General Conditions</u>	15A	NCAC	07H	.1704
Amend/*				
<u>Specific Conditions</u>	15A	NCAC	07H	.1705
Amend/*				

ENVIRONMENT AND NATURAL RESOURCES, DEPARTMENT OF

The rules in Chapter 12 concern parks and recreation areas.

The rules in Subchapter 12A concern organization and duties.

<u>Organization and Purpose</u>	15A	NCAC	12A	.0101
Amend/*				
<u>Directory of State Parks and Recreation Areas</u>	15A	NCAC	12A	.0104
Amend/*				
<u>Definitions</u>	15A	NCAC	12A	.0105
Amend/*				

The rules in Subchapter 12B concern parks and recreation areas including general provisions (.0100); preservation of the park (.0200); bathing (.0300); refuse and rubbish (.0400); traffic and parking (.0500); boating and camping (.0600); sports and games (.0700); hunting and fishing (.0800); firearms, explosives, fires, etc. (.0900); disorderly conduct, public nuisance, etc. (.1000); commercial enterprises, advertising, meetings, exhibitions, etc. (.1100); and miscellaneous (.1200).

<u>Permits</u>	15A	NCAC	12B	.0104
Amend/*				
<u>Natural and Cultural Resource Protection</u>	15A	NCAC	12B	.0201
Amend/*				

<u>Metal Detectors Prohibited</u>	15A	NCAC	12B	.0203
Amend/**				
<u>Rock or Cliff Climbing and Rappelling</u>	15A	NCAC	12B	.0204
Amend/**				
<u>Bathing and Swimming Activities Where Prohibited</u>	15A	NCAC	12B	.0301
Amend/*				
<u>Disposal of Refuse: Garbage, Etc.</u>	15A	NCAC	12B	.0401
Amend/*				
<u>Vehicles; Where Prohibited</u>	15A	NCAC	12B	.0501
Amend/**				
<u>Parking</u>	15A	NCAC	12B	.0502
Amend/**				
<u>Boating</u>	15A	NCAC	12B	.0601
Amend/**				
<u>Camping</u>	15A	NCAC	12B	.0602
Amend/**				
<u>Sports and Games: When Permitted</u>	15A	NCAC	12B	.0701
Amend/**				
<u>Fishing</u>	15A	NCAC	12B	.0802
Amend/**				
<u>Noise Regulation</u>	15A	NCAC	12B	.1001
Amend/**				
<u>Intoxication Liquors: Controlled Substance or Beverages</u>	15A	NCAC	12B	.1003
Amend/**				
<u>Animals at Large</u>	15A	NCAC	12B	.1004
Amend/**				
<u>Commercial Enterprises</u>	15A	NCAC	12B	.1101
Amend/**				
<u>Public Assemblies and Meetings; Special Activity Permit</u>	15A	NCAC	12B	.1105
Amend/**				
<u>Closing and Opening Hours; Restricted Areas</u>	15A	NCAC	12B	.1201
Amend/**				
<u>Reservation Periods</u>	15A	NCAC	12B	.1205
Amend/**				
<u>Fees and Charges</u>	15A	NCAC	12B	.1206
Amend/**				

PUBLIC HEALTH, COMMISSION FOR

The rules in Chapter 13 cover hazardous and solid waste management, inactive hazardous substances, and waste disposal sites.

The rules in Subchapter 13A cover hazardous waste management and specifically HWTSD (hazardous waste treatment, storage, or disposal) facilities.

<u>STDS Applicable to Generators of Hazardous Waste-Part 262</u>	15A	NCAC	13A	.0107
Amend/*				

ENVIRONMENT AND NATURAL RESOURCES, DEPARTMENT OF

The rules in Chapter 28 are from the NC Aquariums and concern use of North Carolina Aquariums (.0100); scheduling activities for group use (.0200); unauthorized use of facilities, fees (.0300); firearms, fires, and smoking (.0400); conduct, alcoholic beverages, pets and proper dress (.0500); commercial activities, solicitations, etc. (.0600); and preservation of aquarium property

(.0700).

<u>Purpose</u>	15A	NCAC	28	.0101
Repeal/*				
<u>Facilities</u>	15A	NCAC	28	.0102
Repeal/*				
<u>Users</u>	15A	NCAC	28	.0103
Amend/*				
<u>Permissible Activities</u>	15A	NCAC	28	.0104
Amend/*				
<u>Permission for Use</u>	15A	NCAC	28	.0105
Amend/*				
<u>Scheduling Permissible Activities</u>	15A	NCAC	28	.0106
Repeal/*				
<u>Available Areas</u>	15A	NCAC	28	.0107
Amend/*				
<u>Long-Term Use Prohibited</u>	15A	NCAC	28	.0108
Repeal/*				
<u>Scheduling Activities for Regular Hours</u>	15A	NCAC	28	.0201
Amend/*				
<u>Aquarium Responsibilities</u>	15A	NCAC	28	.0202
Repeal/*				
<u>Scheduling Activities for Non-regular Hours</u>	15A	NCAC	28	.0203
Amend/*				
<u>Unauthorized Entry</u>	15A	NCAC	28	.0301
Amend/**				
<u>Fee Schedule</u>	15A	NCAC	28	.0302
Amend/*				
<u>Lethal Instruments</u>	15A	NCAC	28	.0401
Amend/*				
<u>Fires</u>	15A	NCAC	28	.0403
Amend/*				
<u>Smoking</u>	15A	NCAC	28	.0404
Amend/*				
<u>Uses Not Covered by Policy</u>	15A	NCAC	28	.0405
Repeal/*				
<u>Disorderly Conduct</u>	15A	NCAC	28	.0501
Amend/*				
<u>Sales of Alcohol or Controlled Substances</u>	15A	NCAC	28	.0502
Amend/**				
<u>Consumption of Alcohol</u>	15A	NCAC	28	.0503
Amend/**				
<u>Pets</u>	15A	NCAC	28	.0504
Amend/*				
<u>Loud Radios</u>	15A	NCAC	28	.0505
Amend/*				
<u>Proper Dress</u>	15A	NCAC	28	.0506
Amend/*				
<u>Coaster Conveyances</u>	15A	NCAC	28	.0507
Adopt/*				
<u>Advertising</u>	15A	NCAC	28	.0602
Amend/**				

<u>Photographs</u>	15A	NCAC	28	.0603
Amend/**				
<u>Logos: Slogans: Etc.</u>	15A	NCAC	28	.0604
Amend/**				
<u>Solicitations</u>	15A	NCAC	28	.0605
Amend/**				
<u>Acceptance of Donated Personal Property</u>	15A	NCAC	28	.0606
Adopt/*				
<u>Flowers: Plants: Animals: Etc.</u>	15A	NCAC	28	.0701
Amend/**				
<u>Parking</u>	15A	NCAC	28	.0703
Amend/*				
<u>Food and Beverages Prohibited Inside</u>	15A	NCAC	28	.0704
Adopt/*				

GENERAL CONTRACTORS, LICENSING BOARD FOR

The rules of the Licensing Board for General Contractors include the board's organization (.0100); licensing requirements (.0200); application procedures (.0300); examinations (.0400); licenses (.0500); disciplinary procedures (.0700); contested cases (.0800); and home-owners recovery fund (.0900).

<u>Construction Management</u>	21	NCAC	12	.0208
Amend/**				
<u>Multiunit Buildings</u>	21	NCAC	12	.0211
Amend/*				

DENTAL EXAMINERS, BOARD OF

The rules in Chapter 16 cover the licensing of dentists and dental hygienists.

The rules in Subchapter 16B concern licensure examination for dentists including examination required (.0100); qualifications (.0200); application (.0300); Board conducted examinations (.0400); licensure by credentials (.0500); limited volunteer dental license (.0600); instructor's license (.0700); temporary volunteer dental license (.0800); and exemptions for active military (.0900).

<u>Definitions</u>	21	NCAC	16B	.0901
Adopt/*				
<u>Exemptions Granted</u>	21	NCAC	16B	.0902
Adopt/*				

The rules in Subchapter 16I concern the annual renewal of the dental hygienist license.

<u>Definitions</u>	21	NCAC	16I	.0110
Adopt/*				
<u>Exemptions Granted</u>	21	NCAC	16I	.0111
Adopt/*				

DIETETICS/NUTRITION, BOARD OF

The rules in Chapter 17 are from the Board of Dietetics/Nutrition. The rules cover the general provisions of licensure (.0100); weight control programs (.0200); dietetic/nutrition students or trainees (.0300); and unlicensed individuals and those who aid in the practice of dietetics/nutrition (.0400).

<u>Definitions</u>	21	NCAC	17	.0101
Amend/*				

<u>Code of Ethics for Professional Practice and Conduct</u>	21	NCAC	17	.0114
Amend/*				
<u>Violations, Complaints, Subsequent Board Action, and Hear...</u>	21	NCAC	17	.0116
Amend/*				
<u>Suspension of Authority and Escrow of Funds</u>	21	NCAC	17	.0117
Adopt/*				
<u>Armed Services Licensees</u>	21	NCAC	17	.0118
Adopt/*				
<u>Individuals Aiding the Practice of Dietetics/Nutrition</u>	21	NCAC	17	.0401
Amend/**				

MASSAGE AND BODYWORK THERAPY, BOARD OF

The rules in Chapter 30 concern organization and general provisions (.0100); application for licensure (.0200); licensing (.0300); business practices (.0400); standards of professional conduct (.0500); massage and bodywork therapy schools (.0600); continuing education (.0700); rules (.0800); and complaints, disciplinary action and hearings (.0900).

<u>License Renewal</u>	21	NCAC	30	.0303
Amend/*				

MEDICAL BOARD

The rules in Chapter 32 include the licensing and practice standards of doctors, approval of nurse practitioners and physician assistants, regulation of professional corporations and mobile intensive care, and other aspects of medical practice and the regulatory procedures.

The rules in Subchapter 32W concern the regulations of anesthesiologist assistants.

<u>Supervision of Anesthesiologist Assistants</u>	21	NCAC	32W	.0109
Amend/*				

PHARMACY, BOARD OF

The rules in Chapter 46 cover organization of the Board (.1200); general definitions (.1300); hospitals and other health facilities (.1400); admission requirements and examinations (.1500); licenses and permits (.1600); drugs dispensed by nurse and physician assistants (.1700); prescriptions (.1800); forms (.1900); administrative provisions (.2000); elections (.2100); continuing education (.2200); prescription information and records (.2300); dispensing in health departments (.2400); miscellaneous provisions (.2500); devices (.2600); nuclear pharmacy (.2700); sterile parenteral pharmaceuticals (.2800); product selection (.2900); disposal of unwanted drugs (.3000); clinical pharmacist practitioner (.3100); impaired pharmacist peer review program (.3200); and registry of pharmacist technicians (.3300).

<u>Extension of Period for Certain Members of the Armed Forces</u>	21	NCAC	46	.1613
Adopt/*				

APPRAISAL BOARD

The rules in Subchapter 57A cover licensing, certification and practice rules for appraisers including application procedures (.0100); licensing and certification (.0200); examination (.0300); general practice requirements (.0400); and appraisal standards (.0500).

<u>Qualifications for Trainee Registration and Appraiser Cer...</u>	21	NCAC	57A	.0201
Amend/*				
<u>Continuing Education</u>	21	NCAC	57A	.0204
Amend/*				
<u>Appraisal Reports</u>	21	NCAC	57A	.0405

Amend/*

<u>Supervision of Trainees</u>	21	NCAC	57A	.0407
Amend/*				

The rules in Subchapter 57B cover real estate appraisal education including the courses required for licensure or certification (.0100); course sponsor standards for pre-licensing or pre-certification courses (.0200); pre-licensing and pre-certification course standards (.0300); course sponsor fees (.0400); fees for private real estate appraisal education schools (.0500); and continuing education course standards (.0600).

<u>Registered Trainee Course Requirements</u>	21	NCAC	57B	.0101
Amend/*				
<u>Certified Residential Real Estate Appraiser Course Requir...</u>	21	NCAC	57B	.0102
Amend/*				
<u>Certified General Real Estate Appraiser Course Requirements</u>	21	NCAC	57B	.0103
Amend/*				
<u>Course Completion Standards</u>	21	NCAC	57B	.0303
Amend/*				
<u>Course Scheduling</u>	21	NCAC	57B	.0304
Amend/*				
<u>Instructor Requirements</u>	21	NCAC	57B	.0306
Amend/*				
<u>Criteria for Course Recognition</u>	21	NCAC	57B	.0307
Amend/*				
<u>Criteria for Course Approval</u>	21	NCAC	57B	.0603
Amend/*				
<u>Course Operational Requirements</u>	21	NCAC	57B	.0606
Amend/*				
<u>Sponsor Reporting of Continuing Education Credit</u>	21	NCAC	57B	.0608
Amend/*				
<u>Renewal of Approval and Fees</u>	21	NCAC	57B	.0611
Amend/*				

COMMUNITY COLLEGES, BOARD OF

The rules in Chapter 2 concern Community Colleges.

The rules in Subchapter 2C deal with the organization and operation of the colleges including trustees and colleges (.0100); personnel (.0200); students (.0300); libraries and learning resource centers (.0400); equipment (.0500); college evaluation (.0600); and civil rights (.0700).

<u>Education Services for Minors</u>	23	NCAC	02C	.0305
Amend/*				

The rules in Subchapter 2D cover the fiscal affairs of community colleges including salaries (.0100), student fees (.0200) and budgeting, accounting and fiscal management (.0300).

<u>Limitations in Reporting Student Membership Hours</u>	23	NCAC	02D	.0325
Amend/*				
<u>Maintenance of Plant Flexibility</u>	23	NCAC	02D	.0329
Adopt/*				

The rules in Chapter 3 are from the Board of Community Colleges.

<u>Definitions and Application for Initial License</u>	23	NCAC	03A	.0101
Amend/*				
<u>Application for Renewal of License</u>	23	NCAC	03A	.0102
Amend/*				
<u>Administration of the Student Protection Fund</u>	23	NCAC	03A	.0116
Adopt/*				

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) 431-3000. 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

Beecher R. Gray
Selina Brooks
Melissa Owens Lassiter
Don Overby

Randall May
A. B. Elkins II
Joe Webster

<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>ALJ</u>	<u>DATE</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
<u>ALCOHOL BEVERAGE CONTROL COMMISSION</u>				
NC Alcoholic Beverage Control Commission v. Ciro Maya Maya, T/A Carolina Sports Arena	08 ABC 2411	Overby	06/29/09	
NC Alcoholic Beverage Control Commission v. Abdu Suleh Ali d/b/a Harlam Mini Mart	08 ABC 2980	Overby	01/07/10	
N.C. Alcoholic Beverage Control Commission v. Du Cong Phan T/A Good Food Market	09 ABC 0565	May	05/18/09	
North Carolina Alcoholic Beverage Control Commission v. Mayra Leticia Rodriguez, T/A La Perla Del Pacifico	09 ABC 0975	Gray	07/28/09	
N.C. Alcoholic Beverage Control Commission v. Roberta White Bridges T/A Christina Restaurant and Catering	09 ABC 1899	May	07/28/09	
N.C. Alcoholic Beverage Control Commission v. Mobashar Hassan Chaudhary	09 ABC 3579	Gray	09/30/09	
N.C. Alcoholic Beverage Control Commission v. Partnership T/A El Paraiso II	09 ABC 4171	May	02/16/10	
NC Alcoholic Beverage Control Commission v. La Tienda Mexicana Corp. T/A Tienda La Unica	09 ABC 4379	Brooks	09/17/09	
NC Alcoholic Beverage Control Commission v. Jose Elias Bautista T/A Bar Mexico Lindo	09 ABC 4680	May	12/30/09	
NC Alcoholic Beverage Control Commission v. Uwem Eyo Equan, T/A Sahara Restaurant and Lounge	09 ABC 4682	May	11/13/09	
NC Alcoholic Beverage Control Commission v. KAM Properties Inc. T/A Grays Creek Superette	09 ABC 4686	Gray	10/19/09	
N.C. Alcoholic Beverage Control Commission v. Bee Nui Carson, T/A Big Boys Market	09 ABC 5209	Brooks	12/11/09	
NC Alcoholic Beverage Control Commission v. Rimal Enterprise, Inc., T/A R B FoodMarket	09 ABC 5213	Brooks	12/11/09	
NC Alcoholic Beverage Control Commission v. Alhobishi Convenience Stores & Rentals, Inc T/A Happy Mart 4	09 ABC 5293	Lassiter	01/19/10	
NC Alcoholic Beverage Control Commission v. Mike's Private Club, Inc., T/A EL Rincon Caliente	09 ABC 5423	Brooks	12/10/09	
NC Alcoholic Beverage Control Commission v. Xuan Huong Thi Le T/A Billiards and Grill	09 ABC 5424	Brooks	12/10/09	
NC Alcoholic Beverage Control Commission v. Yong Cha Kim, T/A Asian Odyssey	09 ABC 6412	Overby	02/12/10	
<u>BOARD OF COSMETIC ARTS EXAMINERS</u>				
Douglas Van Essen v. NC State Board of Cosmetic Arts Examiners	09 BCA 2773	Webster	01/20/10	24:18 NCR 1638
<u>CRIME VICTIMS COMPENSATION</u>				
Mary D. Malone v. State of North Carolina, Department of Crime Control., Victims Compensations Services	08 CPS 2463	Gray	07/09/09	
Tony Ray Ross v. North Carolina State Highway Patrol	08 CPS 2546	Overby	10/06/09	
Ricky F. Smith v. Crime Control and Public Safety	08 CPS 2582	May	08/06/09	
Robert Melvin v. Janice Carmichael, NC Crime Victim Compensation	08 CPS 2634	Elkins	06/01/09	
B-Red Enterprises, Inc., Linda Parrish v. Secretary of Crime Control and Public Safety	08 CPS 3043	Webster	06/23/09	
Spencer's Incorporated of Mount Airy, NC d/b/a Ararat Rock Products Company and Jim Crossingham, III v. North Carolina Highway Patrol	08 CPS 3399	May	08/25/09	24:11 NCR 908
Apex PTO & Trailer, Inc. Morris F. Purdy v. NC Dept. of Crime Control & Public Safety, Division of State Highway Patrol, Carrier Enforcement Section	09 CPS 0010	Lassiter	08/17/09	
Peggy Gulley, Gulley's Backhoe Service v. Crime Control and Public Safety	09 CPS 0085	Overby	06/04/09	
Peter Thomas, Southeast Forest Works, LLC v. NC State Highway Patrol	09 CPS 1257	Gray	05/19/09	
Allen Bender, AB's Gravel Driveways, LLC v. North Carolina State Highway Patrol, Motor Carrier	09 CPS 1259	Gray	06/29/09	

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Enforcement Section				
Bruce E. Tyndall v. NC Dept. of Crime Control & Public Safety, Division of State Highway Patrol, Motor Carrier Enforcement Section	09 CPS 1494	Webster	07/29/09	
Ramdog Enterprises, LLC v. NC Highway Patrol, Troop G, District V and Captain F.T. Stout	09 CPS 1531	Brooks	01/13/10	
Cape Romain Contractors, Inc., Andrew Dupre v. North Carolina Department of Crime Control and Public Safety, Division of State Highway Patrol, Motor Carrier Enforcement Section	09 CPS 1599	Gray	07/02/09	
John Emiliani, Jr., v. N.C. Division of Motor Vehicles	09 CPS 1604	Brooks	06/15/09	
Clifton Artis v. Secretary of Crime Control and Public Safety	09 CPS 1732	Gray	10/26/09	
Alexander Rybak v. NC DMV, State Highway Patrol	09 CPS 1834	Brooks	08/11/09	
Shelby T. Wallace v. Motor Carrier Enforcement, NC State Highway Patrol	09 CPS 1840	Brooks	08/11/09	
Wanda K. McNeill v. Crime Victims Compensation Commission	09 CPS 3873	Gray	02/05/10	
Rowland L. Simmons v. North Carolina State Highway Patrol	09 CPS 2087	Brooks	05/19/09	
Covenant Trucking Company, Inc. v. NC Dept. of Crime Control & Public Safety	09 CPS 2361	Cella	08/11/09	
SEKO-Charlotte, Inc. v. NC State Highway Patrol	09 CPS 2380	May	07/28/09	
James Christian Laubach and the Auto Barn, Inc. v. NC State Highway Patrol	09 CPS 2385	Mann	07/28/09	
Joseph Moseley v. NC State Highway Patrol	09 CPS 2390	Gray	12/22/09	
George Allen Cook (Case #08-35780), v. N.C. Department of Crime Control and Public Safety, Victim Compensation Services Division	09 CPS 2391	May	07/29/09	
Cynthia K. Shreve v. Victims Compensation Program	09 CPS 2404	May	06/23/09	
Robert C. Bacon v. NC State Highway Patrol	09 CPS 2426	Gray	12/18/09	
Allen Robinson v. NCSHP	09 CPS 2449	Overby	06/17/09	
Walter D. Cochran v. NC Dept. of Crime Control and Public Safety	09 CPS 2458	Cella	08/14/09	
Gregory Vett Arnold v. NC State Highway Patrol	09 CPS 2509	Gray	08/25/09	
Jeffrey Andrew Kennedy v. NC State Highway Patrol, Citation and Notice of Assessment	09 CPS 2511	May	07/09/09	
George M. Gause v. NC Dept. of Crime Control and Public Safety, Division of State Highway Patrol, Motor Carrier Enforcement Section	09 CPS 2551	Webster	09/30/09	
Rowland L. Simmons v. North Carolina State Highway Patrol	09 CPS 2885	May	06/11/09	
Derik Core V. NCHP	09 CPS 3500	Overby	07/29/09	
Randy Stewart v. State Highway Patrol	09 CPS 3646	Brooks	10/09/09	
Rachel Strickland v. NC Crime Victims Compensation Commission	09 CPS 3650	Brooks	10/06/09	
D&D Auto Transport, Jimmy Donald v. NC State Highway Patrol	09 CPS 3690	Cella	10/30/09	
Goodfellas Auto Transport v. NC State Highway Patrol	09 CPS 3757	Gray	01/15/10	
Jennifer Elizabeth Bollinger v. NC Dept. of Crime Control & Public Safety, Division of Victims Compensation Commission	09 CPS 3765	Gray	10/07/09	
CL Hill Hauling, LLC, Christopher Hill v. NC Dept. of Crime Control and Public Safety, Division of State Highway Patrol, Motor Carrier Enforcement Section	09 CPS 3784	Gray	09/08/09	
KJ Logistics, LLC v. NC State Highway Patrol	09 CPS 3876	Gray	09/08/09	
Jorge Rodriguez v. Secretary of Crime Control & Public Safety	09 CPS 3921	Gray	09/10/09	
TMC Transportation Inc. v. NC State Highway Patrol, Motor Carrier Enforcement Section	09 CPS 3996	Lassiter	09/17/09	
Douglas Harris v. NC Dept. of Crime Control and Public Safety	09 CPS 4023	Brooks	11/23/09	
Antonio LeGrande v. Victim Compensation Service Division	09 CPS 4065	Lassiter	10/07/09	
Andrew S. McJunkin v. NC Victim and Justice Services	09 CPS 4206	Brooks	10/07/09	
Larry Williams NOLA Bus Tours Inc. v. Crime Control and Public Safety	09 CPS 4209	Elkins	03/01/10	
Shirley Wilson v. State Highway Patrol	09 CPS 4332	Gray	10/07/09	
Darryl Tyrone Davis, D&G Excavating Services	09 CPS 4363	Gray	10/07/09	
Ronald William Duke v. NC State Highway Patrol	09 CPS 4366	Lassiter	10/13/09	
Robert D. Cooper v. NC State Highway Patrol, Motor Carrier Enforcement Section	09 CPS 4434	Overby	03/01/10	
Linda S. Johnson	09 CPS 4450	May	12/28/09	
Triad Solutions, Inc., Gene Petty v. NC State Highway Patrol Motor Carrier Enforcement Division	09 CPS 4455	Brooks	10/20/09	
Chrystal N. Clark v. NC Victims Compensation Commission v. Respondent	09 CPS 4451	Lassiter	10/15/09	
Lowell Thomas Blue v. NC State Highway Patrol	09 CPS 4509	Gray	10/07/09	
Lindsey Carol Bollinger v. NC Dept. of Crime Control & Public Safety, Division of Victims Compensation Services	09 CPS 4514	May	09/27/09	
Larry George Willoughby v. NC Department of Crime Control and Public Safety	09 CPS 4569	Gray	12/16/09	
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Palmetto Sealing Co., Inc. v. NC Secretary of Crime Control and Public Safety	09 CPS 4632	Gray	11/30/09	
Eddy L. Cheek v. NC Dept. of Crime Control & Public Safety, State Highway Patrol	09 CPS 4633	May	10/09/09	
NOLA Bus Tours Inc, NC State Highway Patrol	09 CPS 4739	Elkins	03/01/10	
Crst Malone v. NC State Highway Patrol	09 CPS 4741	Overby	01/27/10	
Yurry Demyanchuk v. RR Sheets, NC State Highway Patrol	09 CPS 4799	Lassiter	09/29/09	
Piedmont Cheerwine Bottling Co. v. NC Dept. of Crime Control and Public Safety	09 CPS 4852	Brooks	11/09/09	
Phillip J. Evans v. Highway Motor Carrier	09 CPS 4953	Overby	10/28/09	
Jesse M Staton v. NC State Highway Patrol, Motor Carrier Enforcement Section	09 CPS 4997	Overby	01/21/10	
Poplar Ridge Lumber Company, Blaine J. Snyder, II v. NC State Highway Patrol	09 CPS 5089	Gray	02/16/10	
Atlantic Construction Services, Inc., Frederick George Lempe II v. NC Dept. of Crime Control and Public Safety	09 CPS 5161	Lassiter	12/01/09	
Juan Pablo Rivera Salinas Sealy Agents Waterproofing v. NC State Highway Patrol	09 CPS 5385	Brooks	02/03/10	
CMT Trucking Inc. Charles M. Tyson v. NC Dept. of Crime Control and Public Safety, Division of State Highway Patrol, Motor Carrier Enforcement Section	09 CPS 5446	Gray	12/16/09	
Palmetto Sealing Inc v. NC Secretary Crime Control and Public Safety	09 CPS 6169	Overby	01/27/10	
Michael Davis v. NC Department of Crime Control and Public Safety, State Highway Patrol	09 CPS 6190	Gray	01/27/10	
Gilberto Santiago v. NC Department of Crime Control and Public Safety, Division of State Highway Patrol, Motor Carrier Enforcement Section	09 CPS 6191	Gray	01/27/10	
William Terry Ivey v. NC Hwy Patrol, Division of Motor Vehicles	09 CPS 6250	Elkins	02/26/10	

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Mack Padgett v. Crime Control and Public Safety	10 CPS 0107	Brooks	03/01/10
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A list of Child Support Decisions may be obtained by accessing the OAH Website: <http://www.ncoah.com/hearings/decisions/>

DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

Henry Neese and Patricia Neese v. NC Department of Agriculture and Consumer Services	09 DAG 2899	Mann	11/25/09 24:18 NCR 1662
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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Patricia L. Tiller v. NC Dept. of Health & Human Ser., Health Care Personnel Registry Sec	07 DHR 0302	Lassiter	07/14/09
Martha's Group Home, Inc. v. NCDHHS, Ms. Emery Milliken, General Counsel	07 DHR 1714	Gray	02/24/10
Teresa S. Reid, Reid's Health Care v. DHHS, Division of Medical Assistance	08 DHR 0596	Elkins	01/21/10
Ely Enterprises, Inc., D/B/A A Home Away from Home v. DHHS	08 DHR 0906	Gray	02/22/10
Envisions of Life LLC v. Hearing Office – 05 Division of Medical Assistance	08 DHR 0967	Lassiter	07/01/09
Cynthia Curtis v. Department of Health and Human Services, Division of Health Service Regulation	08 DHR 1485	Brooks	05/07/09 24:07 NCR 408
MedExpress Pharmacy LTD. V. NC Dept. of Health and Human Services and NC Dept. of Administration	08 DHR 1566	Elkins	11/30/09
Lilieth P. Brown v. Office of Administrative Hearings	08 DHR 1807	Morrison	08/13/09
Blue Ridge Healthcare Surgery Center-Morganton, LLC & Grace Hospital, Inc. v. NC Dept. of Health and Human Services, Division of Health Service Regulation, Certificate of Need Section & Carolina Digestive Care, PLLC and HMB Properties, LLC	08 DHR 2216	Brooks	06/19/09 24:11 NCR 913
Bethlehem Center of Charlotte v. Child and Adult Care Food Program, Division of Public Health, NC Dept. of Health and Human Services	08 DHR 2284	Brooks	05/26/09
Edward A. Patterson v. Division of Child Development	08 DHR 2364	Webster	06/02/09
Choices Group Home Inc., Victor Vega v. N.C. Department of Health and Human Services	08 DHR 2404	Gray	07/16/09
MJKM, LLC d/b/a Pueblo Supermarket v. NC Dept. of Health and Human Services, Division of Public Health, Women and Children's Health Section	08 DHR 2443	Gray	09/03/09
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Choices Group Home Inc, Victor Vega v. Office of Administrative Hearings, Department of Health and Human Services	08 DHR 2512	Gray	07/16/09
Pepper Dawn Kirk-McLendon Peppermint Daycare v. N.C Department of Health and Human Services, Division of Child Development	08 DHR 2571	Mann	07/07/09 24:07 NCR 416
Edward Royal, Dept. of Health and Human Services, Division of Health Service Regulation, Health Care Personnel Registry	08 DHR 2698	Overby	05/27/09
C. Vann Pierce, Executive Officer, Heritage Care of Rocky Mount, Licensee, License No. Hal-033-005 v. N.C DHHS, Division of Health Service Regulation, Adult Care Licensure Section	08 DHR 2732	Lassiter	11/03/09 24:16 NCR 1435
Abundant Life Child Care Center, Tiffany D. Monroe v. Division of Child Development, June Locklear, Brenda Faircloth	08 DHR 2954	Elkins	06/03/09
Outreach Home v. NC Dept. of Health and Human Services, Division of Health Service Regulation, Mental Health Licensure and Certification Section	08 DHR 2981	Gray	09/17/09
L&J Group Homes, Inc. v. NC DHHS/Div. of Health Service Regulation, Mental Health	08 DHR 3108	Lassiter	10/06/09
Amy G. Poteat v. Health Care Personnel Registry	08 DHR 3489	May	06/03/09
Freedom House Recovery Center, Inc. v. NC Division of Health Service Regulation	08 DHR 3674	Gray	10/13/09
Kathy Dunning Bright v. Health Care Personnel Registry	09 DHR 0057	Overby	08/04/09
Gaynelle Smith v. DHHS	09 DHR 0223	May	02/24/09
Marie Jagne v. NC Dept. of Health and Human Services, Division of Health Service Regulation, Health Care Registry Section	09 DHR 0444	Lassiter	07/27/09
Brenda V. Patterson v. Division of Child Development	09 DHR 0667	Webster	06/02/09
Sonya C. Ragland, Joseph K. Ragland, Barbara Washington, and The Seed of Abraham Learning Center v. NC Dept. of Health and Human Services	09 DHR 1261	Gray	06/08/09
Sonya C. Ragland, Joseph K. Ragland, Barbara Washington, and The Seed of Abraham Learning Center v. NC Dept. of Health and Human Services	09 DHR 1262	Gray	06/08/09
Sonya C. Ragland, Joseph K. Ragland, Barbara Washington, and The Seed of Abraham Learning Center v. NC Dept. of Health and Human Services	09 DHR 1263	Gray	06/08/09
Sonya C. Ragland, Joseph K. Ragland, Barbara Washington, and The Seed of Abraham Learning Center v. NC Dept. of Health and Human Services	09 DHR 1264	Gray	06/08/09
Genesis Family Health Care Inc. c/o James Collins v. NC Dept. of Health and Human Services, Division of Medical Assistance	09 DHR 1413	Gray	08/18/09
Michael Parks Fresh Start Residential Services Inc. v. NC DHHS Division of Health Service Regulation Mental Health Licensure Certification	09 DHR 1474	Overby	06/17/09
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Victoria Martin v. Surry County Dept of Health and Human Services AFDC/Work First	09 DHR 1533	May	06/04/09
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Vickie Hovis Abernethy v. Third Party Recovery	09 DHR 1984	Brooks	08/24/09
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CONTESTED CASE DECISIONS

and Human Services (DHHS)			
Bernice Taylor v. NC Dept. of Health and Human Services, Division of Health Service Regulation, Health Care Personnel Registry	09 DHR 2297	May	08/07/09
Gerald A. Harper v. NC Dept. of Health and Human Services	09 DHR 2349	Gray	10/07/09
Contour Service, Inc., (MHL #090-101) v. Department of Health Services, Division of Health Service Regulation	09 DHR 2350	May	07/21/09
Community Alternative Resources, Inc. Wayne L. Burch and Michelle M. Dolphus v. Dept. of Health and Human Services	09 DHR 2456	May	08/28/09
Charlene M. Hatfield v. NC Dept. of Health and Human Services, Division of Health Service Regulation	09 DHR 2503	Gray	08/31/09
Helen Webb v. Department of Health and Human Dept. of Child Dept	09 DHR 2589	Webster	07/17/09
Lanika Ortega v. North Carolina Department of Health and Human Services	09 DHR 2637	Lassiter	07/27/09
Ndeye Ngone Diene v. DHHS-Health Care Registry	09 DHR 2640	Webster	08/27/09
Brenda V. Patterson v. State Department of Social Services	09 DHR 2654	Webster	07/17/09
Brenda V. Patterson v. State Department of Social Services	09 DHR 2655	Webster	07/17/09
Rose Boyd v. NC Dept. of Health and Human Services	09 DHR 2706	Brooks	08/17/09
John Okoroma v. Mecklenburg County Dept. of Social Services	09 DHR 2710	May	07/24/09
Angela Conner Tawes, Conner's Cape Hatteras Supermarket, Inc v. North Carolina Department of Health and Human Services	09 DHR 2717	Gray	06/15/09
Melonie L. Keith, John David Keith v. Central Billing DHHS Controllers Office	09 DHR 2779	Webster	10/22/09
Sharon M. Hill v. NC Department of Health and Human Services	09 DHR 2809	Lassiter	07/27/09
Cipriano Mendez Chiquito v. NC Dept. of Health and Human Services, Division of Public Health	09 DHR 2824	May	08/12/09
Trinia E. McCorkle v. North Carolina Department of Health and Human Services	09 DHR 2829	Brooks	07/10/09
Kashina L. Davis v. North Carolina Department of Health and Human Services, Division of Health Service Regulation, Health Care Personnel Registry Section	09 DHR 2832	Gray	07/01/09
Brenda V. Patterson v. N.C. State Department of Social Services	09 DHR 2836	Webster	07/17/09
Brenda Patterson v. Division of Child Development	09 DHR 2837	Webster	07/17/09
Edward A. Patterson v. Division of Child Development	09 DHR 2838	Webster	07/17/09
Brenda V. Patterson v. Division of Child Development	09 DHR 2839	Webster	07/17/09
Edward A. Patterson v. Division of Child Development	09 DHR 2841	Webster	07/17/09
John and Candice Danner v. NC Dept. of Health and Human Services	09 DHR 2936	Brooks	08/28/09
Rickie Annas v. NC Dept. of Health and Human Services, Division of Health Service Regulation, Health Care Personnel Registry	09 DHR 2962	Brooks	08/10/09
Berta Spencer v. NC Dept. of Health and Human Services	09 DHR 3000	Cella	10/07/09
Brenda V. Patterson v. State Department of Social Services	09 DHR 3002	Webster	07/17/09
Brenda V. Patterson v. State Department of Social Services	09 DHR 3003	Webster	07/17/09
Brenda V. Patterson v. State Department of Social Services	09 DHR 3004	Webster	07/17/09
Mary's House, Inc., MHL #041-288, Craig Thomas, Executive Director v. Ms. Emery Milliken, General Counsel, Department of Health and Human Services, Office of Legal Affairs	09 DHR 3008	Mann	07/22/09
Keshea Montgomery v. Randolph County Dept. of Health and Human Services	09 DHR 3012	Mann	08/27/09
Shawanda Ann Barnes V. Cherry Hospital	09 DHR 3076	Lassiter	09/28/09
St. Francis of Charlotte, Inc. Francis Ford Provider #83022329B and 83022329H v. NC Dept. of Health and Human Services, Div. of Medical Assistance	09 DHR 3101	Brooks	09/23/09
Edward A. Patterson v. Division of Child Development	09 DHR 3113	Webster	07/17/09
Brenda V. Patterson v. Division of Child Development	09 DHR 3114	Webster	07/17/09
Matta Inc. Peaceful Dominion, Issac Matta, v. Div of Health Service Regulation, MH Licensure & Certification	09 DHR 3761	Brooks	02/26/10
Ernest Hines v. Cherry Hospital	09 DHR 3266	Gray	09/17/09
Sandra Wright v. Division of Child Development	09 DHR 3434	Elkins	08/24/09
Carolyn Diane Ragin v. Health Care Personnel Registry	09 DHR 3502	Gray	08/31/09
Edward A. Patterson v. Division of Child Development	09 DHR 3503	Webster	07/17/09
Tamekia Cain v. Athena Foreman, HCPR Investigator, NC Dept. of Health and Human Services	09 DHR 3536	Elkins	10/01/09
Amanda L. Brewer v. DHHS	09 DHR 3541	Elkins	08/21/09
Kenneth and Kimberly Thomason v. NC Dept. of Health and Human Services	09 DHR 3592	Gray	10/08/09
Tommy G. Davis v. NC Dept. of Revenue	09 DHR 3647	Gray	09/02/09
Heather C. Briggs v. NC Dept. of Health and Human Services, Division of Health Service Regulation	09 DHR 3651	May	07/29/09
Dr. Ann Markiewioz, Gaston Memorial Hospital v. The Carolinas Center for Medical Excellence	09 DHR 3660	Webster	09/28/09
Julian E. Cameron, Jr. DDS v. NC Dept. of Health and Human Services, Division of Medical Assistance	09 DHR 3663	Gray	08/12/09
Katonia L. Davis v. Office of Administrative Hearings, Ms. Emery Edwards Milliken	09 DHR 3683	Elkins	10/08/09
Angel's Childcare, Treva Richardson v. Division of Child Development, Dept. of Health and Human Services	09 DHR 3688	Elkins	10/08/09
Brenda Fay Simmons v. NC Dept. of Health and Human Services, Division of Health Service Regulation, Health Care Personnel Registry	09 DHR 3752	Brooks	08/12/09
Lloyd K. Howell v. NC Dept. of Health and Human Services	09 DHR 3756	Lassiter	09/14/09
Pamela Ann Hedgecock v. NC Dept. of Health and Human Services, Division of Health Service Regulation	09 DHR 3763	Brooks	10/30/09
TLC Adult Home, Sonja Hazelwood v. NC Dept. of Health and Human Services, Division of Health Service Regulation	09 DHR 3776	Gray	09/16/09
Lesia Hammonds DBA Sampsons Family Care Home v. NC Dept. of Health and Human Services, Division of Health Service Regulation, Adult Care Licensure Section	09 DHR 3872	Gray	11/13/09
Alvester Miller, III v. NC Dept. of Health and Human Services	09 DHR 4003	Overby	10/26/09
Omnicare of Hickory, Jackie Knight	09 DHR 4069	Brooks	10/07/09
Charles D. Harris v. NC Dept. of Health and Human Services, Division of Health Service Regulation,	09 DHR 4107	Brooks	10/29/09

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Robbie Wilson Community Service Eyvette L. Abbott v. Center Pointe Human Services	09 DHR 4169	Brooks	01/22/10
St. Mary's Home Care Agency v. NC Dept. of Health and Human Services	09 DHR 4170	Gray	10/23/09
Higher Development, LLC Robert Waters v. Division of Medical Assistance	09 DHR 4235	Overby	10/15/09
Vickie Blair v. Office of Administrative Hearings	09 DHR 4236	May	09/27/09
Leilani Michelle Adames v. Linda Waugh, RN, BSN HCPR Investigator Health Care Personnel Registry Investigations	09 DHR 4275	May	09/22/09
Erica M. Small v. NC Dept. of Health and Human Services, Division of Health Service Regulation, Health Care Personnel Registry Section	09 DHR 4299	Brooks	09/11/09
Elite Care Service, Inc. Barsheem Chapman Executive Director v. NCDHHS Division of Health Service Regulation	09 DHR 4331	Gray	10/19/09
Labrishia Keller v. Health Care Personnel Registry	09 DHR 4336	Lassiter	02/04/10
Rebecca Leigh Sadowski v. Dept. of Health and Human Services, Division of Health Service Registry	09 DHR 4362	May	08/26/09
Target Pharmacy v. NC Dept. of Health and Human Services	09 DHR 4397	May	10/05/09
Erie R. Washington v. Dept. of Health and Human Services	09 DHR 4399	May	10/01/09
Erica Moore v. Dept. of Health and Human Services, Division of Health Service Regulation	09 DHR 4429	Brooks	10/09/09
Vametoa L. Deal v. North Carolina Health Care Services	09 DHR 4497	Brooks	10/16/09
Valley Hospital Medical Center v. NC Dept. of Health and Human Services, Division of Medical Assistance	09 DHR 4548	Overby	09/14/09
Anthony Hosea Wiseman v. Dept. of Health and Human Services	09 DHR 4567	May	09/02/09
Roberta Latasha Wilson v. DHHS	09 DHR 4687	Overby	12/02/09
Estate of Hattie Mae Johnson v. DHHS, Div of Medical Assistance	09 DHR 4689	May	12/08/09
Ward Life Outreach of Cape Fear v. Division of Health Service Regulation Health Care Personnel Registry	09 DHR 4711	Gray	11/18/09
A Positive Life, Inc. v. NC Dept. of Health and Human Services, Division of Health Service Regulation, Mental Health Licensure and Certification Section	09 DHR 4956	Lassiter	10/22/09
James Phifer, Executor of the Estate of Sarah Geneva Phifer and Robert Wilford Phifer v. NC Dept. of Health and Human Services, Division of Medical Assistance	09 DHR 5063	Brooks	12/07/09
Sushila Shrestha v. Dept. of Health and Human Services, Division of Health Service Regulation	09 DHR 5087	Elkins	12/14/09
Charlene Gray v. Dept. of Health and Human Services	09 DHR 5154	Overby	11/04/09
Healthquest Pharmacy, Darin Cunningham v. DHHS	09 DHR 5226	Elkins	02/26/10
Brenda Faye Simmons v. NC Dept. of Health and Human Services, Division of Health Service Regulation, Health Care Personnel Registry	09 DHR 5364	May	11/23/09
Victoria Darnette Edwards v. Dept. of Health and Human Services, Division of Health Service Regulation	09 DHR 5623	Brooks	12/11/09
Devon J. Artis v. NC Dept. of Health and Human Services, Health Care Personnel Registry Section	09 DHR 5667	May	11/16/09
Steven N. Leviner v. Health Care Personnel Register	09 DHR 5864	May	02/22/10
People Achieving Living Skill v. Div. of Health Service Regulation	09 DHR 6090	Elkins	02/26/10
Pastor Carolyn J. Fernandez and Pastor Jesse Fernandez v. Alexis d. Underwood and The Guilford Center	09 DHR 6106	Brooks	12/07/09

DEPARTMENT OF ADMINISTRATION

Meherrin Indian Tribe, a/k/a Meherrin Tribe of North Carolina and Meherrin Tribe of North Carolina, a/k/a Meherrin Indian Tribe v. NC State Commission of Indian Affairs	08 DOA 2068	Morrison	06/15/09
Meherrin Tribe of North Carolina by and through Douglas Patterson v. North Carolina Commission of Indian Affairs	09 DOA 2367	Morrison	06/15/09
Battlecat Productions, Inc., D/B/A Battlecat Marine v. East Carolina University and State of NC Dept. of Purchase and Contract	09 DOA 4788	Gray	10/08/09
NC Indian Cultural Center, Inc. v. NC State Commission of Indian Affairs	09 DOA 4809	Overby	11/19/09

DEPARTMENT OF CORRECTION

Rufus Thomas Blackwell, III, v. (N.C. Department of Correction) Department of Payroll & Overpayment Manager	09 DOC 1296	Overby	07/08/09
Robert Allen Sartori v. K Dufault, C. Bray WCI Mail Staff, Department of Correction	09 DOC 3121	Gray	07/01/09
Sebastian X. Moore v. Theodis Beck (NC Dept. of Correction) et al	09 DOC 4749	Webster	11/03/09
Charles W. Johnson v. Supt. David Mitchell and Mt. View Administrative Authority	09 DOC 4883	May	11/03/09

DEPARTMENT OF JUSTICE

Danny Earl Keel v. NC Criminal Justice Education and Training Standards Commission	07 DOJ 1711	Cella	07/30/09	24:07 NCR 437
Tamika Richardson v. North Carolina Sheriff's Education and Training Standards Commission	08 DOJ 2403	Elkins	05/07/09	
Bruce A. White v. NC Sheriffs' Education and Training Standards Commission	08 DOJ 2490	Brooks	08/14/09	
Weston Samuels v. NC Dept. of Justice, Campus Police Program	08 DOJ 3312	Elkins	08/24/09	
Jackie Marie Daniels v. N.C. Criminal Justice Education and Training Standards Commission	09 DOJ 0218	Elkins	07/24/09	
Darlene Fure v. NC Criminal Justice Education and Training Standards Commission	09 DOJ 0466	Lassiter	07/22/09	
Tyrone Scott v. North Carolina Private Protective Services Board	09 DOJ 0658	Gray	05/28/09	
Ronald Wynn v. NC Criminal Justice Education and Training Standards Commission	09 DOJ 0949	Overby	07/15/09	
Donald Koons, Jr. v. NC Criminal Justice Education and Training Standards Commission	09 DOJ 0956	Gray	07/27/09	
Peggy Sue Shipp v. NC Criminal Justice Education and Training Standards Commission	09 DOJ 1782	Webster	08/28/09	
Jaime Patrick Clayborne v. Department of Justice Company Police Program	09 DOJ 1949	Webster	05/27/09	
Ross Patton Gilmore v. NC Alarm Systems Licensing Board	09 DOJ 2452	Morrison	06/04/09	
William Marquis Davis v. North Carolina Private Protective Services Board	09 DOJ 2506	Morrison	06/04/09	
Ross Patton Gilmore v. North Carolina Alarm Licensing Board	09 DOJ 2452	Morrison	06/04/09	
William Marquis Davis v. NC Private Protective Services Board	09 DOJ 2506	Morrison	06/04/09	

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John D. Dykes v. NC Dept. of Justice Company Police Program	09 DOJ 2639	May	06/18/09	
Jimmie Ray Edmondson, Jr. v. NC Criminal Justice Education and Training Standards Commission	09 DOJ 2823	Lassiter	08/04/09	
Edward A. Patterson v. Attorney General Office	09 DOJ 2840	Webster	07/17/09	
Shonda Lavette Higgins v. NC Private Protective Services Board	09 DOJ 3009	Overby	08/13/09	
Bobby Brown v. NC Private Protective Services Board	09 DOJ 3028	Webster	11/19/09	
Timothy Mark Masters v. NC Alarm Systems Licensing Board	09 DOJ 3037	Morrison	09/14/09	
Nighee Von Superville v. NC Criminal Justice Education and Training Standards Commission	09 DOJ 3073	Gray	08/10/09	
Elizabeth Marie Lancaster v. NC Private Protective Services Board	09 DOJ 3189	Webster	11/13/09	
Kenneth Gray Forcum v. NC Alarm Systems Licensing Board	09 DOJ 3300	Webster	11/12/09	
Heath Dwayne Kinney v. NC Alarm Systems Licensing Board	09 DOJ 3301	Webster	11/12/09	
Richard Lee Powers, Sr. and Richard Lee Powers, Jr. v. Private Protective Services Board	09 DOJ 3488	Morrison	12/15/09	
Richard Lee Powers, Sr. and Richard Lee Powers, Jr. v. Private Protective Services Board	09 DOJ 3489	Morrison	12/15/09	
Cindy Smith Ojeda v. NC Sheriffs' Education and Training Standards Commission	09 DOJ 3643	Brooks	12/07/09	
Anthony Lyle Gentry v. NC Sheriffs' Education and Training Standards Commission	09 DOJ 3865	Gray	08/05/09	
Edward A. Patterson v. Attorney General Office	09 DOJ 4025	Webster	08/28/09	
Edward A. Patterson v. Attorney General Office	09 DOJ 4108	Webster	08/28/09	
Amanda Watson Whitaker v. NC Sheriffs' Education and Training Standards Commission	09 DOJ 4126	Overby	10/02/09	
Walter Armand Bedard v. NC Sheriffs' Education and Training Standards Commission	09 DOJ 4127	Lassiter	11/05/09	
Edward A. Patterson v. Attorney General's Office	09 DOJ 4146	Webster	08/28/09	
Luther Daniel Stidham v. NC Criminal Justice Education and Training Standards Commission	09 DOJ 4219	May	10/01/09	
Antonio Garcia v. NC Sheriffs' Education and Training Standards Commission	09 DOJ 4365	Gray	10/07/09	
Clyde Devon Boger v. NC Sheriffs' Education and Training Standards Commission Re: Richard Squires	09 DOJ 4853	Lassiter	09/29/09	
Melvin Downing, Triton Special Police Dept. v. Company Police Program	09 DOJ 5316	May	11/10/09	
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Duane J. Thomas v. NC Dept. of Labor, NC Board of Funeral Service, Forest Lawn Mortuary	09 DOL 4348	May	11/02/09	
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Alvin J. Smith v. NC Div of Motor Vehicles, Driver Ass't Branch	09 DOT 2616	Brooks	06/09/09	
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Queen N. Thompson v. NC Office of State Treasurer	05 DST 0037	Brooks	12/01/09	
Donna F. Levi v. Department of State Treasurer	09 DST 0161	Gray	07/17/09	
Hilda Harris Member ID: 1725605 v. Department of State Treasurer Retirement Systems Division	09 DST 1290	Overby	05/27/09	
Queen N. Thompson v. NC Office of State Treasurer	09 DST 3682	Brooks	12/01/09	
Linda Duane Stalvey v. NC Dept. of Treasury	09 DST 4073	May	11/09/09	
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John R. Hall v. State Board of Education Licensure	08 EDC 1750	Brooks	07/09/09	
John David Erwin v. NC Dept. of Public Instruction	08 EDC 1827	Brooks	05/27/09	
Frederick Moore v. State Board of Education, Department of Public Instruction	08 EDC 3035	May	09/30/09	24:16 NCR 1448
Michelle Sara Rodriguez v. National Board Certification Appeals Panel/Division of Talent Management and Development	08 EDC 3219	Brooks	08/21/09	
Courtney M. Sears, Petitioner v. Department of Public Instruction Licensure Section	08 EDC 3644	Morrison	06/08/09	
Jennifer Satinsky v. North Carolina State Board of Education	08 EDC 3650	Morrison	06/05/09	
Kenneth H. Leftwich v. June Atkinson, Superintendent of Public Instruction	08 EDC 3690	May	06/29/09	
Lindsey Forde-Smith v. North Carolina State Board of Education	09 EDC 1848	Gray	07/09/09	
Provisions Community Development Corporation dba Provisions Academy v. State Board of Education	09 EDC 2081	Elkins	07/27/09	24:11 NCR 969
Sandra Chesser v. State Board of Education	09 EDC 4435	May	10/01/09	
Ashley Chrisp v. NC Dept. of Public Instruction	09 EDC 5160	Brooks	10/23/09	
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Robert Taylor, Grier Fleischauer, Sue Bankes, and Carol Faley v. NC Dept. of Environment and Natural Resources, Division of Coastal Management and TP, Inc.	07 EHR 1765	Gray	06/19/09	24:11 NCR 881
The Town of Franklin Government of NC v. NC Dept. of Environment and Natural Resources, Division of Water Quality and Duke Energy Carolinas, LLC	07 EHR 2201	Brooks	09/24/09	
The Jackson County Government of NC v. NC Dept. of Environment and Natural Resources, Division of Water Quality and Duke Energy Carolinas, LLC	08 EHR 0019	Brooks	09/24/09	
Old Mill Forestry, LLC v. N.C. Department of Environment and Natural Resources, Division of Water Quality	08 EHR 1806	Lassiter	05/08/09	
Friends of the RockyRiver, Inc v. N.C. DENR, Div. of Water Quality and Town of Siler City	08 HER 2474	Gray	09/28/09	24:16 NCR 1453
Cherokee County Health Department James Pann(managing member, Creek Ridge Holdings, LLC) v. N.C. Department of Environment and Natural Resources	08 EHR 2986	Gray	05/27/09	
Olde Beau General Partnership v. NC Dept. of Environment and Natural Resources, Division of Land Resources	09 EHR 0122	Gray	08/18/09	24:11 NCR 983
Saint Gobain Containers, Inc. v. NC Dept. of Environment and Natural Resources, Division of Air Quality	09 EHR 1616	Overby	10/23/09	
John C Campbell Folk School, John M Clarke, Bldgs & Ground Mgr v. NCDENR Public Water Supply Section	09 EHR 1852	Overby	06/03/09	
Doug Jernigan v. NC Dept. of Environment and Natural Resources, Division of Air Quality	09 EHR 3118	Elkins	10/16/09	

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Appalachian Stove Fab, Inc., James Rice v. Western North Carolina Regional Air Quality Agency	09 EHR 3785	Gray	08/06/09
Woodfield Gardens Apartments, Loretta Sims, v. NC Dept. of Environment and Natural Resources, Division of Envir Health	09 EHR 4330	May	10/09/09
Kyle D. Page v. NC Dept. of Environment and Natural Resources	09 EHR 4623	Gray	10/07/09
Town of Lilesville v. NCDENR/Public Water Supply Section	09 EHR 5286	May	12/05/09
Sidney Bruton, III v. NC Dept. of Environment and Natural Resources, Division of Air Quality	09 EHR 5351	Gray	11/05/09

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NC Board of Examiners for Engineers and Surveyors v. Mr. Michael J. Dykes, PE	08 ELS 2275	Webster	06/10/09
Linda R. Sharp v. NC Board of Examiners for Engineers and Surveyors	09 ELS 3268	Lassiter	09/01/09

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Gary L. Childers v. NC Teachers' and State Employees' Comprehensive Major Medical Plan	08 INS 2251	Brooks	06/18/09
John Randolph Ingram v. NC Teachers' and State Employees' Comprehensive Major Medical Plan	08 INS 2952	Gray	09/08/09
Elizabeth M. Bailey v. NC Teachers' and State Employees' Comprehensive Major Medical Plan	09 INS 0661	Lassiter	08/03/09
Erin Tapley v. Blue Cross Blue Shield	09 INS 2393	Gray	10/07/09
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Sandra Hunter v. BCBS of North Carolina	09 INS 3183	Lassiter	09/14/09
Patricia Sharp v. NC State Health Plan Blue Cross/Blue Shield	09 INS 3192	Gray	08/31/09

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Rodney Dale v. Judge Angela Hoyle	09 MIS 2704	May	06/09/09
Benjamin Pace v. Wake County Superior-District Court and Information Center	09 MIS 5188	Elkins	11/13/09

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C.W. McAdams v. NC Dept. of Transportation	05 OSP 0626	Morrison	08/14/09	
Wade Bryan Bulloch v. N.C. Department of Crime Control and Public Safety, N.C. Highway Patrol	05 OSP 1178	Gray	01/15/10	24:16 NCR 1394
Alvita C. Byers v. Elizabeth Cox, The office of Human Resources and The North Carolina School of the Arts	07 OSP 1514	Brooks	05/20/09	24:07 NCR 396
Edward Alan Roper v. Broughton Hospital, Dept. of Health and Human Services	07 OSP 2186	Brooks	05/18/09	
Fatima Akhtar v. NC Dept of Commerce	08 OSP 0171	Gray	08/05/09	
Julie Norris Watson v. NC DPI	08 OSP 0541	Brooks	05/22/09	
Kathleen Hardiman v. NC Aquarium at Pine Knoll Shores, Jay Barnes, Director, James Lewis and Lonnie Burke	08 OSP 0868	Gray	11/10/09	
Simon Camara v. NC Central University	08 OSP 1345	Lassiter	10/07/09	
Janice F. Stokes v. NC Dept. of Correction, Division of Community Corrections	08 OSP 2150	Gray	11/16/09	
Isaac T. Perkins v. NC Dept. of Corrections	08 OSP 2242	Overby	09/16/09	24:11 NCR 939
Sharon Annette Mercer v. N.C. Division of Motor Vehicles	08 OSP 2293	Webster	08/14/09	24:07 NCR 447
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Tonya M. Jones v. NC Dept. of Health and Human Services	08 OSP 2418	Webster	06/12/09	24:11 NCR 955
Richard C. Foy v. NC Dept. of Insurance	08 OSP 2581	Gray	05/21/09	
Denise Vee v. Cumberland County Department of Public Health	08 OSP 2955	Elkins	07/22/09	24:07 NCR 465
Darryll Williams v. NC Dept. of Health and Human Services, Murdoch Developmental Center	08 OSP 3661	Cella	09/18/09	
Jerry Lewis Monroe, Sr. v. Fayetteville State University	09 OSP 0098	Gray	09/03/09	
Annie L. Gadson v. NC A&T University	09 OSP 0261	May	09/11/09	
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Timothy Strong v. Central Regional Hospital, NC DHHS	09 OSP 2401	Elkins	05/27/09	
Benjamin Hicks v. Central Regional Hospital, NC DHHS	09 OSP 2399	Elkins	05/27/09	
Felicia D. McClain v. DENR/Soil & Water Conservation	09 OSP 2550	Webster	08/12/09	
Ronald Gene Ezzell, Jr. v. NC State Highway Patrol	09 OSP 2588	Morrison	08/05/09	24:11 NCR 998
Thomas E. Freeman, Jr. v. NC DHHS/Central Regional Hospital And Whitaker School	09 OSP 2826	Webster	07/17/09	
Cecil L. Glaze v. UNC Charlotte	09 OSP 2884	Mann	07/29/09	
Vickye Williams Herring, NC Employment Security Commission	09 OSP 3501	Elkins	07/30/09	
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Tiajuana Evans v. O'Berry Neuro-Medical Treatment Center	09 OSP 3530	Lassiter	08/31/09	
Francisa Okafor v. NC Dept. of Health and Human Services	09 OSP 3533	Gray	09/30/09	
Charles Nathan v. Robeson Co. DSS Foster Care Unit	09 OSP 3543	Elkins	10/08/09	
Wilbert Riggan v. Scotland County Public Schools	09 OSP 3653	Elkins	10/05/09	
Marcus Lamont Hill, Sr. v. Wayne Correctional Center	09 OSP 3790	Lassiter	09/18/09	
Sarah M. Brake v. State Board of Elections	09 OSP 4061	Lassiter	10/06/09	
Cynthia Bizzell v. Durham Public Schools	09 OSP 4070	Lassiter	08/24/09	
Glenn Hodge v. NC Dept. of Transportation	09 OSP 4094	Lassiter	08/18/09	
Randall S. Smith v. Carolina Copy c/o UNC at Chapel Hill	09 OSP 4109	Lassiter	08/31/09	
Clifton Cox v. Caswell Center	09 OSP 4241	Overby	10/29/09	
Virginia (Gin) Ivey Leggett v. Pathways LME	09 OSP 4498	Lassiter	08/31/09	
Tina McMillian v. Employment Security Commission of NC	09 OSP 4568	Gray	11/20/09	
Ruby H. Cox v. Tim Davis, Employment Security Commission	09 OSP 4774	Overby	10/05/09	

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Harriette E. Smith v. UNC General Administration	09 OSP 5189	Elkins	10/30/09	

OFFICE OF SECRETARY OF STATE

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Robert Lee Evans v. NC Office of Administrative Hearings	09 SOS 2300	Lassiter	06/03/09	
Asali J. Howard v. North Carolina Department of The Secretary Of State	09 SOS 2707	May	07/16/09	
Pamela Nickles v. Dept. of Secretary of NC State	09 SOS 3120	Brooks	10/16/09	
Stanley Young v. The Notary Public Section	09 SOS 4001	Brooks	09/18/09	
Jeremy Glen Blow v. NC Office of the Secretary of State	09 SOS 4245	Overby	09/14/09	
Martha C. Graybeal v. NC Dept. of the Secretary of State Certification Filing Division	09 SOS 4273	Brooks	10/07/09	
Brandi Alexis Meeker v. Dept. of the Secretary of State	09 SOS 4580	Overby	10/29/09	
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UNC HOSPITALS

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Jennifer Jacobs v. UNC Hospitals	09 UNC 2409	Mann	07/21/09	
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Darice Witherspoon v. UNC Hospitals	09 UNC 3428	Gray	07/30/09	
Timothy H. Keck v. UNC Hospitals	09 UNC 3528	Gray	08/06/09	
Marion Munn v. UNC Hospitals	09 UNC 3531	Gray	08/31/09	
Cynthia D. Baker v. UNC Hospitals	09 UNC 3680	Gray	09/02/09	
Eilene Renee Alston v. UNC Hospitals	09 UNC 3926	Gray	08/31/09	
Karen E. Current v. UNC Hospitals	09 UNC 4019	Gray	09/08/09	
John C. Presley v. UNC Hospitals	09 UNC 4020	Gray	07/21/09	
Richard F. Shoe v. UNC Hospitals	09 UNC 4396	Elkins	11/24/09	
Alberto Berri v. UNC Hospitals	09 UNC 4718	Overby	10/06/09	

STATE OF NORTH CAROLINA

COUNTY OF WAKE

Filed

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IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
09 BCA 2773

Office of
Administrative Hearings

Douglas Van Essen,
Petitioner,

v.

N.C. State Board of Cosmetic Arts Examiners,
Respondent.

DECISION

This contested case was commenced by the filing of a Petition for Contested Case Hearing on April 22, 2009, with Petitioner appealing the Respondent's decision to terminate his employment as the Executive Director of the North Carolina Board of Cosmetic Art Examiners. It came on for hearing before Joe L. Webster, Administrative Law Judge, on August 26, 2009 and August 27, 2009, in Raleigh, North Carolina.

APPEARANCES

For Petitioner:

Faith Herndon
15 East Main Street
Durham, NC 27701-3601

For Respondent:

Grady L. Balentine, Jr.
Special Deputy Attorney General
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ISSUE

Whether Respondent had just cause to dismiss Petitioner from the position of Executive Director?

EXHIBITS

Petitioners Exhibits 1 through 11 were admitted into evidence.

Respondents Exhibits 1 through 17 were admitted into evidence.

BASED UPON careful consideration of the sworn testimony of the witnesses presented at the hearing, the documents and exhibits received and admitted into evidence, and the entire record in this proceeding, the Undersigned makes the following findings of fact. In making the findings of fact, the Undersigned has weighed all the evidence and has assessed the credibility of the witnesses by taking into account the appropriate factors for judging credibility, including but not limited to the demeanor of the witness, any interest, bias, or prejudice the witness may have, the opportunity of the witness to see, hear, know or remember the facts or occurrences about which the witness testified, whether the testimony of the witness is reasonable, and whether the testimony is consistent with all other believable evidence in the case. Wherefore, the undersigned makes the following Findings of Fact, Conclusions of Law and Decision, which is tendered to the State Personnel Commission for a final decision.

FINDINGS OF FACT

1. Respondent North Carolina Board of Cosmetic Arts Examiners (hereinafter NCBCAE) is a State agency authorized under N.C. Gen. Stat. §88B-1 et seq. Respondent's statutory purpose includes assuring clean and sanitary salons and safe services for consumers, including through salon inspections. Inspections of cosmetic arts shops protect the public by preventing the spread of disease. NCBCAE's activities are governed by state regulation. See 14 NCAC 14F.0101 et seq. (T. Vol. 1, p. 193).
2. NCBAE is governed by a Board of Directors. The Board is authorized to administer

inspections and examinations, issue regulations, and take other acts regulating the practice of cosmetology. N.C. Gen. Stat. §88B-4. That authority includes hiring an Executive Director, who answers to the Board. The Respondent also has the authority to employ any additional personnel necessary to carry out the provisions of N.C. Gen. Stat. §88B-4(11). Under the statute, there is no requirement in the statute as to how inspections are performed, or how often, but regulations require inspections on an annual basis. (21 NCAC 14H .0105; T. Vol. 2, p. 401) Historically, NCBCAE has hired salon inspectors who are assigned territories within the state and are responsible for conducting inspections within that territory. (T. Vol. 1, p. 19)

3. Petitioner Douglas Van Essen was employed by the Respondent as its Executive Secretary in 1996, a position which was subsequently designated Executive Director. (T. Vol. 2, pp. 394-396). The Petitioner was the ultimate supervisor for all personnel employed by the Respondent. (T. Vol. 2, p. 459)

4. At the time Petitioner Van Essen was hired, NCBCAE was facing significant organizational problems. (T. Vol. 2, p. 396). Petitioner made many improvements in NCBCAE operations, including improvements specific to the inspection process. (T. Vol. 2, pp. 396-399, 401-406)

5. Throughout Petitioner's employment as Executive Director, salon inspections were performed by salon inspectors, who visited each salon in person. Inspectors were required to complete inspection reports showing each inspection date and results. When Petitioner was first hired, inspectors completed a paper inspection report, which sent to NCBCAE's Raleigh office where data from it was entered in NCBCAE's computer data base. (T. Vol. 1, pp. 23-26, 31-32) Beginning in approximately 2006, Petitioner changed the salon inspection process so that

inspectors were issued laptops and entered inspection results directly into the NCBCAE data base. The purpose of this change was to make the inspection process more efficient. (T. Vol. 1, pp. 33-36, 105, T. Vol. 2, p. 404). Petitioner was not a computer expert or cosmetologist, did not design the new program, and reasonably relied upon NCBCAE's two lead inspectors' recommendations to determine how to change the inspection process to allow reporting from laptops. (T. Vol. 1, pp. 107-108, 125-126, T. Vol. 2, pp. 401, 406). No lead inspector or other employee warned about any problem in the new procedure, recommended against it, or felt it needed to be changed at any point prior to Petitioner's termination in Fall 2008. (T. Vol. 1, pp. 108-109, 124-125, T. Vol. 2, p. 407).

6. The two lead inspectors directly supervised salon inspectors and met regularly with Petitioner to discuss performance. (T. Vol. 1, pp. 96, 101-104). Prior to January 2008, no lead inspector ever reported to Petitioner that salon inspectors were not completing their required annual inspections. (T. Vol. 2, p. 407). Only one problem surfaced regarding problems with a salon inspector falsifying inspection reports before 2008. The Office of the State Auditor communicated with Respondent on January 21, 2000 about an allegation it received through its hotline concerning an inspector employed by the Respondent. The complaint alleged the inspector had submitted inspection reports on a salon without actually visiting the salon, and that signatures on forms in areas designated for owner's signatures were not actually signed by the salon owner. (Resp. Ex. 1). That occurred in 1999, and involved an employee who worked for Respondent in the southeast region on the state. (T. pp. Vol. 1, 111, Vol. 2, p. 410). Salon owner signatures were required by office procedures and not by the law. (T. pp. Vol. 12, pp. 411-412). Petitioner was made aware of the problem, ordered an investigation, and gave the

inspector a warning. Petitioner felt the inspections had occurred, but it was a significant clerical error. To insure that she didn't do this again, the inspector's supervisor paid closer attention to that employee after that point. (T. Vol. 2, p. 412).

7. The State Auditor expanded the review by selecting a sample of salons within the Inspector's territory and reviewing past inspection records submitted to Respondent by this Inspector. The expanded review found four salons in which inspection information on posted grade certificates was not consistent with inspection records and that signatures on inspection records designated as salon owner's signatures were not, in fact, the salon owner's signature.

(Resp. Ex. 1) The problem of falsified signatures did not recur thereafter and Petitioner was not disciplined or warned about the incident. (T. Vol. 1, p. 112, T. Vol. 2, p. 412)

8. The Petitioner, as Executive Director, responded to the State Auditor on behalf of the Respondent by memorandum dated February 1, 2000. In response to the original complaint, the Petitioner directed staff to reiterate proper inspection procedures and had provided additional inspection training. The Petitioner, in his response to the State Auditor, stated that both he and the individual inspector felt that past adverse actions would never happen again. (Resp. Ex. 2)

9. Before January 2008, there is no evidence Respondent had received any complaints that salon inspectors were falsifying inspection reports by saying they had completed inspections which had not been done. Petitioner and NCBCAE inspector supervisors all felt the annual inspection system was working. (T. Vol. pp. 123-126, T. Vol. 2, pp. 315-317, 428)

10. In 2004, Ray Mitchell joined the NCBCAE Board of Directors and became its Chair. (T. Vol. 1, p. 191, T. Vol. 2, p. 268)

11. By August 2007 the NCBCAE Board developed concerns regarding Petitioner. Mitchell

testified that on August 15, 2007 he presented Petitioner with a “written warning of unsatisfactory job performance and unacceptable personal conduct.” (T. Vol. 1, p. 204; Resp. Ex. 4). The warning letter Mitchell alleged he presented to Petitioner mentioned issues relating to continuing education classes and travel. The alleged letter of warning however was not on letterhead and was not signed, and Petitioner testified he never received it. (T. Vol. 2, pp. 279-80, Vol. 2, pp. 415-16). The undersigned finds that Mitchell’s testimony is not reliable enough to establish that Petitioner was presented with a first written warning on this occasion.

12. The undersigned does find that in August 2007 Mitchell had a discussion with Petitioner regarding the two issues of continuing education and travel. Respondent asserted Petitioner was at fault for allowing NCBCAE employees to conduct continuing education classes; on the grounds this presented a conflict. However, the evidence was that the NCBCAE Curriculum Committee, of which Mitchell was chair, had authorized NCBCAE employees to do continuing education, and not Petitioner. (T. Vol. 1, pp. 276, 291-293, T. Vol. 2, p. 414). Respondent also asserted Petitioner was at fault in how he authorized travel for NCBCAE employees. There was no NCBCAE rule or procedure regarding travel, however. (T. Vol. 2, p. 381). Mitchell felt those issues were resolved after the August 2007 meeting with Petitioner. (T. Vol. 2, p. 279)

13. On August 20, 2007, the NCBCAE Board of Directors sent several letters to the Office of State Personnel (“OSP”) from NCBCAE Board members, listing various complaints against Petitioner. (Resp. Exs. 5-9; T. Vol. 1, pp. 209-210). None of these letters was shown to Petitioner, and NCBCAE did not raise the issues raised in the letters directly to Van Essen for many months. (T. Vol. 2, pp. 300, T. Vol. 2, pp. 416-417, 485). Several of the letters alleged Petitioner exhibited a disrespectful attitude in Board meetings, (Resp. Ex. 6), or disagreed with

Petitioner's decision making. (Resp. Exs. 8, 9). The letters also contained complaints about the continuing education issue, (Resp. Exs. 5 and 9), which had already been resolved. (T. Vol. 2, p. 284). Because the letters of complaint are substantially based on the subjective opinions or perceptions of Board members who did not testify at the hearing, or contain hearsay reports or non-parties who did not testify at the hearing, the undersigned finds that the truth of the allegations in these letters has not been reliably substantiated and the undersigned gives little weight to these letters.

14. Also in fall of 2007, the NCBCAE offices were involved in renewing licenses for Salons. The license renewal process produced a heavy volume of telephone calls to the NCBCAE offices. (T. Vol. 2, p. 288). Mitchell received a written letter of complaint from a salon owner complaining about the phones. (Resp. Ex. 10). Mitchell did not immediately bring that problem to Petitioner's attention.

15. On January 8, 2008, the NCBCAE Board of Directors issued a signed "Written Warning" for unsatisfactory job performance to Petitioner, who received this Written Warning. (T. Vol. 2, pp. 226, 296-297; Pet. Ex. 3; Resp. Ex. 11). The warning listed six items, four of which had taken place during the previous summer, and two of which had already been raised and resolved through the August 2007 discussion with Van Essen. (T. Vol. 2. pp. 278-79, 301, 303-306, 422-423). The Written Warning did not contain a statement that failure to correct could result in termination.

16. Also on January 8, 2008, Respondent's Board placed Van Essen on a Performance Improvement Plan ("PIP"). (Resp. Ex. 12). The PIP required changes within thirty days. The evidence was undisputed that Petitioner satisfactorily dealt with the matters raised in the January

8, 2008 Written Warning in a timely fashion. (T. Vol. 2, pp. 305, 307-309, 312).

17. No other written warnings were given to Petitioner after the January 8, 2008 letter. (T. Vol. 2, p. 311). No warnings of any kind were ever given at any time regarding problems with salon inspections or reports. (T. Vol. 2, pp. 312, 315, 428)

18. In January 2008, a lead inspector received a complaint from a Mecklenburg County salon owner that her salon had not been receiving its annual inspections. (T. Vol. 1, p. 47-48). The two lead inspectors investigated, substantiated the complaint, and reported the problem to Petitioner. (T. Vol. 1, pp. 127, T. Vol. p. 429). Petitioner immediately met the Mecklenburg County inspector, provided her with a pre-disciplinary letter and discussed the matter. Petitioner then made the decision immediately to terminate the inspector for unacceptable personal conduct. (Pet. Ex. 8; T. Vol. 1, pp. 51-54). Petitioner directed a team of inspectors into the terminated inspector's territory and sent an email to all inspectors warning them against falsely reporting they had completed inspections reiterating the need for integrity and honesty. (T. Vol. 1, pp. 53-57, 129-130 and T. Vol. 2, pp. 429-32).

19. Ray Mitchell learned of the inspection falsifications in February 2008, discussed them with Petitioner, and approved of Petitioner's actions. Mitchell felt Petitioner had addressed the issue. (T. Vol. 1, p. 203, T. Vol. 2, pp. 318, 324). Mitchell felt it was an isolated incident. There was no testimony or other evidence that any NCBCAE employee or Board member was concerned that there was a more widespread problem of falsified salon inspections. (T. Vol. 1, pp. 204, T. Vol. 2, pp. 317, 324-25, 431, 435-6).

20. The two lead inspectors also recommended Petitioner implement a spot check program to insure all inspectors were doing their inspections. (T. Vol. 1, p. 58). Petitioner subsequently

directed lead inspector Terri Johnson to institute random spot checks of salons that were reported as already having been inspected. (T. Vol. 2, pp. 433, 435). Ms. Johnson did not begin the spot checks until approximately summer 2008, due to circumstances beyond Petitioner's control, consisting of a significant backlog in inspections and unusual turnover among inspectors. (T. Vol. 2, pp. 433, 471). Ms. Wilder, who was both a lead inspector and Chief of Salon Operations, did not recommend any additional action and also thought the Mecklenburg problem had been unforeseeable and was an isolated incident. (T. Vol. 1, pp. 18, 132-3, T. Vol. 2, p. 436)

21. Throughout spring and summer 2008, the problems noted in the January 2008 Written Warning did not resurface. (T. Vol. 2, pp. 436-7). On April 23, 2008 Mitchell sent Petitioner a memo reproving him from permitting a NCBCAE employee to use a state vehicle to transport her child, (Resp. Ex. 13), but that the memo was not an official disciplinary action by the Board. (T. Vol. 2, p. 326). Also in spring 2008, Mitchell became concerned that Petitioner had handled phone calls from a legislator poorly, (T. Vol. 2, pp. 327-8, 441), but Petitioner had not received the messages and met with the legislator once he received the message. (T. Vol. 2, p. 439). No oral or written warning was given to Petitioner about that issue. (T. Vol. 2, pp. 233, 352)

22. In July 2008 the NCBCAE Board re-wrote the Executive Director's job description. (Pet. Ex. 4). The principal changes involved increasing the Board's oversight over Petitioner, requiring him to notify and consult with the Board Chair on many issues and curtailing his administrative authority. The changes were due to the fact the Board wanted more "input" and remained dissatisfied with Petitioner, despite his compliance with the Performance Improvement Plan. (T. Vol. 2, pp. 329-330, 444-5). Some Board members had a personality conflict with Petitioner. (T. Vol. 2, pp. 330, 382, 483). As a result of the changes, Mitchell effectively

became "Co-Executive Director" in addition to being Board Chair. (T. Vol. 2, pp. 333-4, 379)

23. On about August 8, 2008, Ray Mitchell received a letter complaining that salon inspections in the New Bern territory had not been done for some time. (Resp. Ex. 3; T. Vol. 1, p. 195-6). While Mitchell normally would bring all complaints directly to Petitioner, instead he did his own inquiry. (T. Vol. 2, p. 316, 450). Mitchell then contacted OSP and requested an investigation. (T. Vol. 1, p. 199). The evidence was that several salons from the New Bern area had not been inspected annually and that the inspector had reported falsely that the inspections had been done. (T. Vol. 2, p. 349). No evidence was introduced as to how the reports were falsified.

24. Mitchell did not inform Petitioner about the New Bern inspection problem, or the actions he was taking. Mitchell testified that he was worried Petitioner might not have taken care of the problem or might have changed data or "made it disappear." Respondent offered no evidence to substantiate Mitchell's suspicions and the evidence showed Petitioner had know prior knowledge of or involvement in the New Bern problem. (T. Vol. 1, p. 200, T. Vol. 2, pp. 327, 345, 338-340).

25. On September 16, 2008, the NCBCAE Board placed Petitioner on paid investigatory leave effective September 15. (Resp. Exs. 14, 15). The leave was pending investigation of "information we have received concerning irregularities in the salon inspection process." The suspension was based on the January 2008 Mecklenburg incident and the August 2008 New Bern inspection problem.

26. During the OSP investigation, an NCBCAE Board member reported visiting a Mt. Airy salon that showed a last inspection date of 2006. The NCBCAE electronic records for that salon

showed a current inspection. (T. Vol. 1, pp. 135, 138). Mitchell reported this discovery to the OSP investigator but did not immediately order any investigation to confirm what had happened or how extensive a problem was involved. (T. Vol. 2, pp. 350, 343-44). Nonetheless, Mitchell then concluded "the problem of grade cards not being signed or dated is widespread." (Resp. Ex. 16).

27. On October 3, 2008, OSP issued the results of its investigation. The report found that there were "discrepancies between dates in the BCAE database and those recorded on some grade cards in operational salons in the Charlotte and the eastern and western areas of North Carolina." (Resp. Ex.16, p. 5). She found, consistent with testimony summarized above, that the January 2008 incident had been a "concern to both the Salon Inspector Supervisor and the Executive Director," and that the problem had been dealt with by dismissal of the Inspector, implementation of random follow up visits to recently inspected salons, and formation of a "clean-up" team for the Charlotte area. (Resp. Ex.16, p. 5). The OSP report opined, "[o]nce Mr. Van Essen became aware that electronic record dates and dates on grade cards did not match, it would have been prudent for him to explore whether or not these practices were more extensive in spite of his desire to trust his employee. The Board must now determine if Mr. Van Essen's response to the known discrepancies in electronic grade cards was a failure at the level of unsatisfactory work performance or grossly inefficient job performance." (Resp. Ex. 16, p. 5)

28. On October 15, 2008, Respondent terminated Petitioner. (T p. 244). Respondent's termination letter identified Petitioner's response to the January 2008 salon inspection problem as "inadequate and unacceptable" in that "an investigation of record keeping and the construction of a checking system for inspections should have been established immediately. Furthermore,

these concerns should have been discussed in supervisory meetings with inspectors and the Board Chair should have been directly informed of the inspector's dismissal over record falsification." (Resp. Ex.17, p. 1).

29. The termination letter also indicated the decision was based in part on the Board's discovery of the New Bern and Mt. Airy problems: "The gravity of this situation and your inefficient response to it was further exacerbated when the Board discovered numerous salon inspection records in various areas of the state may have been falsified for over a year, and in some cases, several years." (Resp. Ex. 17, p. 1). The letter concluded:

These incidents have led the Board to believe that the problem of unsigned and undated grade cards is widespread. Failure to inspect salons in a timely manner to provide the citizens of North Carolina clean and safe service conditions in the state's cosmetic arts shops is in violation of administrative code [sic] and can have serious, wide-ranging consequences to both employees and members of the public. . . . It was your responsibility to address this situation so that our customers (the salon operators) and the public receive the benefit of our services. Your failure to do so in a timely, effective and efficient manner represents gross inefficiency that this Board can no longer tolerate. Based on your lack of response to the many situations involving failure to inspect salons on an annual basis as set out above and to insure accurate recordkeeping regarding inspections, we are dismissing you from your position

(Resp. Ex 17, p. 2; T pp. 244)

30. These incidents have led the Board to believe that the problem of unsigned and undated grade cards is widespread. Failure to inspect salons in a timely manner to provide the citizens of North Carolina clean and safe service conditions in the state's cosmetic arts shops is in violation of administrative code [sic] and can have serious, wide-ranging consequences to both employees and members of the public. . . . It was your responsibility to address this situation so that our customers (the salon operators) and the public receive the benefit of our services. Your failure to do so in a timely, effective and efficient manner represents gross inefficiency that this Board can

no longer tolerate. Based on your lack of response to the many situations involving failure to inspect salons on an annual basis as set out above and to insure accurate recordkeeping regarding inspections, we are dismissing you from your position . . . (Resp. Ex.17, p. 2; T. Vol. 2, pp. 244-5, 247).

31. On October 16, 2008 Connie Wilder was made Acting Director of the NCBCAE. That same day Mitchell asked Ms. Wilder to investigate the Mt. Airy situation. (T. Vol. 1, pp. 61, 143). Ms. Wilder determined the Mt. Airy salon had not been inspected for approximately two years, and that some other salons within the territory also had not been inspected as reported. (T. Vol. 1, pp. 140-1). Three salons were affected. (T. Vol. 1, p. 143). No evidence was offered as to how that inspector had been able to falsify reports. Despite the inspection results, no immediate action was taken against the Mt. Airy Inspector. That inspector kept doing her job with no corrective action until mid-December 2008 at which time she was notified and terminated on the same day. (T. Vol. 1, pp. 147-8, T. Vol. 2, pp. 344-6; Pet. Ex. 1)

32. During November 2008 another lead inspector, Joyce Lippard, randomly investigated salons around the State. One additional inspector in the Hickory area was found to have falsified conducting a salon inspection. She was not terminated until February 2009. "More than one" salon was affected. (T. Vol. 1, pp. 149, 151, 155; Pet. Ex. 2)

33. There had been no previous indication that the New Bern, Hickory or Mt. Airy area inspectors were failing to do inspections. (T. Vol. 2, pp. 348-9). All had been good employees with good records, and none had received any previous warnings. While Wilder felt responsible as one of the immediate supervisors, she was promoted rather than disciplined. (T. Vol. 1, pp. 142, 150, 167-8)

34. The evidence regarding the total number of salons for which annual inspections had not been performed was not clear. Mitchell was not sure of the total number in New Bern but believed it was five or six salons. He believed the total number in Mt. Airy was three to five, and in Charlotte he believed more than one salon was found not to have been inspected. The total number of salons he believed were affected was between nine and eleven. (T. Vol. 2, pp. 380, 384-6, 388). There are more than thirteen thousand salons in the State. (T. Vol. 2, p. 393). There was no evidence showing that any of the falsified inspection reports had taken place after January 2008. Mitchell felt the inspection problem was “widespread” because it involved salons in different parts of the State. (T. Vol. 2, p. 386)

35. When the salons that had missed annual inspections finally were inspected, none received any citations or had health or safety violations. (T. Vol. 1, p. 166) Historically, the most typical problems uncovered during annual salon inspections involve salons operating without licenses or with expired licenses. The most serious health problems found through salon inspections have been unsanitary foot spas. (T. Vol. 1, p. 165):

36. Petitioner’s conduct, as set forth above, does not constitute unsatisfactory job performance as specified in his job description, work plan, or as directed by the NCBCAE Board of Directors. With regard to the salon inspection problem, Petitioner made many improvements in salon inspections before 2008, and there is no indication that the Board had any dissatisfaction with the manner in which the salon inspection process was being implemented prior to that time. (T. Vol. 2, pp. 396-404). None of the Board complaints about Van Essen’s performance in 2007 and 2008 concerned inspections, no lead inspector indicated a concern about how the inspection process was working before 2008, and the Board did not direct that anything about the inspection

program needed to change. (T. Vol. 1, pp. 108-9, 124-5, T. Vol. 2, pp. 407, 428). Petitioner did not have reason to know in advance that inspectors might be falsifying inspections.

37. Once he became aware of the January 2008 problem, Petitioner took reasonable actions based on the circumstances known to him at all times, was not careless or negligent, and did not show lack of attention or diligence. Respondent through the NCBCAE Board of Directors was aware of the problem and the actions taken by Petitioner, and approved of those actions. (T. Vol. 2, p. 318). While Petitioner did not immediately implement the spot check program, the delay was a reasonable result of the back log of inspections and did not reflect a lack of diligence. (T. Vol. 2, pp. 487-493). Petitioner did not have reason to know of the New Bern, Mt. Airy or Hickory salon inspection problems before he was suspended from his job, (T. Vol. 2, p. 348), and could not have taken any action regarding those problems.

38. There is no evidence any of Petitioner's actions resulted in any loss of or damage to State property or funds. There is no evidence Petitioner's actions resulted in a potential for death or serious bodily injury to a member of the public. The evidence is not sufficient to establish that Petitioner's actions relating to the salon inspection program were causally related to the inspection problems that were uncovered in 2008. No inspector testified that the changes Petitioner implemented in the salon report system allowed them to falsify inspection reports, or that any other action taken by Petitioner led to the falsifications. There was no evidence that any of the problems with falsified inspection reports for New Bern, Mt. Airy or Hickory took place after Petitioner learned of the Mecklenburg County problem, and there is no evidence that if Petitioner had taken additional action after January 2008 it could or would have prevented any of the later-discovered falsified inspections. Further, the evidence does not show that the inspection

problem was widespread or that, as a result of the missed inspection, any salon affected was cited for sanitation problems. (T. Vol. 1, p. 166, T. Vol. 2, p. 386)

39. With regard to the other allegations bearing on unsatisfactory job performance, while Respondent disagreed with Petitioner's decisions regarding staff travel, hiring a new employee without approval, access to office space by non-employees, and employment of Petitioner's friends, Respondent did not have rules or standards proscribing such activities at the time Petitioner allowed them, so that Petitioner did not knowingly violate work standards as directed by the Respondent. Petitioner, when notified of these concerns, acted promptly to address the concerns. (T. Vol. 2, pp. 422-427, 477). Respondent's Board, not Petitioner, was responsible for authorizing NCBCAE staff to conduct continuing education courses. (T. Vol. 2, pp. 291-293). While telephone problems occurred in fall 2007, those resulted from the license renewal process and were not within Petitioner's control. (T. Vol. 2, p. 288). The problem in the spring of 2008 when the legislator's calls were not immediately returned was due to Petitioner not receiving the messages as opposed to lack of diligence, (T. Vol. 2, p. 429), and also was not unsatisfactory job performance.

40. With respect to Respondent's allegations that Petitioner had a harsh or difficult attitude, Respondent has failed to establish concrete examples of an inappropriate demeanor or attitude by Petitioner towards members of the NCBCAE Board and has not established anything more than a personality dispute between certain members of the Board and Petitioner.

41. The undersigned finds that Petitioner was terminated as a result of a personality dispute between members of the Board of Directors and Petitioner, and due to the Board's desire to exercise greater control over the administration of the NCBCAE staff's activities, and not due to

unsatisfactory job performance. Petitioner followed Respondent's grievance procedures and obtained a recommendation that he be reinstated. (T. Vol. 2, p. 245-6; Pet. Ex. 6). After Respondent declined to reinstate him, (T. Vol. 2, p. 384), Petitioner filed his Petition for Contested Case in this matter. Several weeks before the hearing in this matter, during August 2009, several members of the NCBCAE Board sought an amendment to the law to amend N.C. Gen. Stat. §88B-6 to make the Executive Director position serve at the pleasure of the Board. (T. Vol. 2, pp. 365, 382). The Board members acted without authority from the full Board. (T. Vol. 2, p. 371). The change was sought due to the alleged problems with Petitioner. (T. Vol. 2, p. 383). Subsequently, H.B. 596, "An Act to Allow Licensed Barbers to Practice Barbering In a Client's Home," was passed, containing Section 2.2 which amended Section 88B-6(d) to read:

42. The salaries of all employees of the Board, excluding the executive director shall be subject to the State Personnel Act. The executive director shall serve at the pleasure of the Board. The legislation was signed by the Governor and went into effect on August 26, 2009, the first day of the hearing in this matter. (S.L. 209-471)

43. The undersigned finds as a fact and as a matter of law that it is speculative that Respondent would terminate Petitioner if he were reinstated in the future, since the composition of Respondent's Board of Directors may change and circumstances may alter.

CONCLUSIONS OF LAW

1. Respondent bears the burden to establish just cause for terminating Petitioner. N.C. Gen. Stat. §126-35(d).
2. Under N.C. Gen. Stat. §126-35, no career State employee subject to the State Personnel Act shall be discharged, suspended, or demoted for disciplinary reasons, except for just cause.

Dismissal based on unsatisfactory job performance or grossly inefficient job performance constitutes "just cause." In cases of grossly inefficient job performance, employees may be dismissed without any prior disciplinary action. 25 NCAC IJ.0606(a).

3. In order to establish grossly inefficient job performance, Respondent must put forth evidence showing Petitioner's job performance was unsatisfactory and that such unsatisfactory performance resulted in (1) the creation of the potential for death or serious bodily injury to an employee(s) or to members of the public or to a person(s) over whom the employee has responsibility; or (2) the loss of or damage to state property or funds that result in a serious impact on the State or work unit. 25 NCAC IJ.1614(f); Donoghue v. N.C. Dept. of Corrections, 166 N.C. App. 612, 616, 603 S.E.2d 360, 363 (2004). Unsatisfactory job performance is work-related job performance that fails to satisfactorily meet job requirements as specified in the relevant job description, work plan, or as directed by the management of the work unit or agency. 25 NCAC IJ.1614(j). Respondent must show Petitioner failed to exercise "reasonable care, diligence and attention" under the circumstances. Walker v. N.C. Dept. of Human Resources, 100 N.C. App. 498, 504, 397 S.E.2d 350, 355 (1990). The undersigned finds as a matter of law that Petitioner's conduct does not amount to grossly inefficient job performance within the meaning of 25 N.C.A.C. 1K/0604 or any other statute or regulation.

4. Respondent has failed to meet its burden by a preponderance of the evidence to show Petitioner's actions at they related to salon inspection problems amounted to unsatisfactory job performance justifying his termination. Petitioner's conduct regarding salon inspections were reasonable under the circumstances and in light of what was known to the parties at the time, and met Respondent's expectations. Mitchell's approval of Petitioner's actions in particular is

significant evidence that Petitioner's handling of salon inspection issues was satisfactory to Respondent.

5. In addition, Respondent also has failed to meet its burden to establish a causal relationship between how Petitioner handled salon inspection issues and any potential death or serious bodily injury to members of the public, or loss of or damage to state property or funds. Respondent must do more than offer speculative evidence of causation and must establish some genuine risk of harm.

6. In order to establish unsatisfactory job performance based on matters in addition to the salon inspection problems, Respondent must show that Petitioner had a history of unsatisfactory job performance and that Respondent provided the requisite warnings prior to terminating Petitioner. Nix v. Department of Administration, 106 N.C. App. 644, 417 S.E.2d 823 (1992). Respondent, however, has failed to meet its burden to establish that the other problems alleged constitute unsatisfactory job performance. Further, Respondent failed to meet its due process obligation to provide two prior written warnings, one of which stated Petitioner was subject to termination, before notifying him of its intention to terminate him.

7. Respondent's complaints regarding Petitioner's attitude and demeanor are more properly treated as allegations of unacceptable personal conduct. "Unacceptable personal conduct" is defined as "(1) conduct for which no reasonable person should expect to receive prior warning; or (2) job-related conduct which constitutes a violation of state or federal law; or (3) conviction of a felony or an offense involving moral turpitude that is detrimental to or impacts the employee's service to the State; or (4) the willful violation of known or written work rules; or (5) conduct unbecoming a state employee that is detrimental to state service; or (6) the abuse of client(s),

patient(s), student(s) or a person(s) over whom the employee has charge or to whom the employee has a responsibility or an animal owned by the State; or (7) absence from work after all authorized leave credits and benefits have been exhausted; or (8) falsification of a state application or in other employment documentation.” 25 NCAC IJ .01614(i). Respondent has not established that Petitioner engaged in a serious level of misconduct that falls within any of these categories and that would warrant his termination. Dept. of Health and Natural Resources v. Carroll, 358 N.C. 649, 674, 599 S.E.2d 888, 904 (2004).

8. To the extent that Respondent terminated Petitioner because of a personality conflict with Petitioner, such a conflict does not amount to just cause for termination.

9. Statutes take effect the day of their enactment, absent a clear direction to the contrary. State v. Philip. Morris, 618 S.E.2d 219 (2005). S.L. 2009-471, amending Section 88B-6(d), does not contain an express provision making it effective before the date of its enactment. Accordingly, it must be interpreted as having an effective date of August 26, 2009.

10. Ordinarily, statutes are presumed to act prospectively only, unless it is clear that the legislature intended that the law be applied retroactively. . Landgraf v. USI Film Products, Inc., 511 U.S. 244, 264 (1994); Fogleman v. D&J Equipment, 111 N.C. App. 228, 232, 431 S.E.2d 849, 851 (1993). The application of a statute is deemed retroactive when its operative effect is to alter the legal consequences of conduct or transactions completed prior to its enactment, or when it affects vested rights. Gardner v. Gardner, 300 N.C. 715, 718, 268 S.E.2d 468, 471 (1980); Wood v J.P. Stevens & Co., 297 N.C. 636, 256 S.E.2d 692 (1979); 16B Am. Jur. 2d Constitutional Law § 690. A statute that makes substantive changes in rights, liabilities, causes of action or legal duties will not be interpreted to apply retroactively to transactions that have already

occurred, or causes of action that have already arisen, or rights that have already vested 16B Am. Jur. 2d Constitutional Law § 690.

11. S.L. 2009-471 effectively makes the Executive Director position exempt from the State Personnel Act as of August 26, 2009. Before S.L. 2009-471 was enacted, Petitioner had a vested property interest in his employment, Peace v. Employment Sec. Comm'n, 439 N.C. 315, 507 S.E.2d 242 (1998), enjoyed substantive rights to be terminated only for "just cause," and, in the event of such a termination, to seek to recover back pay and reinstatement. N.C. Gen. Stat. §126-37. Applying S.L. 2009-471 to this pending claim would be contrary to the plain language of the statute, which is effective only as of August 26, 2009, and would be an impermissible retroactive application of the statute, since it would impair Petitioner's vested rights and disturb the parties' legal obligations in effect as of the time this claim arose. Landgraf v. USI Film Products, Inc., 511 U.S. at 283 (holding statute changing type of damages available to terminated employee cannot be interpreted to apply retroactively to pending claims). An application of S.L. 2009-471 by the Respondent to the facts of Petitioner's case would amount to a violation of Petitioner's constitutional rights to due process and fairness, and would as a matter of law deprive the Petitioner of property and substantially prejudice the Petitioner's rights. Moreover, the application of S.L. 2009-471 to Petitioner by Respondent would be erroneous as a matter of law.

12. Petitioner is entitled to pursue his claim under the State Personnel Act and to seek all remedies that were previously available to him under the Act, including an award of back pay as well as other relief deemed appropriate, including reinstatement. Petitioner's entitlement to back pay does not cease as of the date of enactment of S.L. 2009-471. Petitioner's statutory right to reinstatement has not been rendered meaningless by the fact that the Executive Director is now

exempt from the State Personnel Act, in that Petitioner may be entitled to pursue remedies available under N.C. Gen. Stat. §126-5(e).

13. The undersigned further concludes the Office of Administrative Hearings has proper jurisdiction to hear this matter and that S.L. 2009-471 does not alter or remove OAH jurisdiction. N.C. Gen. Stat. §126-34.

14. Based upon the foregoing conclusions of law, the undersigned makes the following:

DECISION

Respondent's decision to discharge Petitioner should be reversed. Due to his unlawful termination, Respondent shall reinstate Petitioner to his position as Executive Director of the North Carolina Board of Cosmetic Arts Examiners. Respondent shall pay Petitioner back pay from the date of his termination on October 15, 2008 through the date he is reinstated to his position. Respondent further shall pay Petitioner in the amount of the value of his lost benefits from the date of his termination through the date of his reinstatement, and to restore to his years of service the period between October 15, 2008 and the date of his reinstatement. In event the Petitioner is reinstated and Respondent then chooses to terminate him from the Executive Director position, Petitioner shall be entitled to pursue all other remedies to which he would be normally due under N.C. Gen. Stat. §126-5(e), including the right to seek placement in an alternate position. Respondent shall pay Petitioner's attorneys fees and costs associated with this action.

ORDER

It is hereby ordered that the agency serve a copy of the final decision on the Office of

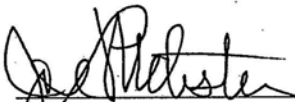
Administrative Hearings, 6714 Mail Service Center, Raleigh, N.C. 27699-6714, in accordance with North Carolina General Statute 150B-36(b).

NOTICE

The decision of the Administrative Law Judge in this contested case will be reviewed by the agency making the final decision according to the standards found in G.S. 150B-36(b)(b1) and (b2). The agency making the final decision is required to give each party an opportunity to file exceptions to the decision of the Administrative Law Judge and to present written argument to those in the agency who will make the final decision. G.S. 150B-36(a).

The agency that will make the final decision in this contested case is the N.C. State Board of Cosmetic Arts Examiners.

This 20th day of January, 2010.



Joe L. Webster
Administrative Law Judge

A copy of the foregoing was mailed to:

Faith Herndon
Law Office of Faith Herndon
115 E Main St.
Durham, NC 27701
ATTORNEY FOR PETITIONER

Grady Ballentine
Special Deputy Attorney General
P. O. Box 629
Raleigh, NC 27602-0629
ATTORNEY FOR RESPONDENT

This the 20th day of January, 2010.



Office of Administrative Hearings
6714 Mail Service Center
Raleigh, NC 27699-6714
(919) 431 3000
Fax: (919) 431-3100

IN THE OFFICE OF

2009 NOV 25 PM ADMINISTRATIVE HEARINGS
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Office of
Administrative Hearings

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**ORDER
OF
SUMMARY JUDGMENT
FOR
PETITIONERS**

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APPEARANCES

STATEMENT OF THE CASE

UNDISPUTED FINDINGS

1662

exhibits, pleadings or otherwise established in the record:

1. On June 8, 2001, Petitioner Henry Neese signed an agreement to cease and desist from allowing the slaughter of livestock on his property by the general public.
2. Respondent's compliance officers reported that certain third parties were slaughtering animals on Petitioners' property on July 17, 2004 (the "2004 Violations").
3. Respondent issued a Notice of Civil Penalty for the 2004 Violations on June 29, 2006.
4. On December 14, 2006, Respondent reported the improper burning of dead fowl on Petitioners' property. Respondent issued a Notice of Civil Penalty for these violations on December 18, 2006.
5. Petitioners contested both of these Civil Penalty Assessments by filing petitions with the North Carolina Office of Administrative Hearings (file number 06 DAG 1518 and 07 DAG 0402).
6. On July 5, 2007, Petitioners and Respondent entered into a written Settlement Agreement ("2007 Settlement Agreement"). This Settlement Agreement recites the parties' "desire[d] to fully and finally settle this and all other disputes and controversies ...in order to avoid the burden and expense of continued litigation."
7. Respondent's compliance officers inspected Petitioners property on December 19 and 20, 2007 pursuant to paragraph #3 of the 2007 Settlement Agreement, and reported that certain third parties were slaughtering livestock on Petitioners' property in violation of N.C. Gen. Stat. §§ 106-549.17 and -549.23.
8. Respondent filed a Complaint against Petitioners in the Superior Court of Guilford County, North Carolina (case no 08 CVS 5431). The Complaint alleged violations of North Carolina law based on the events of December 19-20, 2007 and sought injunctive relief in the form of an order enjoining Petitioners from engaging in conduct that violated State law concerning unregistered animal slaughter facilities.
9. Petitioners and Respondent participated in Court-ordered mediation on October 9, 2008.
10. Petitioners and Respondent agreed to settle their dispute during mediation by amending, in writing, the 2007 Settlement Agreement. According to the First Amendment to Settlement Agreement, Petitioners and Respondent were agreeing to settle "in order to resolve issues between them *that have arisen since entering into a formal binding Settlement Agreement* [the 2007 Settlement Agreement]...." (Emphasis added). Further, the First Amendment to Settlement Agreement explained that the parties "desire[d] to fully and finally settle *those new matters and all*

other disputes and controversies...in order to avoid the burden and expense of continued litigation." (Emphasis added). The First Amendment to Settlement Agreement specifically provides for the enforcement of the terms of the 2007 Settlement Agreement.

11. Petitioners and Respondent signed the First Amendment to Settlement Agreement on or before December 19, 2008.

12. On March 3, 2009, Respondent assessed a \$40,000.00 civil penalty against Petitioners. The Notice of Violations and Assessment of Civil Penalty included Findings of Fact based on Respondent's investigation of Petitioners' property on December 19 and 20, 2007. Respondent assessed the civil penalty for violations of North Carolina General Statutes §§ 106-549.17 and -549.23 occurring on December 19 and 20, 2007.

CONCLUSIONS OF LAW

1. The Office of Administrative Hearings has personal and subject matter jurisdiction of this contested case pursuant to Chapter 150B of the North Carolina General Statutes.

2. Rule 56(c) declares that summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that any party is entitled to a judgment as a matter of law." N.C.Gen.Stat. § 1A-1, Rule 56(c); §150B-33(3a), §150B-36(d), and 26 N.C.A.C. 03 .0101(a).

3. The moving party (Petitioners) has the burden of showing (1) that it would be entitled to judgment from the evidence contained in the materials submitted; and (2) that there can be no other evidence from which a jury could reach a different conclusion as to a material fact (i.e. that there is no triable issue). Goode v. Tait, Inc., 36 N.C. App. 268, 243 S.E.2d 404 (1978).

4. The moving party must establish that all of the facts on all of the essential elements of its claim are in its favor, and that there is no genuine issue of material fact with respect to any one of the essential elements of his claim. An issue is "genuine" if it may be maintained by substantial evidence. An issue is "material" if the facts as alleged would constitute a legal defense, would affect the result of the action, or would prevent the party against whom it is resolved from prevailing in the action. First Commerce Bank v. Dockery, 171 N.C.App. 297, 300, 615 S.E.2d 314, 315-316 (2005).

5. The evidence must be viewed "in the light most favorable to the nonmoving party." Waddle v. Sparks, 100 N.C. App. 129, 394 S.E.2d 683 (1990), aff'd in part and rev'd in part on other grounds, 331 N.C. 73, 4144 S.E.2d 22 (1992). The slightest doubt as to material facts entitles the nonmovant to a trial. Snipes v. Jackson, 69 N.C.App. 64, 316 S.E.2d 657, disc. review denied, 312 N.C. 85, 321 S.E.2d 734 (1974).

6. In this case, the undisputed findings establish that there are no genuine issues of material fact and that Petitioners are entitled to judgment as a matter of law.

7. Respondent based its civil penalty on incidents that it discovered on or before December 19 and 20, 2007 and known to Respondent on and before December 19, 2008 at the time of the execution of the First Amended Settlement Agreement.

8. Prior to the assessment of any civil penalty for the December 19-20, 2007 incidents, on or about December 19, 2008, the Respondent entered into a First Amendment to Settlement Agreement with Petitioners ("First Amendment").

9. "[An] executed agreement terminating or purporting to terminate a controversy is a contract, to be interpreted and tested by established rules relating to contracts." Clayton v. Branson, 170 N.C.App. 438, 450, 613 S.E.2d 259, 268, disc. rev. denied, 360 N.C. 174, 625 S.E.2d 785 (2005) (citations and quotation marks omitted). See, also, Cabarrus County v. Systel Bus. Equip. Co., 171 N.C.App. 423, 425, 614 S.E.2d 596, 597, disc. rev. denied, 360 N.C. 61, 621 S.E.2d 177 (2005)(settlement agreement is interpreted according to the general principles of contract law).

10. Thus, the First Amendment to Settlement Agreement, like any settlement agreement, is a contract and is to be interpreted as a contract.

11. When an agreement is in writing, and the language is plain and unambiguous, neither party can obtain an interpretation and result contrary to the express language of the agreement by an assertion that it does not express its intent. Fidelity and Casualty Co. of N.Y. v. Nello L. Teer Co., 250 N.C. 547, 550-551, 109 S.E.2d 171, 173 (1959) (citations omitted). "It must be presumed the parties intended what the language used clearly expresses, and the contract must be construed to mean what on its face it purports to mean." Hartford Accident & Indem. Co. v. Hood, 226 N.C. 706, 710, 40 S.E.2d 198, 201 (1946)(internal citations omitted).

12. The language of the First Amendment to Settlement Agreement is plain and unambiguous. By the very terms of the agreement, Petitioners and Respondent were fully and finally settling (a) issues that have arisen since entering into the original 2007 Settlement Agreement, (b) all other disputes and controversies and (c) in order to avoid the burden and expense of continued litigation.

13. The reported violations of December 19-20, 2007 are fairly considered as "issues" that arose after the 2007 Settlement Agreement. The reported violations of December 19-20, 2007 are also fairly considered "all other disputes and controversies" since those reported violations arose after the 2007 Settlement Agreement and were a subject of dispute between the parties.

14. The First Amendment to Settlement Agreement identifies that the parties desired to fully and finally settle certain issues in order to avoid the burden and expense of further litigation.

15. By the plain language of the agreement, the scope of the First Amendment to Settlement Agreement includes the reported violations of December 19-20, 2007. Because the reported violations are within the scope of the First Amendment, those matters were fully and finally settled and Respondent may not impose a civil penalty after the First Amendment had been fully negotiated and executed.

16. Respondent was aware of the alleged violations or the potential for alleged violations at the time that the First Amendment to Settlement Agreement was negotiated and signed by the parties. The settlement agreement is clear as to the discharge of disputes and the intent is expressed in the language employed by the parties. Petitioners have acted in conformity with the First Amendment to Settlement Agreement and the settlement agreement precludes any further action for the December 19-20, 2007 alleged violations.

17. The law favors the settlement of controversies out of court. Dixie Lines v. Grannick, 238 N.C. 552, 555, 78 S.E.2d 410, 413 (1953) (citations omitted). North Carolina public policy encourages settlement of disputed claims. North Carolina Baptist Hosp. Inc. v. Mitchell, 323 N.C. 528, 533, 374 S.E.2d 844, 846 (1988) (North Carolina public policy encourages prompt settlement of disputed claims).

18. N.C. Gen. Stat. §150B-2(2) defines contested case as “an administrative proceeding pursuant to this chapter to resolve a *dispute* between an agency and another person...” (Emphasis added) N.C. Gen. Stat. §150B-22 not only speaks to the statutory prerequisites of settlement resolution of *disputes* (emphasis added) but articulates a far greater directive, other than a mere statutory directive, when the General Assembly articulates the state’s public policy favoring settlements as follows: “It is the *policy of this State* (emphasis added) that any *dispute* (emphasis added) between an agency and another person that involves the person’s rights, duties, or privileges, including licensing or the levy of a monetary penalty, should be settled (emphasis added) through informal procedures.” In addition to the construction of the term “dispute,” the term “controversies,” a term of equal or broader application, adds additional support for the conclusion that the events of December 19 and 20, 2007 were settled and discharged in the first Amended Settlement Agreement in December, 2008. The state’s strong public policy favoring settlements, articulated by both the judicial branch in appellate decisions and by the legislative branch in a specific statutory directive, lends to a construction of the terms employed in the instant case that favors the accomplishment of this policy in this administrative law context.

19. Thus, the undersigned concludes as a matter of law that when the parties in a contractual settlement agreement utilize language “to fully and finally settle ... *all other disputes and controversies*” (emphasis added) this language is unambiguous and clearly articulates the intent to discharge all disputes, including both pre and post contested case claims as that term (*dispute*) is employed in North Carolina Administrative Procedures Act and in accord with the public policy of this state. This language encompasses a contested case filed over 15 months after the investigation is concluded and clearly within Respondent’s knowledge at the time of the settlement agreement. [See

Robert H. Hardin, Jr., v. KCS International, NC d/b/a Cruisers Yachts ____ N.C. App. ____, ____, S.E. 2d. (2009) (holding that even a fraud regarding the subject matter learned after the signing of the settlement agreement is barred).]

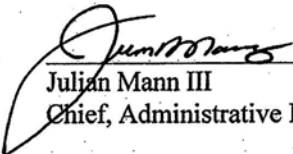
DECISION

Based on the foregoing Findings and Conclusions of Law, the undersigned hereby **GRANTS** Summary Judgment in favor of Petitioners and Respondent is barred from assessing a forty thousand dollar (\$40,000) civil penalty claim against Petitioners in accordance with the rationale above.

NOTICE AND ORDER

The undersigned is authorized to make this decision under N.C. Gen. Stat. § 150B-36(d). The North Carolina Department of Agriculture and Consumer Services will make the Final Decision in this contested case under the provisions of N.C. Gen. Stat. § 150B-36(a) and (d). Before the agency makes a Final Decision in this case, the agency is required to give each party an opportunity to file exceptions to the decision and to present written argument to those in the agency who will make the final decision. N.C. Gen. Stat. G.S. 150B-36(a). Unless required for disposition of an ex parte matter authorized by law, neither the administrative law judge assigned to a contested case nor a member or employee of the agency making a final decision in the case may communicate, directly or indirectly, in connection with any issue of fact, or question of law, with any person or party or his representative, except on notice and opportunity for all parties to participate. The agency shall serve a copy of its Final Decision on each party, on each party's attorney of record, and to the Office of Administrative Hearings, 6714 Mail Service Center, Raleigh, NC 27699-6714.

This the 25th day of November, 2009.



Julian Mann III
Chief, Administrative Law Judge

A copy of the foregoing was mailed to:

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ATTORNEY FOR PETITIONERS

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Assistant Attorney General
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ATTORNEY FOR RESPONDENT

This the 25th day of November, 2009.



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