

NORTH CAROLINA REGISTER

VOLUME 25 • ISSUE 11 • Pages 1294 - 1381

December 1, 2010

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Contact List for Rulemaking Questions or Concerns

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

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

Office of Administrative Hearings
Rules Division
1711 New Hope Church Road (919) 431-3000
Raleigh, North Carolina 27609 (919) 431-3104 FAX

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Rule Review and Legal Issues

Rules Review Commission
1711 New Hope Church Road (919) 431-3000
Raleigh, North Carolina 27609 (919) 431-3104 FAX

contact: Joe DeLuca Jr., Commission Counsel joe.deluca@oah.nc.gov (919) 431-3081
Bobby Bryan, Commission Counsel bobby.bryan@oah.nc.gov (919) 431-3079

Fiscal Notes & Economic Analysis

Office of State Budget and Management
116 West Jones Street (919) 807-4700
Raleigh, North Carolina 27603-8005 (919) 733-0640 FAX
Contact: 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
24:17	03/01/10	02/08/10	03/16/10	04/30/10	05/20/10	07/01/10	01/26/11	11/26/10
24:18	03/15/10	02/22/10	03/30/10	05/14/10	05/20/10	07/01/10	01/26/11	12/10/10
24:19	04/01/10	03/11/10	04/16/10	06/01/10	06/21/10	08/01/10	01/26/11	12/27/10
24:20	04/15/10	03/24/10	04/30/10	06/14/10	06/21/10	08/01/10	01/26/11	01/10/11
24:21	05/03/10	04/12/10	05/18/10	07/02/10	07/20/10	09/01/10	01/26/11	01/28/11
24:22	05/17/10	04/26/10	06/01/10	07/16/10	07/20/10	09/01/10	01/26/11	02/11/11
24:23	06/01/10	05/10/10	06/16/10	08/02/10	08/20/10	10/01/10	01/26/11	02/26/11
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25:01	07/01/10	06/10/10	07/16/10	08/30/10	09/20/10	11/01/10	01/26/11	03/28/11
25:02	07/15/10	06/23/10	07/30/10	09/13/10	09/20/10	11/01/10	01/26/11	04/11/11
25:03	08/02/10	07/12/10	08/17/10	10/01/10	10/20/10	12/01/10	01/26/11	04/29/11
25:04	08/16/10	07/26/10	08/31/10	10/15/10	10/20/10	12/01/10	01/26/11	05/13/11
25:05	09/01/10	08/11/10	09/16/10	11/01/10	11/22/10	01/01/11	01/26/11	05/29/11
25:06	09/15/10	08/24/10	09/30/10	11/15/10	11/22/10	01/01/11	01/26/11	06/12/11
25:07	10/01/10	09/10/10	10/16/10	11/30/10	12/20/10	02/01/11	05/2012	06/28/11
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.



U.S. Department of Justice
Civil Rights Division

TCH:RSB:JBG:JDH:cv
DJ 166-012-3
2010-3350

Voting Section - NWB
950 Pennsylvania Avenue, NW
Washington, DC 20530

October 7, 2010

David A. Holec, Esq.
City Attorney
P.O. Box 7207
Greenville, North Carolina 27835-7207

Dear Mr. Holec:

This refers to four annexations (Ordinance Nos. 10-13, 10-14, 10-35, and 10-45 (2010)) and their designation to districts of the City of Greenville in Pitt County, North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, 42 U.S.C. 1973c. We received your submission on August 18, 2010.

The Attorney General does not interpose any objection to the specified changes. However, we note that Section 5 expressly provides that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the changes. Procedures for the Administration of Section 5 of the Voting Rights Act of 1965, 28 C.F.R. 51.41.

Sincerely,

A handwritten signature in black ink, appearing to read "T. Christian Herren, Jr.", is written over the typed name. The signature is stylized with loops and flourishes.

T. Christian Herren, Jr.
Chief, Voting Section

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

Statutory reference: G.S. 150B-21.2.

TITLE 21 – OCCUPATIONAL LICENSING BOARDS AND COMMISSIONS

CHAPTER 14 – BOARD OF COSMETIC ART EXAMINERS

Fiscal Impact:

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

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Board of Cosmetic Art Examiners intends to adopt the rules cited as 21 NCAC 14G .0118; 14I .0110 and amend the rules cited as 21 NCAC 14F .0104; 14G .0113-.0114; 14H .0113; 14I .0101, .0109; 14J .0207, .0501; 14N .0113; 14P .0106; 14S .0107.

Proposed Effective Date: April 1, 2011

Public Hearing:

Date: December 16, 2010

Time: 8:00 a.m.

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

Reason for Proposed Action: Each regulation provides greater clarity to processes.

Procedure by which a person can object to the agency on a proposed rule: Written correspondence to 1201 Front Street, Suite 110, Raleigh, NC 27609; Attn: Stefanie Kuzdrall; phone (919) 715-0018.

Comments may be submitted to: Stefanie Kuzdrall, 1201 Front Street, Suite 110, Raleigh, NC 27609; phone (919) 715-0018

Comment period ends: January 31, 2011

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.

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 .0104 SEPARATION OF BEAUTY SALON

(a) A beauty salon, whether residential or non-residential, shall be separated from any building or room used for any other business ~~or purpose~~ by solid walls at least 7 ft. in height.

~~(b) The solid walls separating a beauty salon from other rooms in a building used for other purposes may be fitted with a doorway, provided that a solid full length door is installed in the doorway and kept closed.~~

~~(e)(b)~~ An entrance to a beauty salon from a passageway, walkway or mall area used only for access to the salon, or to the salon and other businesses, may be open.

Authority G.S. 88-23.

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

SECTION .0100 - PERMANENT FILES

21 NCAC 14G .0113 TEACHER/STUDENT RATIO

(a) All cosmetic art schools shall provide one teacher for every ~~20 25 enrolled students, or a fraction thereof, present.~~ students.

(1) In theory or demonstration classes the student teacher ratio may exceed 1:25.

(2) During student practical work on live models, on the clinic floor, there must be a ratio of one teacher for every 20 students.

~~(b) This ratio~~ These ratios shall be adhered to at all time schools are in operation. Refer to 21 NCAC 14G .0115.

~~(c) Each teaching cosmetology faculty member shall not be responsible for more than 20 students in the same time period.~~

Authority G.S. 88B-4.

21 NCAC 14G .0114 SCHOOL AFFILIATION WITH COSMETIC ART SHOPS AND OTHER BUSINESSES

(a) No cosmetic art shop or any other business shall be operated as a cosmetic art school.

~~(b) Cosmetic art shops or other businesses operating adjacent to a cosmetic art school shall be separated by a solid wall, floor to ceiling, with a separate entrance.~~

(b) When a school and a shop are under the same ownership or otherwise associated, separate operation of the shop and school shall be maintained:

- (1) If the school and shop are located in the same building, separate entrances and visitor reception areas shall be maintained; and
- (2) The school and shop shall have separate public information releases, advertisements, names and advertising signs.

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

21 NCAC 14G .0118 SCHOOL CURRICULUM APPROVAL (A) NO COSMETIC ART SHOP OR ANY OTHER BUSINESS SHALL BE OPERATED AS A COSMETIC ART SCHOOL

Licensed cosmetic art schools must submit, for Board approval, course curriculum for all disciplines of cosmetic art.

Authority G.S. 88B-4; 88B-16.

SUBCHAPTER 14H - SANITATION

SECTION .0100 - SANITATION

21 NCAC 14H .0113 CLEANLINESS OF SCISSORS: SHEARS: RAZORS AND OTHER EQUIPMENT

(a) All scissors, shears, razors, and other metal instruments must be cleaned and disinfected after each use in the following manner:

- (1) If the implement is not immersible, it shall be cleaned by wiping it with a clean cloth moistened ~~or spraying with a disinfectant, and disinfected~~ used in accordance with the manufacturer's instructions, that states the solution will destroy HIV, TB or HBV viruses and approved by the Federal Environmental Protection Agency.
- (2) If it is immersible, it shall be disinfected by immersion and whenever it comes in contact with blood, with:
 - (A) disinfectant, used in accordance with the manufacturer's instructions, that states the solution will destroy HIV, TB or HBV viruses and approved by the Federal Environmental Protection Agency.
 - (B) EPA registered, hospital/pseudomonacidal (bactericidal, virucidal, and fungicidal) ~~and~~ or tuberculocidal, that

is mixed and used according to the manufacturer's directions; or

- (C) household bleach in a 10 percent solution for 10 minutes.
- (3) If the implement is not used immediately after cleaning, it must be stored in a clean, closed cabinet until it is needed.

(b) Furniture, equipment and fixtures must be of a washable material and kept clean and in good repair.

(c) Lancets, disposable razors, and other sharp objects shall be disposed in puncture-resistant containers.

Authority G.S. 88B-4; 88B-14.

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 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 along with proof of documentation for verification purposes 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) 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. 88B-4.

21 NCAC 14I .0109 SUMMARY OF COSMETIC ART EDUCATION

(a) The manager of each cosmetic art school must compile, from the school's records, a summary of hours, live model/mannequin performance completions, date of enrollment, and last date of attendance. ~~Within 30 days after the student's graduation date, the cosmetic art school must present to the student his or her licensure registration documentation.~~

~~This licensure registration~~ The graduation form documentation must be signed by ~~the owner/director~~, a teacher, and the student and must have the seal of the school affixed.

(c) ~~The licensure registration~~ original graduation form documentation must be prepared on a form furnished by the Board. The cosmetic art school shall ~~mail a copy mail, within 30 days after the student's graduation date,~~ with the school seal

affixed of the ~~license—registration—graduation~~ form documentation to the Board at the Board's address.

Authority G.S. 88B-4; 88B-7; 88B-8; 88B-9; 88B-10; 88B-16.

21 NCAC 14I .0110 UNIFORM

A waiver of the uniform requirement in 21 NCAC 14J, 21 NCAC 14K, 21 NCAC 14O and 21 NCAC 14S may be requested for enrollment classes of cosmetic art students. Cosmetic art schools may request from the Board a waiver of the uniform requirement no more than once per year.

Authority G.S. 88B-4(a)(10).

SUBCHAPTER 14J - COSMETOLOGY CURRICULUM

SECTION .0200 - ADVANCED DEPARTMENT

21 NCAC 14J .0207 LIVE MODEL/MANNEQUIN PERFORMANCE REQUIREMENTS

(a) The following live model/mannequin performance completions shall be done by each student in the advanced department before the student is eligible to take the cosmetologist's examination. Sharing of performance completions is not allowed. Credit for a performance shall be given to only one student.

		1200 Hours		1500 Hours	
		Live Model	Maniq.	Live Model	Maniq.
(1)	scalp and hair treatments with massage	8		10	
(2)	fullhead fingerwave and style	3	OR 3	5	OR 5
(3)	fullhead pincurl and style	3	OR 3	5	OR 5
(4)	Hair Styling – sets, blowdrying				
	Thermal press/flat iron, artificial hair	80	56	100	70
(5)	haircuts	60	8	75	10
(6)	chemical reformation or permanent waving and relaxers	16	12	20	15
(7)	temporary color	3		5	
(8)	Color Application – semi, demi, Permanent color, and hair lightening	24	8	30	10
(9)	Multidimensional Color – low/high Lighting, cap, bleach	3	8	5	10
(10)	lash and brow tinting	2		4	
(11)	Nail Care – manicures and pedicures	12			15
(12)	artificial nails (sets)	4	OR 4	4	OR 4
(13)	facials with massage/makeup	3		10	
(14)	hair removal	3		5	

(b) Certification of live model or mannequin performance completions is required along with the application for the examination.

(c) A live model may be substituted for a mannequin for any mannequin service.

(d) All mannequin services may be performed using a simulated product.

(e) Simulated product is not allowed for credit for live model performance.

Authority G.S. 88B-4.

SECTION .0500 - CREDIT FOR COSMETOLOGY STUDY OUTSIDE OF NORTH CAROLINA

21 NCAC 14J .0501 APPROVAL OF CREDIT FOR COSMETOLOGY 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 in the cosmetic arts. If this agency or department does not maintain any student records or if the state does not give license to practice in the cosmetic arts, 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.

SUBCHAPTER 14N - EXAMINATIONS

SECTION .0100 - GENERAL PROVISIONS

21 NCAC 14N .0113 RE-EXAMINATION

(a) Notwithstanding any other provision of the rules in this Subchapter, pursuant to G.S. 88B-18(d) a cosmetologist, esthetician, manicurist, natural hair care specialist or teacher candidate who has failed either section of the examination three times, shall complete the following amounts of study at an approved cosmetic art school before ~~reapplication for~~ examination shall be accepted by the Board:

- (1) Cosmetologist 200 hours,
- (2) Esthetician 80 hours,
- (3) Manicurist 40 hours,
- (4) Natural Hair Care Specialist 40 hours, and
- (5) Teacher:
 - (A) cosmetology 100 hours,
 - (B) esthetician 80 hours, and
 - (C) manicurist 40 hours.

(b) Teacher candidates with no prior cosmetic art teacher training program experience shall provide a written affidavit documenting a minimum of required work experience as outlined in 21 NCAC 14N .0115 or complete a minimum of the hours required for the teacher curriculum in the discipline in which they hold a license. The required minimums for teacher curriculums are 800 hours of a cosmetology teacher curriculum, 650 hours of an esthetician teacher curriculum, 320 hours of a

natural hair care teacher curriculum or 320 hours of a manicurist teacher curriculum.

(c) The school in which the student has enrolled pursuant to G.S. 88B-18(d) shall design a course of study for that student in order to correct the student's deficiencies.

Authority G.S. 88B-4; 88B-18.

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 | \$200.00 |
| (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) | 1st offense | \$100.00 |
| (2) | 2nd offense | \$250.00 |
| (3) | 3rd offense | \$500.00 |

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

- | | | |
|-----|-------------|----------|
| (1) | 1st offense | \$250.00 |
| (2) | 2nd offense | \$350.00 |
| (3) | 3rd offense | \$500.00 |

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

SUBCHAPTER 14S - NATURAL HAIR CARE STYLING CURRICULUM

SECTION .0100 - NATURAL HAIR CARE

21 NCAC 14S .0107 PERFORMANCES

(a) 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	
Beginners: Sanitation, bacteriology, disinfection, shampooing, draping, anatomy, disorders of the hair and scalp	80	-		-
Styles and techniques of natural hair styling including twisting, wrapping, extending, locking <u>locking</u> , <u>blow dry and hot iron</u>	220	-		-
Performance Requirements	-	-	Mannequin	Live Model
Braids	-	-	5	5
Twists	-	-	5	5
Knots	-	-	3	2
Corn rows	-	-	3	2
Hairlocking	-	-	5	5
Artificial hair and decorations	-	-	5	5
Braid Removal	-	-	5	5

PROPOSED RULES

Blow dry and hot iron

5

5

(b) A minimum of 80 hours of technical and practical instruction in application areas are required prior to conducting performances on the public. A live model may be substituted for a mannequin for any mannequin service. All mannequin services may be performed using a simulated product. A performance consists of 10 or more lengths of hair.

Authority G.S. 88B-4(a)(10).

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

Rules approved by the Rules Review Commission at its meeting on October 21, 2010.

**REGISTER CITATION TO THE
NOTICE OF TEXT**

ALCOHOLIC BEVERAGE CONTROL COMMISSION

<u>Definitions</u>	04	NCAC	02R	.0103*	25:02 NCR
<u>Distribution, Inspection and Copies of ABC Laws</u>	04	NCAC	02R	.0303	25:02 NCR
<u>Fee for Computer Services</u>	04	NCAC	02R	.0304*	25:02 NCR
<u>Definition</u>	04	NCAC	02R	.0601	25:02 NCR
<u>Request for Declaratory Ruling</u>	04	NCAC	02R	.0603*	25:02 NCR
<u>Daily Deposits</u>	04	NCAC	02R	.0905*	25:02 NCR
<u>Annual Independent Financial Audit</u>	04	NCAC	02R	.0907*	25:02 NCR
<u>Warehouse: Presence of Unauthorized Person Prohibited</u>	04	NCAC	02R	.1005	25:02 NCR
<u>Audits to be Forwarded to Commission</u>	04	NCAC	02R	.1103	25:02 NCR
<u>Approval of New Stores</u>	04	NCAC	02R	.1203	25:02 NCR
<u>Definitions</u>	04	NCAC	02R	.1301	25:02 NCR
<u>Commemorative Bottles</u>	04	NCAC	02R	.1405*	25:02 NCR
<u>Payment</u>	04	NCAC	02R	.1407	25:02 NCR
<u>Markup Formula</u>	04	NCAC	02R	.1502*	25:02 NCR
<u>Removal of Beverages from ABC Stores</u>	04	NCAC	02R	.1701	25:02 NCR
<u>Purchase-Transportation Permits</u>	04	NCAC	02R	.1708	25:02 NCR
<u>Credit Card Sales</u>	04	NCAC	02R	.1710	25:02 NCR
<u>Purchase-Transportation Permits: Wine: Liquor</u>	04	NCAC	02R	.1801	25:02 NCR
<u>Mixed Beverage Permit/Invoice Form</u>	04	NCAC	02R	.1802	25:02 NCR
<u>Cabinet Permittees: Purchase-Transportation Permits</u>	04	NCAC	02R	.1803*	25:02 NCR
<u>Designation of Store</u>	04	NCAC	02R	.1902	25:02 NCR

HHS - HEALTH SERVICE REGULATION, DIVISION OF

<u>Declaratory Rulings</u>	10A	NCAC	14A	.0103*	n/a G.S. 150B-21.5(a)(2) & (a)(6)
<u>Information Required of Applicant</u>	10A	NCAC	14C	.1202*	25:01 NCR
<u>Information Required of Applicant</u>	10A	NCAC	14C	.1402*	25:01 NCR
<u>Performance Standards</u>	10A	NCAC	14C	.1403*	25:01 NCR
<u>Definitions</u>	10A	NCAC	14C	.1701*	25:01 NCR
<u>Performance Standards</u>	10A	NCAC	14C	.1703*	25:01 NCR
<u>Information Required of Applicant</u>	10A	NCAC	14C	.1902*	25:01 NCR
<u>Information Required of Applicant</u>	10A	NCAC	14C	.2102*	25:01 NCR
<u>Performance Standards</u>	10A	NCAC	14C	.2103*	25:01 NCR
<u>Support Services</u>	10A	NCAC	14C	.2104	25:01 NCR
<u>Staffing and Staff Training</u>	10A	NCAC	14C	.2105	25:01 NCR
<u>Facility</u>	10A	NCAC	14C	.2106	25:01 NCR

APPROVED RULES

<u>Information Required of Applicant</u>	10A	NCAC	14C .2202	25:01 NCR
<u>Performance Standards</u>	10A	NCAC	14C .2203	25:01 NCR
<u>Definitions</u>	10A	NCAC	14C .2701	25:01 NCR

PUBLIC HEALTH, COMMISSION FOR

<u>Accreditation of Training Courses</u>	10A	NCAC	41C .0904*	24:24 NCR
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STATE REGISTRAR

<u>Routine Requests for Certified Copies</u>	10A	NCAC	41H .0701*	25:01 NCR
<u>Research Requests</u>	10A	NCAC	41H .0702	25:01 NCR

INSURANCE, DEPARTMENT OF

<u>Sanctions for NCEC Noncompliance by Licensees...</u>	11	NCAC	13 .0528*	24:24 NCR
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ALARM SYSTEMS LICENSING BOARD

<u>Determination of Experience</u>	12	NCAC	11 .0106*	24:20 NCR
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LABOR, DEPARTMENT OF, AND APPRENTICESHIP COUNCIL

<u>Apprenticeship Council</u>	13	NCAC	14A .0103	25:02 NCR
<u>Certification</u>	13	NCAC	14A .0105	25:02 NCR
<u>Public Access to Records</u>	13	NCAC	14A .0108	25:02 NCR
<u>Name: Address</u>	13	NCAC	14B .0101*	n/a G.S. 150B-21.5(a)4)
<u>Registration Agency</u>	13	NCAC	14B .0102*	25:02 NCR
<u>Veterans Training Assistance Allowances</u>	13	NCAC	14B .0103	25:02 NCR
<u>Definition</u>	13	NCAC	14B .0104*	25:02 NCR
<u>Criteria for Apprenticeable Occupations</u>	13	NCAC	14B .0201*	25:02 NCR
<u>Program Performance Standards</u>	13	NCAC	14B .0203	25:02 NCR
<u>Registration Request Procedure</u>	13	NCAC	14B .0204*	25:02 NCR
<u>Registration of Apprentice and Agreement</u>	13	NCAC	14B .0209*	25:02 NCR
<u>Termination and Extension of Agreements</u>	13	NCAC	14B .0212*	25:02 NCR
<u>Standards for OJT Programs</u>	13	NCAC	14B .0301*	25:02 NCR
<u>Registration Request Procedure for OJT Programs</u>	13	NCAC	14B .0302*	25:02 NCR
<u>Eligibility and Procedure for Registration of OJT Programs</u>	13	NCAC	14B .0303*	25:02 NCR
<u>OJT Agreement</u>	13	NCAC	14B .0305*	25:02 NCR
<u>Registration of OJT Agreements</u>	13	NCAC	14B .0306	25:02 NCR
<u>Termination and Extension of Agreements</u>	13	NCAC	14B .0309*	25:02 NCR
<u>De-Registration of Program</u>	13	NCAC	14B .0402	25:02 NCR
<u>Voluntary De-Registration</u>	13	NCAC	14B .0403	25:02 NCR
<u>De-Registration</u>	13	NCAC	14B .0404*	25:02 NCR
<u>De-Registration for Inactivity</u>	13	NCAC	14B .0405*	25:02 NCR
<u>Reinstatement of Registration</u>	13	NCAC	14B .0406*	25:02 NCR
<u>Complaint Procedure</u>	13	NCAC	14B .0503*	25:02 NCR
<u>Noncompliance with Federal and State Equal Opportunity Re...</u>	13	NCAC	14B .0616*	25:02 NCR

ENVIRONMENT AND NATURAL RESOURCES, DEPARTMENT OF

<u>Sales of Alcohol or Controlled Substances</u>	15A	NCAC	28	.0502*	24:24 NCR
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ARCHITECTURE, BOARD OF

<u>Definitions</u>	21	NCAC	02	.0109*	25:01 NCR
<u>Architect and Firm Contact Information as on File with...</u>	21	NCAC	02	.0201*	25:01 NCR
<u>Name of Firm</u>	21	NCAC	02	.0205*	25:01 NCR
<u>Dishonest Conduct</u>	21	NCAC	02	.0208*	25:01 NCR
<u>Unprofessional Conduct</u>	21	NCAC	02	.0209*	25:01 NCR
<u>Annual Listing of Partnership</u>	21	NCAC	02	.0216	25:01 NCR
<u>Registered Limited Liability Partnership</u>	21	NCAC	02	.0219	25:01 NCR
<u>Application for Registration by Exam</u>	21	NCAC	02	.0301*	25:01 NCR
<u>Examination</u>	21	NCAC	02	.0302*	25:01 NCR
<u>Licensure by Reciprocity</u>	21	NCAC	02	.0303*	25:01 NCR
<u>Continuances Failure to Appear</u>	21	NCAC	02	.0701*	25:01 NCR
<u>Subpoenas</u>	21	NCAC	02	.0703*	25:01 NCR

MASSAGE AND BODYWORK THERAPY, BOARD OF

<u>Student Enrollment Agreement</u>	21	NCAC	30	.0629*	24:22 NCR
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MEDICAL BOARD

<u>Continuing Medical Education</u>	21	NCAC	32S	.0216	24:23 NCR
<u>Limited Physician Assistant License for Disasters and...</u>	21	NCAC	32S	.0219*	24:23 NCR
<u>Expedited Application for Physician Assistant Licensure</u>	21	NCAC	32S	.0220*	24:23 NCR

TITLE 04 – DEPARTMENT OF COMMERCE

04 NCAC 02R .0103 DEFINITIONS

(a) As used throughout this Chapter:

- (1) "Administrator" means the principal administrative officer of the Commission;
- (2) "Agent," "alcohol law enforcement agent," or "ALE agent" means an enforcement agent of the Alcohol Law Enforcement Division, North Carolina Department of Crime Control and Public Safety;
- (3) "Applicant" means any person who requests the issuance of a permit from the Commission;
- (4) "Chairman" means the chairman of the Commission;
- (5) "Contract carrier" means the carriers operated by the contractor on behalf of the state for the purpose of distributing spirituous liquors;
- (6) "Distressed liquor" means liquor which is not saleable due to adulteration or damage to the bottle, label or tax seal;
- (7) "Industry Member" means any manufacturer, bottler, importer, vendor, representative or wholesaler of alcoholic beverages;
- (8) "Operator" or "Contractor" means the person or persons responsible for carrying out the

storage and distribution of spirituous liquors at the state ABC warehouse;

(9) "Permit" means a written or printed authorization to engage in some phase of the alcoholic beverage industry that is issued by the Commission;

(10) "Permittee" means a person to whom a permit has been issued by the Commission; and

(11) "State ABC warehouse" means the contractor-operated facility or facilities storing spirituous liquors on behalf of the Commission pursuant to G.S. 18B-204, or, in cases of emergency, the facility or facilities operated by the state for the purpose of storing spirituous liquors.

(b) The definitions in Chapter 18B apply to the rules in this Chapter.

History Note: Authority G.S. 18B-207; 150B-4; Eff. January 1, 1982; Amended Eff. November 1, 2010; May 1, 1984.

04 NCAC 02R .0303 DISTRIBUTION, INSPECTION AND COPIES OF ABC LAWS

(a) Distribution of Rules and Statutes. The Commission shall distribute at no charge a copy of Chapter 18B of the General Statutes and the Commission's Rules to each local ABC board, each ALE agent, ABC officer and local law enforcement officer

employed by a contracting agency pursuant to G.S. 18B-501(f), and to each employee of the Commission.

(b) Purchasing Copies of Documents. Copies of the following documents are available from the Commission:

- (1) Chapter 18B of the General Statutes and the Commission's Rules;
- (2) Individual sections of Chapter 18B of the General Statutes;
- (3) Individual Commission Rules;
- (4) ABC Retail Guide; and
- (5) Public records retained by the Commission.

Copies of the above documents are available at the "actual cost" as defined in G.S. 132-6.2(b) for making the copies and the mailing cost if applicable. The Commission shall provide its "actual cost" on the Commission's website. Persons requesting copies of the above documents shall make payment by certified check, cashier's check or money order to the Commission prior to receiving any copies of the above documents.

History Note: Authority G.S. 12-3.1; 18B-207; 132-1; 132-1.1; 132-1.2; 132-1.3; 132-6;

Eff. July 1, 1992;

Amended Eff. November 1, 2010.

04 NCAC 02R .0304 FEE FOR COMPUTER SERVICES

Upon request, the Commission shall provide data processing services related to the public information maintained by the Commission, if feasible. Fees for such services are based on the actual cost to the Commission and shall be paid in advance by certified check, cashier's check or money order. The requester shall request and receive a quote from the Commission prior to payment of requested services.

History Note: Authority 18B-207; 150B-19(5)(e);

Eff. July 1, 1992;

Amended Eff. November 1, 2010.

04 NCAC 02R .0601 DEFINITION

History Note: Authority G.S. 18B-207; 150B-11; 150B-17;

Eff. January 1, 1982;

Amended Eff. May 1, 1984;

Repealed Eff. November 1, 2010.

04 NCAC 02R .0603 REQUEST FOR DECLARATORY RULING

(a) All requests for a declaratory ruling to contest the validity of a rule adopted by the Commission shall supply the following information:

- (1) name and address of person aggrieved;
- (2) statute or rule to which the request relates;
- (3) a brief statement of the manner in which the person aggrieved is affected or may be affected by the statute or rule;
- (4) names and addresses of additional third persons known to the person aggrieved who may possibly be affected by the requested ruling;

- (5) statement of all material facts;
- (6) statement whether or not the person aggrieved is aware of any pending Commission action or court action that may bear on the applicability of the statute or rule to the person's particular situation;
- (7) statement of the arguments and legal authority supporting the person's position on the applicability of this statute or rule; and
- (8) statement of whether or not a conference is desired and reasons for requesting conference.

The person aggrieved shall sign and verify the request before an officer qualified to administer oaths that the information supplied in the request form is true and accurate.

(b) The request and any supporting materials relevant to the request shall be sent to the North Carolina Alcoholic Beverage Control Commission, 4307 Mail Service Center, Raleigh, North Carolina 27699-4307.

(c) The Commission shall either deny the request, stating the reasons therefore, or issue a declaratory ruling. The Commission shall deny a request for a declaratory ruling when the Commission determines that:

- (1) the request does not comply with the procedural guidelines within Paragraphs (a) and (b) of this Rule;
- (2) the Commission has previously issued a declaratory ruling on substantially similar facts;
- (3) the Commission has previously issued a final agency decision in a contested case on substantially similar facts;
- (4) the facts underlying the request for a declaratory ruling were considered at the time of the adoption of the rule in question;
- (5) the subject matter is one concerning which the Commission is without authority to make a decision binding the Commission or the petitioner;
- (6) the petitioner is not aggrieved by the rule or statute in question or otherwise has no interest in the subject matter of the request;
- (7) there is reason to believe that the petitioner or some other person or entity materially connected to the subject matter of the request is acting in violation of the G.S. 18B or the rules adopted by the Commission; or
- (8) the subject matter of the request is involved in pending litigation, legislation, or rulemaking.

(d) The Commission shall not issue a declaratory ruling when the petitioner or his or her request is the subject of, or materially related to, an investigation by the Commission or contested case before the Commission.

History Note: Authority G.S. 18B-207; 150B-4;

Eff. January 1, 1982;

Amended Eff. November 1, 2010; May 1, 1984.

04 NCAC 02R .0905 DAILY DEPOSITS

(a) Each officer whose duty it is to collect or receive moneys of the local board shall deposit into an official depository the collections and receipts daily. If the local board gives its approval, deposits shall be required only when the moneys on hand are equal to or are greater than two hundred fifty dollars (\$250.00), but in any event a deposit shall be made on the last business day of the month. All deposits shall be made in an official depository. Deposits in an official depository shall be reported to the finance officer by means of a duplicate deposit ticket.

(b) A change fund necessary for daily operation of an ABC store shall be established by each local board and maintained in a secure place on the store's premises and shall not be subject to the daily deposit rule. Each change fund shall be maintained in the amount and place established by the local board.

(c) The finance officer may at any time audit the records maintained by any employee collecting sales revenue and may prescribe the form and detail of these records.

(d) The Commission shall waive or alter the daily deposit requirement for any local board where adequate security for the funds involved is demonstrated.

History Note: Authority G.S. 18B-702(d),(e); Eff. May 1, 1984; Amended Eff. November 1, 2010.

04 NCAC 02R .0907 ANNUAL INDEPENDENT FINANCIAL AUDIT

(a) Each local board shall have its accounts audited after the close of each fiscal year by an independent certified public accountant. The auditor shall be selected by and report to the local board. The audit contract shall be on a form provided by the Commission. The audit report is due to the Commission ninety days after the end of the fiscal year. The financial officer shall file one unbound copy of the audit report and management letter with the Commission.

(b) Each officer and employee of the local board having custody of public money or responsibility for keeping records of financial or fiscal affairs shall produce books and records requested by the auditor or the Commission and shall divulge any information relating to fiscal affairs that they request. If any member of the local board or any employee conceals, falsifies or refuses to deliver or divulge any books, records, or information with intent to mislead the auditor or impede or interfere with the audit, he is subject to removal for cause pursuant to G.S. 18B-203(a)(8).

(c) Disclosure of the distribution of profits shall include every element that is applicable under G.S. 18B-805 in a schedule prepared for inclusion with the annual audited financial statements. In addition the schedule shall be supported by a listing of each person who receives moneys from the local board, the date of payment and, if applicable, the purpose for which the payment was made and restrictions on use of the payment. The listing shall be so designated to provide the same totals as were used in the schedule for each type of distribution.

History Note: Authority G.S. 18B-702(c),(e); Eff. May 1, 1984;

Amended Eff. November 1, 2010.

04 NCAC 02R .1005 WAREHOUSE: PRESENCE OF UNAUTHORIZED PERSON PROHIBITED

Only personnel employed by a local board may enter a local board's warehouse, except for:

- (1) truck drivers who need to enter in order to verify the amount of merchandise delivered;
- (2) members of the Commission and its representatives;
- (3) local board members; and
- (4) persons with approval from the local board or general manager; provided, they are accompanied by a board member or employee of the local board.

History Note: Authority G.S. 18B-207; 18B-807; Eff. January 1, 1982; Amended Eff. November 1, 2010.

04 NCAC 02R .1103 AUDITS TO BE FORWARDED TO COMMISSION

History Note: Authority G.S. 18B-205; 18B-207; 18B-702(c); Eff. January 1, 1982; Repealed Eff. November 1, 2010.

04 NCAC 02R .1203 APPROVAL OF NEW STORES

(a) Notice to Commission. The opening of any new ABC stores shall not be approved by the Commission unless at least a 30 day notice is given to the Chairman as to the intended location of the store and until a public notice of the intention to open such ABC store has been posted for 30 days at such location.

(b) Sign Requirements. In order to meet the public notice requirements of Paragraph (a) of this Rule, the local board shall post at least one sign at the proposed new store site in accordance with all the following requirements:

- (1) Dimensions of the sign shall total at least nine square feet;
- (2) The board shall state on the sign its intention to open an ABC store on the site and shall state the entity and its phone number to provide public comments;
- (3) Lettering shall be at least four inches in height and background colors shall be of sufficient contrast so that the notice shall be legible to passersby; and
- (4) The sign shall be posted within 10 feet of the property line that is parallel to the public road or sidewalk that will be in front of the proposed store, or if the proposed store will be in an existing shopping center, the sign shall be posted on the front exterior of the existing storefront or building. Lettering on the sign shall face the public road or sidewalk, or if within an existing shopping center, the lettering shall face the exterior of the existing storefront or building.

*History Note: Authority G.S. 18B-207; 18B-801;
Eff. January 1, 1982;
Amended Eff. November 1, 2010; July 1, 1992.*

04 NCAC 02R .1301 DEFINITIONS

*History Note: Authority G.S. 18B-101; 18B-207;
Eff. January 1, 1982;
Repealed Eff. November 1, 2010.*

04 NCAC 02R .1405 COMMEMORATIVE BOTTLES

The Commission shall approve local boards' orders and sales of specially designed bottles commemorating particular events, occasions, or ceremonies, provided advertising borne upon commemorative bottles is limited to commemorating historical events of the local board and non-profit, charitable enterprises (i.e., ordinary profit-oriented businesses are not permitted to advertise themselves or their products via commemorative bottles.)

*History Note: Authority G.S. 18B-207; 18B-807;
Eff. January 1, 1982;
Amended Eff. November 1, 2010.*

04 NCAC 02R .1407 PAYMENT

- (a) Local boards shall remit full payment of the contractor's statement of account pertaining to the bailment fee within 30 days of receipt of the statement.
- (b) Local boards shall remit full payment of the contractor's statement of account pertaining to the bailment surcharge within 15 days of receipt of the statement.
- (c) Local boards shall remit full payment of the distiller's invoice within 30 days of delivery of the liquor.
- (d) Local boards that obtain spirituous liquor from another local board pursuant to 04 NCAC 02R .1302(e) shall remit full payment within 15 days of the transaction.

*History Note: Authority G.S. 18B-207; 18B-702(e);
Eff. May 1, 1984;
Amended Eff. November 1, 2010; July 1, 1992.*

04 NCAC 02R .1502 MARKUP FORMULA

- (a) On every delivered case of spirituous liquors, there shall be an added markup, which is derived by the following formula:
 - (1) local board markup, plus
 - (2) (one added to the local board markup) multiplied by the state excise tax, plus
 - (3) (one added to the local board markup) multiplied by 3.5 percent, equals
 - (4) the total markup.
- (b) The selling price of spirituous liquor is derived by the following steps:
 - (1) Determine the subtotal case cost by adding base case cost, freight and bailment together;
 - (2) Multiply the subtotal case cost by the total markup calculated in Paragraph (a) of this Rule, to four decimals;
 - (3) Add the bailment surcharge;

- (4) Divide the result by the number of bottles in the case;
- (5) Add five cents (\$.05) rehabilitation tax [Add one cent (\$.01) for bottles 50 ml. or less];
- (6) Add five cents (\$.05) for the local board charge [Add one cent (\$.01) for bottles 50 ml. or less];
- (7) Round the result to an integer evenly divisible by five cents. The break point is one cent, one mill.
- (8) The result is the retail selling price per bottle.

*History Note: Authority G.S. 18B-203(a)(3); 18B-207; 18B-804;
Eff. January 1, 1982;
Amended Eff. November 1, 2010; November 1, 1993; August 1, 1991; November 1, 1988; June 1, 1986.*

04 NCAC 02R .1701 REMOVAL OF BEVERAGES FROM ABC STORES

- (a) Spirituous liquor, either distressed or otherwise, shall not leave the custody of a local board after receipt unless:
 - (1) The spirituous liquor is sold at retail;
 - (2) The liquor is returned to the state ABC warehouse; or
 - (3) The liquor is purchased, exchanged, or otherwise obtained by another local board as provided by 04 NCAC 02R .1302(e).

Any spirituous liquor otherwise leaving the local board is nontaxpaid spirituous liquor.

- (b) Distressed Liquor. Distressed liquor shall be given to a public or private hospital for medicinal purposes only or destroyed and the destruction witnessed by the manager or his designee and a distiller representative. A Destruction of Unsalable Merchandise Report shall be completed and signed by the witnessing parties. A written copy of the report shall be sent to the distiller and a written or electronic copy shall be sent quarterly to the Commission. The original shall be retained by the local board for a period of three years.
- (c) No sales of alcoholic beverages shall be made to employees, board members or other retail customers on credit. This does not prohibit purchases made by the use of credit cards.

*History Note: Authority G.S. 18B-806; 18B-807;
Eff. January 1, 1982;
Amended Eff. January 1, 2011; July 1, 1992; May 1, 1984.*

04 NCAC 02R .1708 PURCHASE-TRANSPORTATION PERMITS

A copy of all Purchase-Transportation Permits shall be maintained by local boards for a period of one year following issuance. A copy of all Mixed Beverages Purchase-Transportation Permit/Invoice forms shall be retained by the local board for a period of at least three years.

*History Note: Authority G.S. 18B-207; 18B-303; 18B-403; 18B-404; 18B-807;
Eff. January 1, 1982;
Amended Eff. November 1, 2010; July 1, 1992; May 1, 1984.*

04 NCAC 02R .1710 CREDIT CARD SALES

*History Note: Authority G.S. 18B-203(b); 18B-702(e); 18B-807;
Eff. July 1, 1992;
Repealed Eff. November 1, 2010.*

04 NCAC 02R .1801 PURCHASE-TRANSPORTATION PERMITS: WINE: LIQUOR:

(a) Form. The Purchase-Transportation Permit shall be issued on a printed three-part form and shall specify the following information on the face of the permit:

- (1) the name and location of the store from which the purchase is to be made;
- (2) whether the purchase is for unfortified wine, fortified wine or spirituous liquor;
- (3) destination of the alcoholic beverages including name and address of location;
- (4) Special Occasions Permit number of a location, if alcoholic beverages are purchased for a special occasion;
- (5) time and date of commencement and conclusion of special occasion, if any;
- (6) quantity and type of alcoholic beverages purchased;
- (7) signature of local ABC official issuing the permit;
- (8) name, address and driver's license number of purchaser.

The form shall contain a statement that the permit is valid for only one purchase on the date shown and will expire at 9:30 p.m. on the date of purchase and a further statement that the permit shall accompany the beverages during transport and storage and be exhibited to any law enforcement officer upon request.

(b) A local board issuing a Purchase-Transportation Permit shall retain one copy of the permit in its files for a period of one year and give the purchaser two copies, one of which the purchaser shall give the store from which the alcoholic beverages are purchased.

*History Note: Authority G.S. 18B-207; 18B-303(a); 18B-403;
Eff. January 1, 1982;
Amended Eff. November 1, 2010; July 1, 1992; May 1, 1984.*

04 NCAC 02R .1802 MIXED BEVERAGE PERMIT/INVOICE FORM

(a) Providing Form. A local board in a jurisdiction in which the sale of mixed beverages is lawful shall provide to a mixed beverages permittee ordering and purchasing spirituous liquor for resale in mixed beverages a Purchase-Transportation Permit/Invoice Form for every purchase of liquor by the permittee.

(b) Contents of Form; Copies. Each Purchase-Transportation Permit/Invoice Form shall be printed in duplicate and shall show on the face of the form the information required by 04 NCAC 02S .0502. The local board shall retain one copy in its permanent records for a period of three years and shall give one

copy of the permit/invoice to the mixed beverages permittee or designated employee to accompany the liquor during transport.

*History Note: Authority G.S. 18B-205; 18B-207; 18B-404(b);
Eff. January 1, 1982;
Amended Eff. November 1, 2010; May 1, 1984.*

04 NCAC 02R .1803 CABINET PERMITTEES; PURCHASE-TRANSPORTATION PERMITS

(a) Approved Container Sizes. Local ABC Boards may sell 50 milliliter, 100 milliliter, 200 milliliter, 355 milliliter, and 375 milliliter containers of liquor to a hotel that has been issued a Guest Room Cabinet Permit.

(b) Purchase-Transportation Permits. A local board receiving an order from a guest room cabinet permittee for liquor intended for resale from guest room cabinets shall provide a separate Purchase-Transportation Permit/Invoice form for the permittee in the same manner as for sales of liquor for mixed beverages permittees, as specified in Rule .1802 of this Section. The Purchase-Transportation Permit/Invoice shall contain all the information required by 04 NCAC 02S .0502(b), and in addition, shall show on the face of the form the permittee's Guest Room Cabinet Permit number. One copy of the Purchase-Transportation Permit/Invoice form for guest room cabinet permittees shall be retained by the local board for a period of three years.

(c) Minimum Orders. A local board may require a guest room cabinet permittee to make a minimum purchase of multi-bottle packages or "sleeves" packaged by the manufacturer or bottler, but may not require minimum purchases in case quantities except as authorized by Rule .1404 of this Subchapter.

*History Note: Authority G.S. 18B-205; 18B-207; 18B-404(d); 18B-1001;
Eff. July 1, 1992;
Amended Eff. November 1, 2010.*

04 NCAC 02R .1902 DESIGNATION OF STORE

*History Note: Authority G.S. 18B-207; 18B-404(c);
Eff. January 1, 1982;
Amended Eff. May 1, 1984;
Repealed Eff. November 1, 2010.*

TITLE 10A – DEPARTMENT OF HEALTH AND HUMAN SERVICES

10A NCAC 14A .0103 DECLARATORY RULINGS

(a) The Director of the Division of Health Service Regulation may make declaratory rulings. All requests for declaratory rulings shall be written and submitted to: the Director, Division of Health Service Regulation, 2701 Mail Service Center, Raleigh, North Carolina, 27699-2701.

(b) All requests for a declaratory ruling must include the following information:

- (1) name and address of the petitioner;

- (2) statute or rule to which petition relates;
- (3) concise statement of the manner in which petitioner is aggrieved by the rule or statute or its potential application to him; and
- (4) the consequences of a failure to issue a declaratory ruling.

(c) Whenever the Director believes for good cause that the issuance of a declaratory ruling will not serve the public interest, he may refuse to issue one. When good cause is deemed to exist, the Director shall notify the petitioner of his decision in writing stating reasons for the denial of a declaratory ruling.

(d) The Director may refuse to consider the validity of a rule and therefore refuse to issue a declaratory ruling:

- (1) if there has been similar controlling factual determination in a contested case, or if the factual context being raised for a declaratory ruling was specifically considered upon adoption of the rule being questioned as evidence by the rulemaking record; or
- (2) if circumstances stated in the request or otherwise known to the agency show that a contested case hearing would presently be appropriate.

(e) Where a declaratory ruling is deemed to be in the public interest, the Director shall issue the ruling within 60 days of receipt of the petition.

(f) A declaratory ruling procedure may consist of written submissions, oral hearings, or such other procedure as may be appropriate in a particular case.

(g) The Director may issue notice to persons who might be affected by the ruling that written comments may be submitted or oral presentations received at a scheduled hearing.

(h) A record of all declaratory ruling procedures shall be maintained for as long as the ruling has validity. This record will contain:

- (1) the original request,
- (2) reasons for refusing to issue a ruling,
- (3) all written memoranda and information submitted,
- (4) any written minutes or audio tape or other record of the oral hearing, and
- (5) a statement of the ruling.

This record will be maintained in a file at the Division Office, Division of Health Service Regulation, 2701 Mail Service Center, Raleigh, North Carolina, 27699-2701 and will be available for public inspection during regular office hours.

History Note: Authority G.S. 143B-10; 150B-4; Eff. November 1, 1989; Amended Eff. November 1, 2010.

10A NCAC 14C .1202 INFORMATION REQUIRED OF APPLICANT

(a) An applicant that proposes new or expanded intensive care services shall use the Acute Care Facility/Medical Equipment application form.

(b) An applicant proposing new or expanded intensive care services shall submit the following information:

- (1) the number of intensive care beds currently operated by the applicant and the number of intensive care beds to be operated following completion of the proposed project;
- (2) documentation of the applicant's experience in treating patients at the facility during the past twelve months, including:
 - (A) the number of inpatient days of care provided to intensive care patients;
 - (B) the number of patients initially treated at the facility and referred to other facilities for intensive care services; and
 - (C) the number of patients initially treated at other facilities and referred to the applicant's facility for intensive care services.
- (3) the projected number of patients to be served and inpatient days of care to be provided by county of residence by specialized type of intensive care for each of the first twelve calendar quarters following completion of the proposed project, including all assumptions and methodologies;
- (4) data from actual referral sources or correspondence from the proposed referral sources documenting their intent to refer patients to the applicant's facility;
- (5) documentation which demonstrates the applicant's capability to communicate effectively with emergency transportation agencies;
- (6) documentation of written policies and procedures regarding the provision of care within the intensive care unit, which includes the following:
 - (A) the admission and discharge of patients;
 - (B) infection control;
 - (C) safety procedures; and
 - (D) scope of services.
- (7) documentation that the proposed service shall be operated in an area organized as a physically and functionally distinct entity, separate from the rest of the facility, with controlled access;
- (8) documentation to show that the services shall be offered in a physical environment that conforms to the requirements of federal, state, and local regulatory bodies;
- (9) a floor plan of the proposed area drawn to scale; and
- (10) documentation of a means for observation by unit staff of all patients in the unit from at least one vantage point.

History Note: Authority G.S. 131E-177(1); 131E-183; Eff. January 4, 1994; Amended Eff. November 1, 1996;

*Temporary Amendment Eff. February 1, 2010;
Amended Eff. November 1, 2010.*

10A NCAC 14C .1402 INFORMATION REQUIRED OF APPLICANT

(a) An applicant proposing to develop a Level I nursery in the facility for the first time or new or additional Level II, III or IV neonatal beds shall use the Acute Care Facility/Medical Equipment application form.

(b) An applicant proposing to develop a Level I nursery in the facility for the first time or new or additional Level II, III or IV neonatal beds shall provide the following information:

- (1) the current number of Level I nursery bassinets, Level II beds, Level III beds and Level IV beds operated by the applicant;
- (2) the proposed number of Level I nursery bassinets, Level II beds, Level III beds and Level IV beds to be operated following completion of the proposed project;
- (3) evidence of the applicant's experience in treating the following patients at the facility during the past twelve months, including:
 - (A) the number of obstetrical patients treated at the acute care facility;
 - (B) the number of neonatal patients treated in Level I nursery bassinets, Level II beds, Level III beds and Level IV beds, respectively;
 - (C) the number of inpatient days at the facility provided to obstetrical patients;
 - (D) the number of inpatient days provided in Level II beds, Level III beds and Level IV beds, respectively;
 - (E) the number of high-risk obstetrical patients treated at the applicant's facility and the number of high-risk obstetrical patients referred from the applicant's facility to other facilities or programs; and
 - (F) the number of neonatal patients referred to other facilities for services, identified by required level of neonatal service (i.e. Level II, Level III or Level IV);
- (4) the projected number of neonatal patients to be served identified by Level I, Level II, Level III and Level IV neonatal services for each of the first three years of operation following the completion of the project, including the methodology and assumptions used for the projections;
- (5) the projected number of patient days of care to be provided in Level I bassinets, Level II beds, Level III beds, and Level IV beds, respectively, for each of the first three years of operation following completion of the project, including the methodology and assumptions used for the projections;

- (6) if proposing to provide Level I or Level II neonatal services in the facility for the first time, documentation that at least 90 percent of the anticipated patient population is within 30 minutes driving time one-way from the facility;
- (7) if proposing to provide Level I or Level II neonatal services in the facility for the first time, documentation of a written plan to transport infants to Level III or Level IV neonatal services as the infant's care requires;
- (8) evidence that the applicant shall have access to a transport service with at least the following components:
 - (A) trained personnel;
 - (B) transport incubator;
 - (C) emergency resuscitation equipment;
 - (D) oxygen supply, monitoring equipment and the means of administration;
 - (E) portable cardiac and temperature monitors; and
 - (F) a mechanical ventilator;
- (9) documentation that the proposed service shall be operated in an area organized as a physically and functionally distinct entity with controlled access;
- (10) documentation to show that the new or additional Level I, Level II, Level III or Level IV neonatal services shall be offered in a physical environment that conforms to the requirements of federal, state, and local regulatory bodies;
- (11) a floor plan of the proposed area drawn to scale;
- (12) documentation of visual observation by unit staff of all patients from one or more vantage points; and
- (13) documentation that the floor space allocated to each bed and bassinet shall accommodate equipment and personnel to meet anticipated contingencies.

(c) If proposing to provide Level III or Level IV neonatal services in the facility for the first time, the applicant shall also provide the following information:

- (1) documentation that at least 90 percent of the anticipated patient population is within 90 minutes driving time one-way from the facility, with the exception that there shall be a variance from the 90 percent standard for facilities which demonstrate that they provide specialized levels of neonatal care to a large and geographically diverse population, or facilities which demonstrate the availability of air ambulance services for neonatal patients;
- (2) evidence that existing and approved neonatal services in the applicant's defined neonatal service area are unable to accommodate the applicant's projected need for additional Level III and Level IV services;

- (3) an analysis of the proposal's impact on existing Level III and Level IV neonatal services which currently serve patients from the applicant's primary service area;
- (4) the availability of high risk OB services at the site of the applicant's planned neonatal service;
- (5) copies of written policies which provide for parental participation in the care of their infant, as the infant's condition permits, in order to facilitate family adjustment and continuity of care following discharge; and
- (6) copies of written policies and procedures regarding the scope and provision of care within the neonatal service, including the following:
 - (A) the admission and discharge of patients;
 - (B) infection control;
 - (C) safety practices;
 - (D) the triaging of patients requiring consultations, including the transfer of patients to another facility; and
 - (E) the protocols for obtaining emergency physician care for a sick infant.

(b) If an applicant proposes to develop a new Level III or Level IV service, the applicant shall document that an unmet need exists in the applicant's defined neonatal service area, unless the State Medical Facilities Plan includes a need determination for neonatal beds in the service area. The need for Level III and Level IV beds shall be computed for the applicant's neonatal service area by:

- (1) identifying the annual number of live births occurring at all hospitals within the proposed neonatal service area, using the latest available data compiled by the State Center for Health Statistics;
- (2) identifying the low birth weight rate (percent of live births below 2,500 grams) for the births identified in (1) of this Paragraph, using the latest available data compiled by the State Center for Health Statistics;
- (3) dividing the low birth weight rate identified in (2) of this Paragraph by .08 and subsequently multiplying the resulting quotient by four; and
- (4) determining the need for Level III and Level IV beds in the proposed neonatal service area as the product of:
 - (A) the product derived in (3) of this Paragraph, and
 - (B) the quotient resulting from the division of the number of live births in the initial year of the determination identified in (1) of this Paragraph by the number 1000.

History Note: Authority G.S. 131E-177(1); 131E-183; Temporary Adoption Eff. September 1, 1993 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner; Eff. January 4, 1994; Amended Eff. November 1, 1996; Temporary Amendment Eff. March 15, 2002; Amended Eff. April 1, 2003; Temporary Amendment Eff. February 1, 2010; Amended Eff. November 1, 2010.

10A NCAC 14C .1403 PERFORMANCE STANDARDS

(a) An applicant shall demonstrate that the proposed project is capable of meeting the following standards:

- (1) if an applicant is proposing to increase the total number of neonatal beds (i.e., the sum of Level II, Level III and Level IV beds), the overall average annual occupancy of the combined number of existing Level II, Level III and Level IV beds in the facility is at least 75 percent, over the 12 months immediately preceding the submittal of the proposal;
- (2) if an applicant is proposing to increase the total number of neonatal beds (i.e., the sum of Level II, Level III and Level IV beds), the projected overall average annual occupancy of the combined number of Level II, Level III and Level IV beds proposed to be operated during the third year of operation of the proposed project shall be at least 75 percent; and
- (3) The applicant shall document the assumptions and provide data supporting the methodology used for each projection in this rule.

History Note: Authority G.S. 131E-177(1); 131E-183(b); Temporary Adoption Eff. September 1, 1993 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner; Eff. January 4, 1994; Temporary Amendment Eff. March 15, 2002; Amended Eff. April 1, 2003; Temporary Amendment Eff. February 1, 2009; Amended Eff. November 1, 2009; Temporary Amendment Eff. February 1, 2010; Amended Eff. November 1, 2010.

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 an 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 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 specialized surgical procedures which:
 - (a) utilize a heart-lung bypass machine (the "pump");
 - (b) are designed to correct congenital or acquired cardiac and coronary disease; and
 - (c) are identified by Medicare Diagnostic Related Group ("DRG") numbers 104, 105, 106, 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 in the State Medical Facilities Plan shall not be limited to 45 road miles.

History Note: Authority G.S. 131E-177(1); 131E-183; Eff. January 1, 1987; Amended Eff. November 1, 1989; Temporary Amendment Eff. September 1, 1993 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner; Amended Eff. November 1, 1996; January 4, 1994; 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; Amended Eff. November 1, 2010.

10A NCAC 14C .1703 PERFORMANCE STANDARDS

The applicant shall demonstrate that the proposed project is capable of meeting the following standards:

- (1) an applicant's existing and new or additional heart-lung bypass machines shall be utilized at an annual rate of 200 open heart surgical procedures per machine, measured during the

- twelfth quarter following completion of the project;
- (2) at least 50 percent of the projected open heart surgical procedures shall be performed on patients residing within the primary open heart surgery service area;
- (3) the applicant's projected utilization and proposed staffing patterns are such that each open heart surgical team shall perform at least 150 open heart surgical procedures in the third year following completion of the project;
- (4) the applicant shall document the assumptions and provide data supporting the methodology used to make these projections; and
- (5) heart-lung bypass machines that have been acquired for non-surgical use or for non-heart surgical procedure use shall not be utilized in the performance of open heart surgical procedures.

History Note: Authority G.S. 131E-177(1); 131E-183(b); Eff. January 1, 1987; Amended Eff. November 1, 1989; Temporary Amendment Eff. September 1, 1993 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner; Amended Eff. January 4, 1994; Temporary Amendment January 1, 1999; Temporary Eff. January 1, 1999 expired October 12, 1999; Temporary Amendment Eff. January 1, 2000 and shall expire on the date 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. January 1, 2002; Amended Eff. April 1, 2003; Temporary Amendment Eff. February 1, 2010; Amended Eff. November 1, 2010.

10A NCAC 14C .1902 INFORMATION REQUIRED OF APPLICANT

- (a) An applicant proposing to acquire radiation therapy equipment shall use the Acute Care Facility/Medical Equipment application form.
- (b) An applicant proposing to acquire radiation therapy equipment shall provide the following information:
 - (1) a list of all the radiation therapy equipment to be acquired and documentation of the capabilities and capacities of each item of equipment;
 - (2) documentation of the purchase price and fair market value of each piece of radiation therapy equipment, each simulator, and any other related equipment proposed to be acquired;
 - (3) the projected number of patient treatments by intensity modulated radiation treatment (IMRT); stereotactic radiosurgery; simple, intermediate and complex radiation treatments to be performed on each piece of radiation

- therapy equipment for each of the first three years of operation following the completion of the proposed project and documentation of all assumptions by which utilization is projected;
- (4) documentation that the proposed radiation therapy equipment shall be operational at least seven hours per day, five days a week;
 - (5) documentation that no more than one simulator is available for every two linear accelerators in the applicant's facility, except that an applicant that has only one linear accelerator may have one simulator;
 - (6) documentation that the services shall be offered in a physical environment that conforms to the requirements of federal, state, and local regulatory bodies;
 - (7) the projected total number of radiation treatment patients by county that will be treated in the facility in each of the first three years of operation following completion of the proposed project;
 - (8) the projected number of radiation treatment patients that will be treated for palliation in each of the first three years of operation following completion of the proposed project; and
 - (9) the projected number of radiation treatment patients that will be treated for cure in each of the first three years of operation following completion of the proposed project.
- (c) An applicant proposing to acquire a linear accelerator for development of a multidisciplinary prostate health center pursuant to a need determination for a demonstration project in the State Medical Facilities Plan shall provide the following information:
- (1) description of all services to be provided by the proposed multidisciplinary prostate health center, including a description of each of the following services:
 - (A) urology services,
 - (B) medical oncology services,
 - (C) biofeedback therapy,
 - (D) chemotherapy,
 - (E) brachytherapy, and
 - (F) living skills counseling and therapy;
 - (2) documentation that urology services, medical and radiation oncology services, biofeedback therapy, brachytherapy and post-treatment living skills counseling and therapy will be provided in the same building;
 - (3) description of any services that will be provided by other facilities or in different buildings;
 - (4) demographics of the population in the county in which the proposed multidisciplinary prostate health center will be located, including:
 - (A) percentage of the population in the county that is African American,
 - (B) the percentage of the population in the county that is male,
 - (C) the percentage of the population in the county that is African American male,
 - (D) the incidence of prostate cancer for the African American male population in the county, and
 - (E) the mortality rate from prostate cancer for the African American male population in the county;
 - (5) documentation that the proposed center is located within walking distance of an established bus route and within five miles of a minority community;
 - (6) documentation that the multiple medical disciplines in the center will collaborate to create and maintain a single or common medical record for each patient and conduct multidisciplinary conferences regarding each patient's treatment and follow-up care;
 - (7) documentation that the center will establish its own prostate/urological cancer tumor board for review of cases;
 - (8) copy of the center's written policies that prohibit the exclusion of services to any patient on the basis of age, race, religion, disability or the patient's ability to pay;
 - (9) copy of written strategies and activities the center will follow to assure its services will be accessible by patients without regard to their ability to pay;
 - (10) description of the center's outreach activities and the manner in which they complement existing outreach initiatives;
 - (11) documentation of number and type of clinics to be conducted to screen patients at risk for prostate cancer;
 - (12) written description of patient selection criteria, including referral arrangements for high-risk patients;
 - (13) commitment to prepare an annual report at the end of each of the first three operating years, to be submitted to the Medical Facilities Planning Section and the Certificate of Need Section, that shall include:
 - (A) the total number of patients treated;
 - (B) the number of African American persons treated;
 - (C) the number of persons in other minority populations treated; and
 - (D) the number of insured, underinsured and uninsured patients served by type of payment category;
 - (14) documentation of arrangements made with a third party researcher to evaluate, during the fourth operating year of the center, the efficacy of the clinical and outreach initiatives on prostate and urological cancer treatment, and

develop recommendations regarding the advantages and disadvantages of replicating the project in other areas of the State. The results of the evaluation and recommendations shall be submitted in a report to the Medical Facilities Planning Section and Certificate of Need Section in the first quarter of the fifth operating year of the demonstration project; and

- (15) if the third party researcher is not a historically black university, document the reasons for using a different researcher for the project.

History Note: Authority G.S. 131E-177; 131E-183; NC 2009 State Medical Facilities Plan, Chapter 9: Radiation Therapy Services – Linear Accelerator;

Temporary Adoption Eff. September 1, 1993 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;

Eff. January 4, 1994;

Amended Eff. November 1, 1996;

Temporary Amendment Eff. January 1, 1999;

Temporary Amendment Eff. January 1, 1999 Expired on October 12, 1999;

Temporary Amendment Eff. January 1, 2000;

Temporary Amendment effective January 1, 2000 amends and replaces a permanent rulemaking originally proposed to be effective August 2000;

Amended Eff. April 1, 2001;

Temporary Amendment Eff. January 1, 2005;

Amended Eff. November 1, 2005;

Temporary Amendment Eff. February 1, 2009;

Amended Eff. November 1, 2009;

Temporary Amendment Eff. February 1, 2010;

Amended Eff. November 1, 2010.

10A NCAC 14C .2102 INFORMATION REQUIRED OF APPLICANT

(a) An applicant proposing to establish a new ambulatory surgical facility, to establish a new campus of an existing facility, to establish a new hospital, to convert a specialty ambulatory surgical program to a multispecialty ambulatory surgical program or to add a specialty to a specialty ambulatory surgical program shall identify each of the following specialty areas that will be provided in the facility:

- (1) gynecology;
- (2) otolaryngology;
- (3) plastic surgery;
- (4) general surgery;
- (5) ophthalmology;
- (6) orthopedic;
- (7) oral surgery; and
- (8) other specialty area identified by the applicant.

(b) An applicant proposing to increase the number of operating rooms in a service area, to convert a specialty ambulatory surgical program to a multispecialty ambulatory surgical program or to add a specialty to a specialty ambulatory surgical program shall provide the following information:

- (1) the number and type of operating rooms in each facility which the applicant or a related entity owns a controlling interest in and is located in the service area, (separately identifying the number of dedicated open heart and dedicated C-Section rooms);
- (2) the number and type of operating rooms to be located in each facility which the applicant or a related entity owns a controlling interest in and is located in the service area after completion of the proposed project and all previously approved projects related to these facilities (separately identifying the number of dedicated open heart and dedicated C-Section rooms);
- (3) the number of inpatient surgical cases, excluding trauma cases reported by Level I, II, or III trauma centers, cases reported by designated burn intensive care units, and cases performed in dedicated open heart and dedicated C-section rooms, and the number of outpatient surgical cases performed in the most recent 12 month period for which data is available, in the operating rooms in each facility listed in response to Subparagraphs (b)(1) and (b)(2) of this Rule;
- (4) the number of inpatient surgical cases, excluding trauma cases reported by level I, II, or III trauma centers, cases reported by designated burn intensive care units and cases performed in dedicated open heart and dedicated C-section rooms, and the number of outpatient surgical cases projected to be performed in each of the first three operating years of the proposed project, in each facility listed in response to Subparagraphs (b)(1) and (b)(2) of this Rule;
- (5) a description of and documentation to support the assumptions and methodology used in the development of the projections required by this Rule;
- (6) the hours of operation of the proposed new operating rooms;
- (7) if the applicant is an existing facility, the average reimbursement received per procedure for the 20 surgical procedures most commonly performed in the facility during the preceding 12 months and a list of all services and items included in the reimbursement;
- (8) the projected average reimbursement to be received per procedure for the 20 surgical procedures which the applicant projects will be performed most often in the facility and a list of all services and items included in the reimbursement; and
- (9) identification of providers of pre-operative services and procedures which will not be included in the facility's charge.

(c) An applicant proposing to relocate existing or approved operating rooms within the same service area shall provide the following information:

- (1) the number and type of existing and approved operating rooms in each facility in which the number of operating rooms will increase or decrease (separately identifying the number of dedicated open heart and dedicated C-Section rooms);
- (2) the number and type of operating rooms to be located in each affected facility after completion of the proposed project and all previously approved projects related to these facilities (separately identifying the number of dedicated open heart and dedicated C-Section rooms);
- (3) the number of inpatient surgical cases, excluding trauma cases reported by Level I, II, or III trauma centers, cases reported by designated burn intensive care units, and cases performed in dedicated open heart and dedicated C-section rooms, and the number of outpatient surgical cases performed in the most recent 12 month period for which data is available, in the operating rooms in each facility listed in response to Subparagraphs (c)(1) and (c)(2) of this Rule;
- (4) the number of inpatient surgical cases, excluding trauma cases reported by level I, II, or III trauma centers, cases reported by designated burn intensive care units and cases performed in dedicated open heart and dedicated C-section rooms, and the number of outpatient surgical cases projected to be performed in each of the first three operating years of the proposed project, in each facility listed in response to Subparagraphs (c)(1) and (c)(2) of this Rule;
- (5) a detailed description of and documentation to support the assumptions and methodology used in the development of the projections required by this Rule;
- (6) the hours of operation of the facility to be expanded;
- (7) the average reimbursement received per procedure for the 20 surgical procedures most commonly performed in each affected facility during the preceding 12 months and a list of all services and items included in the reimbursement;
- (8) the projected average reimbursement to be received per procedure for the 20 surgical procedures which the applicant projects will be performed most often in the facility to be expanded and a list of all services and items included in the reimbursement; and
- (9) identification of providers of pre-operative services and procedures which will not be included in the facility's charge.

(d) An applicant proposing to establish a new single specialty separately licensed ambulatory surgical facility pursuant to the demonstration project in the 2010 State Medical Facilities Plan shall provide:

- (1) the single surgical specialty area in which procedures will be performed in the proposed ambulatory surgical facility;
- (2) a description of the ownership interests of physicians in the proposed ambulatory surgical facility;
- (3) a commitment that the Medicare allowable amount for self-pay and Medicaid surgical cases minus all revenue collected from self-pay and Medicaid surgical cases shall be at least seven percent of the total revenue collected for all surgical cases performed in the proposed facility;
- (4) for each of the first three full fiscal years of operation, the projected number of self-pay surgical cases;
- (5) for each of the first three full fiscal years of operation, the projected number of Medicaid surgical cases;
- (6) for each of the first three full fiscal years of operation, the total projected Medicare allowable amount for the self-pay surgical cases to be served in the proposed facility, i.e. provide the projected Medicare allowable amount per self-pay surgical case and multiply that amount by the projected number of self-pay surgical cases;
- (7) for each of the first three full fiscal years of operation, the total projected Medicare allowable amount for the Medicaid surgical cases to be served in the facility, i.e. provide the projected Medicare allowable amount per Medicaid surgical case and multiply that amount by the projected number of Medicaid surgical cases;
- (8) for each of the first three full fiscal years of operation, the projected revenue to be collected from the projected number of self-pay surgical cases;
- (9) for each of the first three full fiscal years of operation, the projected revenue to be collected from the projected number of Medicaid surgical cases;
- (10) for each of the first three full fiscal years of operation, the projected total revenue to be collected for all surgical cases performed in the proposed facility;
- (11) a commitment to report utilization and payment data for services provided in the proposed ambulatory surgical facility to the statewide data processor, as required by G.S. 131E-214.2;
- (12) a description of the system the proposed ambulatory surgical facility will use to measure and report patient outcomes for the

- purpose of monitoring the quality of care provided in the facility;
- (13) descriptions of currently available patient outcome measures for the surgical specialty to be provided in the proposed facility, if any exist;
 - (14) if patient outcome measures are not currently available for the surgical specialty area, the applicant shall develop its own patient outcome measures to be used for monitoring and reporting the quality of care provided in the proposed facility, and shall provide in its application a description of the measures it developed;
 - (15) a description of the system the proposed ambulatory surgical facility will use to enhance communication and ease data collection, e.g. electronic medical records;
 - (16) a description of the proposed ambulatory surgical facility's open access policy for physicians, if one is proposed;
 - (17) a commitment to provide to the Agency annual reports at the end of each of the first five full years of operation regarding:
 - (A) patient payment data submitted to the statewide data processor as required by G.S. 131E-214.2;
 - (B) patient outcome results for each of the applicant's patient outcome measures;
 - (C) the extent to which the physicians owning the proposed facility maintained their hospital staff privileges and provided Emergency Department coverage, e.g. number of nights each physician is on call at a hospital; and
 - (D) the extent to which the facility is operating in compliance with the representations the applicant made in its application relative to the single specialty ambulatory surgical facility demonstration project in the 2010 State Medical Facilities Plan.

*Temporary Amendment Eff. February 1, 2010;
Amended Eff. November 1, 2010.*

10A NCAC 14C .2103 PERFORMANCE STANDARDS

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

(b) A proposal to establish a new ambulatory surgical facility, to establish a new campus of an existing facility, to establish a new hospital, to increase the number of operating rooms in an existing facility (excluding dedicated C-section operating rooms), to convert a specialty ambulatory surgical program to a multispecialty ambulatory surgical program or to add a specialty to a specialty ambulatory surgical program shall:

- (1) demonstrate the need for the number of proposed operating rooms in the facility which is proposed to be developed or expanded in the third operating year of the project based on the following formula: {[(Number of facility's projected inpatient cases, excluding trauma cases reported by Level I or II trauma centers, cases reported by designated burn intensive care units and cases performed in dedicated open heart and C-section rooms, times 3.0 hours) plus (Number of facility's projected outpatient cases times 1.5 hours)] divided by 1872 hours} minus the facility's total number of existing and approved operating rooms and operating rooms proposed in another pending application, excluding one operating room for Level I or II trauma centers, one operating room for facilities with designated burn intensive care units, and all dedicated open heart and C-section operating rooms or demonstrate conformance of the proposed project to Policy AC-3 in the State Medical Facilities Plan titled "Exemption From Plan Provisions for Certain Academic Medical Center Teaching Hospital Projects;" and
- (2) The number of rooms needed is determined as follows:
 - (A) in a service area which has more than 10 operating rooms, if the difference is a positive number greater than or equal to 0.5, then the need is the next highest whole number for fractions of 0.5 or greater and the next lowest whole number for fractions less than 0.5; and if the difference is a negative number or a positive number less than 0.5, then the need is zero;
 - (B) in a service area which has 6 to 10 operating rooms, if the difference is a positive number greater than or equal to 0.3, then the need is the next highest whole number for fractions of 0.3 or greater and the next lowest whole number for fractions less than 0.3, and if the difference is a negative

*History Note: Authority G.S. 131E-177; 131E-183(b);
Eff. November 1, 1990;
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Amended Eff. January 4, 1994;
Temporary Amendment Eff. July 1, 2001;
Temporary Amendment Eff. January 1, 2002;
Amended Eff. August 1, 2002;
Temporary Amendment effective January 1, 2002 amends and replaces the permanent rule effective August 1, 2002;
Amended Eff. April 1, 2003;
Temporary Amendment Eff. February 1, 2008;
Amended Eff. November 1, 2008;*

- number or a positive number less than 0.3, then the need is zero; and
- (C) in a service area which has five or fewer operating rooms, if the difference is a positive number greater than or equal to 0.2, then the need is the next highest whole number for fractions of 0.2 or greater and the next lowest whole number for fractions less than 0.2; and if the difference is a negative number or a positive number less than 0.2, then the need is zero.
- (c) A proposal to increase the number of operating rooms (excluding dedicated C-section operating rooms) in a service area shall:
- (1) demonstrate the need for the number of proposed operating rooms in addition to the rooms in all of the licensed facilities identified in response to 10A NCAC 14C .2102(b)(2) in the third operating year of the proposed project based on the following formula: $\{[(\text{Number of projected inpatient cases for all the applicant's or related entities' facilities, excluding trauma cases reported by Level I or II trauma centers, cases reported by designated burn intensive care units and cases performed in dedicated open heart and C-section rooms, times 3.0 hours}) \text{ plus } (\text{Number of projected outpatient cases for all the applicant's or related entities' facilities times 1.5 hours})] \text{ divided by } 1872 \text{ hours}\}$ minus the total number of existing and approved operating rooms and operating rooms proposed in another pending application, excluding one operating room for Level I or II trauma centers, one operating room for facilities with designated burn intensive care units, and all dedicated open heart and C-Section operating rooms in all of the applicant's or related entities' licensed facilities in the service area; and
- (2) The number of rooms needed is determined as follows:
- (A) in a service area which has more than 10 operating rooms, if the difference is a positive number greater than or equal to 0.5, then the need is the next highest whole number for fractions of 0.5 or greater and the next lowest whole number for fractions less than 0.5; and if the difference is a negative number or a positive number less than 0.5, then the need is zero;
- (B) in a service area which has 6 to 10 operating rooms, if the difference is a positive number greater than or equal to 0.3, then the need is the next highest whole number for fractions of 0.3 or greater and the next lowest whole number for fractions less than 0.3, and if the difference is a negative number or a positive number less than 0.3, then the need is zero; and
- (C) in a service area which has five or fewer operating rooms, if the difference is a positive number greater than or equal to 0.2, then the need is the next highest whole number for fractions of 0.2 or greater and the next lowest whole number for fractions less than 0.2; and if the difference is a negative number or a positive number less than 0.2, then the need is zero.
- (d) An applicant that has one or more existing or approved dedicated C-section operating rooms and is proposing to develop an additional dedicated C-section operating room in the same facility shall demonstrate that an average of at least 365 C-sections per room were performed in the facility's existing dedicated C-section operating rooms in the previous 12 months and are projected to be performed in the facility's existing, approved and proposed dedicated C-section rooms during the third year of operation following completion of the project.
- (e) An applicant proposing to convert a specialty ambulatory surgical program to a multispecialty ambulatory surgical program or to add a specialty to a specialty ambulatory surgical program shall:
- (1) provide documentation to show that each existing ambulatory surgery program in the service area that performs ambulatory surgery in the same specialty area as proposed in the application is currently utilized an average of at least 1,872 hours per operating room per year, excluding dedicated open heart and C-Section operating rooms. The hours utilized per operating room shall be calculated as follows: $[(\text{Number of projected inpatient cases, excluding open heart and C-sections performed in dedicated rooms, times 3.0 hours}) \text{ plus } (\text{Number of projected outpatient cases times 1.5 hours})] \text{ divided by the number of operating rooms, excluding dedicated open heart and C-Section operating rooms; and}$
- (2) demonstrate the need in the third operating year of the project based on the following formula: $[(\text{Total number of projected outpatient cases for all ambulatory surgery programs in the service area times 1.5 hours}) \text{ divided by } 1872 \text{ hours}] \text{ minus the total number of existing, approved and proposed outpatient or ambulatory surgical operating rooms and shared operating rooms in the service area. The need is demonstrated if the difference is a positive number greater than or equal to one, after the number is rounded to the next highest number for fractions of 0.50 or greater.}$

(f) The applicant shall document the assumptions and provide data supporting the methodology used for each projection in this Rule.

History Note: Authority G.S. 131E-177; 131E-183(b); Eff. November 1, 1990;
Amended Eff. March 1, 1993;
Temporary Amendment Eff. September 1, 1993 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;
Amended Eff. January 4, 1994;
Temporary Amendment Eff. January 1, 2002; July 1, 2001;
Amended Eff. August 1, 2002;
Temporary Amendment effective January 1, 2002 amends and replaces the permanent rule effective August 1, 2002;
Amended Eff. April 1, 2003;
Temporary Amendment Eff. January 1, 2005;
Amended Eff. November 1, 2005;
Temporary Rule Eff. February 1, 2006;
Amended Eff. November 1, 2006;
Temporary Amendment Eff. February 1, 2008;
Amended Eff. November 1, 2008;
Temporary Amendment Eff. February 1, 2009;
Amended Eff. November 1, 2009;
Temporary Amendment Eff. February 1, 2010;
Amended Eff. November 1, 2010.

10A NCAC 14C .2104 SUPPORT SERVICES

(a) An applicant proposing to establish a new ambulatory surgical facility, a new campus of an existing facility, or a new hospital shall provide copies of the written policies and procedures that will be used by the proposed facility for patient referral, transfer, and follow-up.

(b) An applicant proposing to establish a new ambulatory surgical facility, a new campus of an existing facility, or a new hospital shall provide documentation showing the proximity of the proposed facility to the following services:

- (1) emergency services;
- (2) support services;
- (3) ancillary services; and
- (4) public transportation.

History Note: Authority G.S. 131E-177; 131E-183(b); Eff. November 1, 1990;
Temporary Amendment Eff. September 1, 1993 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;
Amended Eff. January 4, 1994;
Temporary Amendment Eff. July 1, 2001;
Temporary Amendment Eff. January 1, 2002;
Amended Eff. August 1, 2002;
Temporary Amendment effective January 1, 2002 amends and replaces the permanent rule effective August 1, 2002;
Amended Eff. April 1, 2003;
Temporary Amendment Eff. February 1, 2010;
Amended Eff. November 1, 2010.

10A NCAC 14C .2105 STAFFING AND STAFF TRAINING

(a) An applicant proposing to establish a new ambulatory surgical facility, to establish a new campus of an existing facility, to establish a new hospital, to increase the number of operating rooms in a facility, to convert a specialty ambulatory surgical program to a multispecialty ambulatory surgical program or to add a specialty to a specialty ambulatory surgical program shall identify, justify and document the availability of the number of current and proposed staff to be utilized in the following areas in the facility to be developed or expanded:

- (1) administration;
- (2) pre-operative;
- (3) post-operative;
- (4) operating room; and
- (5) other.

(b) The applicant shall identify the number of physicians who currently utilize the facility and estimate the number of physicians expected to utilize the facility and the criteria to be used by the facility in extending surgical and anesthesia privileges to medical personnel.

(c) The applicant shall provide documentation that physicians with privileges to practice in the facility will be active members in good standing at a general acute care hospital within the service area in which the facility is, or will be, located or documentation of contacts the applicant made with hospitals in the service area in an effort to establish staff privileges.

(d) The applicant shall provide documentation that physicians owning the proposed single specialty demonstration facility will meet Emergency Department coverage responsibilities in at least one hospital within the service area, or documentation of contacts the applicant made with hospitals in the service area in an effort to commit its physicians to assume Emergency Department coverage responsibilities.

History Note: Authority G.S. 131E-177; 131E-183(b); Eff. November 1, 1990;
Temporary Amendment Eff. September 1, 1993 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;
Amended Eff. January 4, 1994;
Temporary Amendment Eff. July 1, 2001;
Temporary Amendment Eff. January 1, 2002;
Amended Eff. August 1, 2002;
Temporary Amendment effective January 1, 2002 amends and replaces the permanent rule effective August 1, 2002;
Amended Eff. April 1, 2003;
Temporary Amendment Eff. February 1, 2010;
Amended Eff. November 1, 2010.

10A NCAC 14C .2106 FACILITY

(a) An applicant proposing to establish a licensed ambulatory surgical facility that will be physically located in a physician's or dentist's office or within a general acute care hospital shall demonstrate that reporting and accounting mechanisms exist and can be used to confirm that the licensed ambulatory surgery facility is a separately identifiable entity physically and administratively, and is financially independent and distinct from other operations of the facility in which it is located.

(b) An applicant proposing to establish a licensed ambulatory surgical facility or a new hospital shall receive accreditation from the Joint Commission for the Accreditation of Healthcare Organizations, the Accreditation Association for Ambulatory Health Care or a comparable accreditation authority within two years of completion of the facility.

(c) All applicants shall document that the physical environment of the facility to be developed or expanded conforms to the requirements of federal, state, and local regulatory bodies.

(d) An applicant proposing to establish a new ambulatory surgical facility, a new campus of an existing facility or a new hospital shall provide a floor plan of the proposed facility identifying the following areas:

- (1) receiving/registering area;
- (2) waiting area;
- (3) pre-operative area;
- (4) operating room by type;
- (5) recovery area; and
- (6) observation area.

(e) An applicant proposing to expand by converting a specialty ambulatory surgical program to a multispecialty ambulatory surgical program or by adding a specialty to a specialty ambulatory surgical program that does not propose to add physical space to the existing ambulatory surgical facility shall demonstrate the capability of the existing ambulatory surgical program to provide the following for each additional specialty area:

- (1) physicians;
- (2) ancillary services;
- (3) support services;
- (4) medical equipment;
- (5) surgical equipment;
- (6) receiving/registering area;
- (7) clinical support areas;
- (8) medical records;
- (9) waiting area;
- (10) pre-operative area;
- (11) operating rooms by type;
- (12) recovery area; and
- (13) observation area.

History Note: Authority G.S. 131E-177; 131E-183(b);

Eff. November 1, 1990;

Temporary Amendment Eff. September 1, 1993 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;

Amended Eff. January 4, 1994;

Temporary Amendment Eff. July 1, 2001;

Temporary Amendment Eff. January 1, 2002;

Amended Eff. August 1, 2002;

Temporary Amendment effective January 1, 2002 amends and replaces the permanent rule effective August 1, 2002;

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Temporary Amendment Eff. February 1, 2008;

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Temporary Amendment Eff. February 1, 2010;

Amended Eff. November 1, 2010.

10A NCAC 14C .2202 INFORMATION REQUIRED OF APPLICANT

(a) An applicant that proposes to increase dialysis stations in an existing certified facility or relocate stations must provide the following information:

- (1) Utilization rates;
- (2) Mortality rates;
- (3) The number of patients that are home trained and the number of patients on home dialysis;
- (4) The number of transplants performed or referred;
- (5) The number of patients currently on the transplant waiting list;
- (6) Hospital admission rates, by admission diagnosis, i.e., dialysis related versus non-dialysis related;
- (7) The number of patients with infectious disease, e.g., hepatitis, and the number converted to infectious status during last calendar year.

(b) An applicant that proposes to develop a new facility, increase the number of dialysis stations in an existing facility, establish a new dialysis station, or relocate existing dialysis stations shall provide the following information requested on the End Stage Renal Disease (ESRD) Treatment application form:

- (1) For new facilities, a letter of intent to sign a written agreement or a signed written agreement with an acute care hospital that specifies the relationship with the dialysis facility and describes the services that the hospital will provide to patients of the dialysis facility. The agreement must comply with 42 C.F.R., Section 405.2100.
- (2) For new facilities, a letter of intent to sign a written agreement or a written agreement with a transplantation center describing the relationship with the dialysis facility and the specific services that the transplantation center will provide to patients of the dialysis facility. The agreements must include the following:
 - (A) timeframe for initial assessment and evaluation of patients for transplantation,
 - (B) composition of the assessment/evaluation team at the transplant center,
 - (C) method for periodic re-evaluation,
 - (D) criteria by which a patient will be evaluated and periodically re-evaluated for transplantation, and
 - (E) signatures of the duly authorized persons representing the facilities and the agency providing the services.
- (3) For new or replacement facilities, documentation that power and water will be available at the proposed site.
- (4) Copies of written policies and procedures for back up for electrical service in the event of a power outage.

- (5) For new facilities, the location of the site on which the services are to be operated. If such site is neither owned by nor under option to the applicant, the applicant must provide a written commitment to pursue acquiring the site if and when the approval is granted, must specify a secondary site on which the services could be operated should acquisition efforts relative to the primary site ultimately fail, and must demonstrate that the primary and secondary sites are available for acquisition.
- (6) Documentation that the services will be provided in conformity with applicable laws and regulations pertaining to staffing, fire safety equipment, physical environment, water supply, and other relevant health and safety requirements.
- (7) The projected patient origin for the services. All assumptions, including the methodology by which patient origin is projected, must be stated.
- (8) For new facilities, documentation that at least 80 percent of the anticipated patient population resides within 30 miles of the proposed facility.
- (9) A commitment that the applicant shall admit and provide dialysis services to patients who have no insurance or other source of payment, but for whom payment for dialysis services will be made by another healthcare provider in an amount equal to the Medicare reimbursement rate for such services.

History Note: Authority G.S. 131E-177(1); 131E-183(b);
 Eff. March 1, 1989;
 Temporary Amendment Eff. January 1, 2003;
 Amended Eff. August 1, 2004;
 Temporary Amendment Eff. January 1, 2005;
 Amended Eff. November 1, 2005;
 Temporary Amendment Eff. February 1, 2010;
 Amended Eff. November 1, 2010.

10A NCAC 14C .2203 PERFORMANCE STANDARDS

- (a) An applicant proposing to establish a new End Stage Renal Disease facility shall document the need for at least 10 stations based on utilization of 3.2 patients per station per week as of the end of the first operating year of the facility, with the exception that the performance standard shall be waived for a need in the State Medical Facilities Plan that is based on an adjusted need determination.
- (b) An applicant proposing to increase the number of dialysis stations in an existing End Stage Renal Disease facility or one that was not operational prior to the beginning of the review period but which had been issued a certificate of need shall document the need for the additional stations based on utilization of 3.2 patients per station per week as of the end of the first operating year of the additional stations.
- (c) An applicant shall provide all assumptions, including the methodology by which patient utilization is projected.

History Note: Authority G.S. 131E-177(1); 131E-183(b);
 Temporary Adoption Eff. January 1, 2003; January 1, 2002;
 Eff. April 1, 2003;
 Amended Eff. August 1, 2004;
 Temporary Amendment Eff. January 1, 2005;
 Amended Eff. November 1, 2005;
 Temporary Amendment Eff. February 1, 2006;
 Amended Eff. November 1, 2006;
 Temporary Amendment Eff. February 1, 2010;
 Amended Eff. November 1, 2010.

10A NCAC 14C .2701 DEFINITIONS

The following definitions apply to all rules in this Section:

- (1) "Approved MRI scanner" means an MRI scanner which was not operational prior to the beginning of the review period but which had been issued a certificate of need.
- (2) "Capacity of fixed MRI scanner" means 100 percent of the procedure volume that the MRI scanner is capable of completing in a year, given perfect scheduling, no machine or room downtime, no cancellations, no patient transportation problems, no staffing or physician delays and no MRI procedures outside the norm. Annual capacity of a fixed MRI scanner is 6,864 weighted MRI procedures, which assumes two weighted MRI procedures are performed per hour and the scanner is operated 66 hours per week, 52 weeks per year.
- (3) "Capacity of mobile MRI scanner" means 100 percent of the procedure volume that the MRI scanner is capable of completing in a year, given perfect scheduling, no machine or room downtime, no cancellations, no patient transportation problems, no staffing or physician delays and no MRI procedures outside the norm. Annual capacity of a mobile MRI scanner is 4,160 weighted MRI procedures, which assumes two weighted MRI procedures are performed per hour and the scanner is operated 40 hours per week, 52 weeks per year.
- (4) "Dedicated breast MRI scanner" means an MRI scanner that is configured to perform only breast MRI procedures and is not capable of performing other types of non-breast MRI procedures.
- (5) "Existing MRI scanner" means an MRI scanner in operation prior to the beginning of the review period.
- (6) "Extremity MRI scanner" means an MRI scanner that is utilized for the imaging of extremities and is of open design with a field of view no greater than 25 centimeters.
- (7) "Fixed MRI scanner" means an MRI scanner that is not a mobile MRI scanner.
- (8) "Magnetic Resonance Imaging" (MRI) means a non-invasive diagnostic modality in which

- electronic equipment is used to create tomographic images of body structure. The MRI scanner exposes the target area to nonionizing magnetic energy and radio frequency fields, focusing on the nuclei of atoms such as hydrogen in the body tissue. Response of selected nuclei to this stimulus is translated into images for evaluation by the physician.
- (9) "Magnetic resonance imaging scanner" (MRI Scanner) is defined in G.S. 131E-176(14m).
- (10) "Mobile MRI region" means either the eastern part of the State which includes the counties in Health Service Areas IV, V and VI (Eastern Mobile MRI Region), or the western part of the State which includes the counties in Health Service Areas I, II, and III (Western Mobile MRI Region). The counties in each Health Service Area are identified in Appendix A of the State Medical Facilities Plan.
- (11) "Mobile MRI scanner" means an MRI scanner and transporting equipment which is moved at least weekly to provide services at two or more campuses or physical locations.
- (12) "MRI procedure" means a single discrete MRI study of one patient.
- (13) "MRI service area" means the Magnetic Resonance Imaging Planning Areas, as defined in the applicable State Medical Facilities Plan, except for proposed new mobile MRI scanners for which the service area is a mobile MRI region.
- (14) "MRI study" means one or more scans relative to a single diagnosis or symptom.
- (15) "Multi-position MRI scanner" means an MRI scanner as defined in the State Medical Facilities Plan, pursuant to a special need determination for a demonstration project.
- (16) "Related entity" means the parent company of the applicant, a subsidiary company of the applicant (i.e., the applicant owns 50 percent or more of another company), a joint venture in which the applicant is a member, or a company that shares common ownership with the applicant (i.e., the applicant and another company are owned by some of the same persons).
- (17) "Temporary MRI scanner" means an MRI scanner that the Certificate of Need Section has approved to be temporarily located in North Carolina at a facility that holds a certificate of need for a new fixed MRI scanner, but which is not operational because the project is not yet complete.
- (18) "Weighted MRI procedures" means MRI procedures which are adjusted to account for the length of time to complete the procedure, based on the following weights: one outpatient MRI procedure without contrast or sedation is valued at 1.0 weighted MRI procedure, one outpatient MRI procedure with contrast or sedation is valued at 1.4 weighted MRI procedures, one inpatient MRI procedure without contrast or sedation is valued at 1.4 weighted MRI procedures; and one inpatient MRI procedure with contrast or sedation is valued at 1.8 weighted MRI procedures.
- (19) "Weighted breast MRI procedures" means MRI procedures which are performed on a dedicated breast MRI scanner and are adjusted to account for the length of time to complete the procedure, based on the following weights: one diagnostic breast MRI procedure is valued at 1.0 weighted MRI procedure (based on an average of 60 minutes per procedure), one MRI-guided breast needle localization MRI procedure is valued at 1.1 weighted MRI procedure (based on an average of 66 minutes per procedure), and one MRI-guided breast biopsy procedure is valued at 1.6 weighted MRI procedures (based on an average of 96 minutes per procedure).

History Note: Authority G.S. 131E-177(1); 131E-183(b); Temporary Adoption Eff. September 1, 1993 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;
Eff. February 1, 1994;
Temporary Amendment Eff. January 1, 1999;
Temporary Amendment Eff. January 1, 1999 Expired on October 12, 1999;
Temporary Amendment Eff. January 1, 2000;
Temporary Amendment effective January 1, 2000 amends and replaces a permanent rulemaking originally proposed to be effective August 2000;
Temporary Amendment Eff. January 1, 2001;
Temporary Amendment effective January 1, 2001 amends and replaces a permanent rulemaking originally proposed to be effective April 1, 2001;
Temporary Amendment Eff. January 1, 2002;
Amended Eff. August 1, 2002;
Temporary Amendment effective January 1, 2002 amends and replaces the permanent rule effective August 1, 2002;
Temporary Amendment Eff. January 1, 2003;
Amended Eff. August 1, 2004; April 1, 2003;
Temporary Amendment Eff. January 1, 2005;
Amended Eff. November 1, 2005;
Temporary Amendment Eff. February 1, 2006;
Amended Eff. November 1, 2006;
Temporary Amendment Eff. February 1, 2008;
Amended Eff. November 1, 2008;
Temporary Amendment Eff. February 1, 2009;
Amended Eff. November 1, 2009;
Temporary Amendment Eff. February 1, 2010;
Amended Eff. November 1, 2010.

10A NCAC 41C .0904 ACCREDITATION OF TRAINING COURSES

(a) Pursuant to Rule .0902 of this Section, applicants for certification and certification renewal are required to successfully complete training courses accredited by the Program. Training courses:

- (1) Taught in locations other than North Carolina and accredited by US EPA or by a state with a US EPA authorized program shall be deemed accredited for certification purposes of the Program;
- (2) Taught in North Carolina and accredited by a state, tribe, or territory that has a written reciprocating agreement with the Program shall meet the requirements of Paragraphs (b), (c), (e), (g), and (h) of this Rule to be accredited by the Program;
- (3) Taught in North Carolina, other than those covered in Subparagraphs (2) and (4) of this Paragraph, shall meet the requirements of this Rule;
- (4) Taught in North Carolina prior to August 1, 2010, and accredited by US EPA or by a state with a US EPA authorized program shall be deemed accredited for certification purposes of the Program.

(b) A training provider may apply for initial and refresher training course accreditation for the following disciplines: renovator and dust sampling technician. Training providers applying for course accreditation shall submit a completed training course application to the Program for review and evaluation, pursuant to Paragraph (e) of this Rule. Once a training course is accredited, any changes in curriculum, hands-on exercises, examination, training manual or materials, or quality control plan from the original course accreditation application shall be submitted and approved by the Program prior to implementation.

(c) For all courses, the training provider shall administer a closed book examination. Initial courses shall include a hands-on skills assessment. Initial and refresher course examinations shall consist of a minimum of 25 multiple choice questions.

(d) Training courses shall be evaluated for accreditation purposes by the Program for course administration, course length, curriculum, training methods, instructors' teaching effectiveness, technical accuracy of written materials and instruction, examination, and training certificate. The evaluation shall be conducted using 40 CFR Part 745 Subpart L.

(e) Training course providers shall submit the following for evaluation by the Program:

- (1) A completed application on a form provided by the Program, along with supporting documentation. The form and supporting documentation shall include the following:
 - (A) name, address including city, state, and zip code, and telephone number of the training provider, and name and signature of the contact person, training manager, and principal instructor;

- (B) course title, location, and the language in which the course is to be taught;
- (C) course agenda;
- (D) a copy of all written instructional material to be used;
- (E) learning or performance objectives for each topic to be taught;
- (F) a copy or description of all audio/visual materials to be used;
- (G) a description of each hands-on training activity and skills assessment, including criteria for determining student proficiency;
- (H) a description of instructional facilities and equipment;
- (I) a copy of a sample exam with correct answers marked and exam blueprint; and
- (J) a written policy for administration of oral exams.

(2) A sample course certificate with the following information:

- (A) name and address, including city, state, and zip code of the student;
- (B) training course title specifying "initial" or "refresher" of training course completed;
- (C) inclusive dates of course and applicable examination;
- (D) a statement that the student successfully completed the course and hands-on skills assessment and passed the required examination;
- (E) unique certificate number;
- (F) student photo;
- (G) printed name and signature of the training course manager and printed name of the principal instructor;
- (H) name, address including city, state, and zip code, and telephone number of the training provider;
- (I) training course location; and
- (J) for training courses taught in languages other than English, the certificate shall indicate the language of the course;

(3) A list of accredited lead training courses being offered for certification;

(4) A list of instructors who will teach in North Carolina and their qualifications in accordance with 40 CFR 745 Subpart L Subsection .225(c)(2); and

(5) A copy of the course quality control plan that meets the requirements of 40 CFR 745 Subpart L Subsection .225(c)(9).

(f) An application for course accreditation by the Program shall be processed as follows:

- (1) The Program shall review the application and supporting documentation and advise the applicant of any deficiencies. If the deficiencies are not corrected within 12 months from the date of application, the application and any supporting documentation shall be returned to the applicant and the applicant shall re-submit a completed application. Approval of submitted documentation does not constitute course accreditation;
- (2) If the submitted documentation meets all applicable requirements of this Rule, the Program shall notify the applicant of this and also advise the applicant that it may contact the Program to schedule an on-site audit. The on-site audit shall be of a class of at least two student attendees and taught in North Carolina;
- (3) If the Program determines, as a result of the on-site audit, that the training course meets all applicable requirements of this Rule, it shall issue course accreditation. If the course does not meet these requirements, the Program shall notify the applicant of the deficiencies and advise the applicant that it may request one additional on-site audit, which shall be held no more than six months from the date of the first audit; and
- (4) If the Program determines, as the result of the second audit, that the training course meets all applicable requirements of this Rule, it shall issue course accreditation. If the course does not meet all these requirements, the Program shall notify the applicant of the deficiencies, return all the application materials, and advise the applicant that it may not reapply for course accreditation for the audited course for a period of six months from the date of the last audit.

(g) Training course providers shall perform the following in order to maintain accreditation of all initial and refresher courses:

- (1) Issue a certificate of training meeting the requirements of Subparagraph (e)(2) of this Rule to any student who successfully completes the required training and the hands-on skills assessment, and passes the applicable examination;
- (2) Submit to the Program written notice of intention to conduct a training course for North Carolina lead certification purposes, if the course is to be taught in North Carolina. Notices for training courses shall be postmarked or received 10 working days before the training course begins. If the training course is canceled or there is a change of instructors or course location, the training course provider shall notify the Program at least two working days prior to the scheduled

start date. Notification of intent to conduct a training course shall be made using a form provided by the Program and shall include the following:

- (A) training provider name, address including city, state, and zip code, telephone number, and contact person;
 - (B) training course title;
 - (C) inclusive dates of course and applicable exam;
 - (D) start and completion times;
 - (E) location of the course facility and directions to the course facility;
 - (F) language in which the course is taught; and
 - (G) signature of the training manager;
- (3) Notify the Program, in writing, at least 10 working days prior to the scheduled course start date, of any changes to course length, training methods, training certificate, or training course manager;
 - (4) Submit to the Program information and documentation for any course accredited pursuant to this Rule if requested by the Program;
 - (5) Ensure that all training courses covered under this Rule meet the requirements of 40 CFR Part 745 Subpart L, Subsection .225(c), (d), and (e) and the following requirements:
 - (A) the instructor must follow the curriculum that was approved by the Program, US EPA, or a state, tribe, or territory with whom the Program has a reciprocity agreement. The schedule may be adjusted, but all curriculum elements shall be covered;
 - (B) all initial and refresher training courses shall have a maximum of 30 students;
 - (C) a day of training shall include at least eight training hours;
 - (D) a training course shall be completed within a two-week period;
 - (E) instructor ratio for hands-on training shall be no more than 10 students per instructor;
 - (F) all course materials shall be in the language in which the course is being taught;
 - (G) each training course shall be discipline specific;
 - (H) students shall be allowed to take an examination no more than twice for each course. The exam used for retesting shall be different from the previous exam. After two failures, the student shall retake the full course before being allowed to retest; and

- (I) training providers shall provide examination security to prevent student access to the examination materials before and after the exam. Training providers shall take measures to preclude cheating during the exam, such as providing space between students, prohibiting talking, and monitoring students throughout the exam.
- (6) Verify, by photo identification, the identity of any student requesting training;
- (7) Submit a completed renewal application on a form provided by the Program for each course accredited by the Program, and taught in North Carolina, for which the training provider is seeking renewal;
- (8) Conduct work practice and worker protection demonstrations and hands-on exercises presented in all training courses covered under this Rule in accordance with Rule .0906 of this Section and 29 CFR 1926.62, which is hereby incorporated by reference, including any subsequent amendments and editions; and
- (9) Teach the course at least once every five years in North Carolina.

(h) Training course providers shall permit Program representatives to attend, evaluate and monitor any training course, take the course examination, and have access to records of training courses without charge or hindrance to the Program for the purpose of evaluating compliance with these Rules. The Program shall perform periodic and unannounced on-site audits of training courses.

(i) In accordance with G.S. 130A-23, the Program may suspend, revoke, or deny accreditation for a training course for any violation of G.S. 130A, Article 19B or the Rules of this Section and shall revoke accreditation upon revocation of accreditation by the US EPA or by any state with a US EPA authorized accreditation program. The Program shall also revoke course accreditation for all courses taught by a training provider upon a finding that the training course provider has issued one or more certificates to an individual who did not actually attend the course, successfully complete the hands-on exercises, and pass the examination. When course accreditation is revoked for improper issuance of certificates, the training course provider is not eligible for reaccreditation for a period of 36 months from the date of revocation.

History Note: Authority G.S. 130A-453.26; 130A-453.31; 130A-23;
Temporary Adoption Eff. January 1, 2010;
Eff. November 1, 2010.

10A NCAC 41H .0701 ROUTINE REQUESTS FOR CERTIFIED COPIES

(a) The fee for a non-expedited search for a certificate of birth, death, marriage or divorce is twenty-four dollars (\$24.00), which includes the cost of a search of the year indicated and if necessary the year immediately prior to and subsequent to the

indicated year. This fee also covers issuance of a copy if the record is found. If the record is not located, the fee shall be retained for providing the search.

(b) If expedited service is specifically requested, an additional fee of fifteen dollars (\$15.00), in addition to all shipping and commercial charges, shall be charged in accordance with G.S. 130A-93.1(a)(2).

History Note: Authority G.S. 130A-92(a)(7); 130A-93; 130A-93.1;
Eff. February 1, 1976;
Amended Eff. October 1, 1977;
Readopted Eff. November 15, 1977;
Amended Eff. August 24, 2009; June 1, 2005; January 1, 1992;
October 1, 1985;
Emergency Amendment Eff. September 14, 2009;
Temporary Amendment Eff. December 1, 2009;
Amended Eff. November 1, 2010.

10A NCAC 41H .0702 RESEARCH REQUESTS

(a) The State Registrar may permit the use of data from vital records for research purposes. The State Registrar shall require the applicant to specify in writing the conditions under which the records or data will be used, stored, and disposed of; the purpose of the research; the research protocol; access limitations; and security precautions.

(b) A fee of twenty-four dollars (\$24.00) shall be charged per name searched. If expedited service is specifically requested, an additional fee of fifteen dollars (\$15.00), in addition to all shipping and commercial charges, shall be charged in accordance with G.S. 130A-93.1(a)(2).

(c) Vital records or data provided under this Rule shall be used only for the purposes described in the application.

History Note: Authority G.S. 130A-92(a)(7); 130A-93; 130A-93.1;
Eff. February 1, 1976;
Readopted Eff. November 15, 1977;
Amended Eff. August 24, 2009; June 1, 2005; February 1, 1994;
February 1, 1992; September 1, 1990; October 1, 1985;
Emergency Amendment Eff. September 14, 2009;
Temporary Amendment Eff. December 1, 2009;
Amended Eff. November 1, 2010.

TITLE 11 – DEPARTMENT OF INSURANCE

11 NCAC 13 .0528 SANCTIONS FOR BCEC NONCOMPLIANCE BY LICENSEES, COURSE PROVIDERS AND INSTRUCTORS

(a) The Commissioner shall proceed with administrative action under G.S. 58-71-80 against a professional bail bondsman, surety bail bondsman or runner licensee for any of the following causes:

- (1) Failing to respond to Department inquiries, including continuing education audit requests, within seven calendar days after the receipt of the inquiry or request;

- (2) Requesting an extension of time to complete BCEC under false pretenses; or
 - (3) Refusing to cooperate with Department employees in an investigation or inquiry.
- (b) The Commissioner shall summarily suspend or terminate the provider or instructor's certificate of authority to provide or instruct a course for any of the following causes:
- (1) Advertising that a course is approved before the Commissioner has granted such approval in writing;
 - (2) Submitting a course outline with material inaccuracies, either in length, presentation time, or topic content;
 - (3) Presenting or using materials in a course that were not previously filed with the Commissioner pursuant to 11 NCAC 13 .0526(a);
 - (4) Failing to conduct a course for the full time specified in the approval request submitted to the Commissioner;
 - (5) Preparing and distributing certificates of attendance or completion before the course has been approved;
 - (6) Issuing certificates of attendance or completion before the completion of the course;
 - (7) Failing to issue certificates of attendance or completion to any licensee who satisfactorily completes a course;
 - (8) Failing to notify the Commissioner in writing of suspected or known violations of the North Carolina General Statutes or Administrative Code within 30 days after becoming aware of the violations;
 - (9) Failing to comply with the rules in this Section or violating G.S. 58-71-80 and G.S. 58-71-95;
 - (10) Failing to monitor attendance and ensure that licensees complete the course hours approved by the Commissioner; or
 - (11) Preparing and distributing fraudulent certificates of attendance or completion.
- (c) Course providers and instructors are responsible for the activities of persons conducting, supervising, instructing, proctoring, monitoring, moderating, facilitating, or in any way responsible for the conduct of any of the activities associated with the course.
- (d) Upon a finding of a violation of this rule the Commissioner shall require the violator to:
- (1) Refund all course tuition and fees to licensees;
 - (2) Provide licensees with a course to replace the course that was found in violation; or
 - (3) Cease all courses offered by the provider or instructor.

History Note: Authority G.S. 58-2-40; 58-71-71; 58-71-72; Eff. November 1, 2010.

TITLE 12 – DEPARTMENT OF JUSTICE

12 NCAC 11 .0106 DETERMINATION OF EXPERIENCE

- (a) Experience requirements shall be determined in the following manner: one year's experience = 1,000 hours.
- (b) The Board shall not consider any experience claimed by the applicant if gained while not in possession of a valid license or registration while such license or registration was required by existing or previously existing laws of the United States, any State, or any political subdivision thereof.

History Note: Authority G.S. 74D-5; Temporary Rule Eff. January 9, 1984, for a Period of 120 Days to Expire on May 7, 1984; Eff. May 1, 1984; Amended Eff. November 1, 2010; September 1, 1993.

TITLE 13 – DEPARTMENT OF LABOR

13 NCAC 14A .0103 APPRENTICESHIP COUNCIL

History Note: Authority G.S. 94-1; 94-2; Eff. February 1, 1984; Repealed Eff. December 1, 2010.

13 NCAC 14A .0105 CERTIFICATION

History Note: Authority G.S. 94-1; 94-2; 94-4; 94-8; Eff. February 1, 1984; Repealed Eff. December 1, 2010.

13 NCAC 14A .0108 PUBLIC ACCESS TO RECORDS

History Note: Authority G.S. 132-1; 132-2; 132-6; Eff. February 1, 1984; Repealed Eff. December 1, 2010.

SUBCHAPTER 14B – RULES EFFECTIVE MARCH 15, 2010

SECTION .0100 - GENERAL PROVISIONS

13 NCAC 14B .0101 NAME: ADDRESS

- (a) The Apprenticeship and Training Division headquarters are located in the North Carolina Department of Labor Building, Raleigh, North Carolina. The physical address for the division and for the director of apprenticeship is as follows:

N.C. Department of Labor
Apprenticeship and Training Bureau
Labor Building
4 W. Edenton Street
Raleigh, N.C. 27601

- (b) All correspondence shall be addressed to the following mailing address:

N.C. Department of Labor
Apprenticeship and Training Bureau
1101 Mail Service Center
Raleigh, N.C. 27699-1101

History Note: Authority G.S. 94-1; 94-2;
Eff. February 1, 1984;
Recodified from Rule 14A .0101 Eff. March 15, 2010;
Amended Eff. December 1, 2010.

13 NCAC 14B .0102 REGISTRATION AGENCY

- (a) The department functions as the State Apprenticeship Agency with authority to determine whether apprenticeship programs operating in this State conform to the provisions of Chapter 94 of the North Carolina General Statutes and the standards published by the U.S. Secretary of Labor, 29 C.F.R. Part 29 (December 29, 2008).
- (b) As the State Apprenticeship Agency, the department has undertaken the responsibility for implementing equal opportunity standards relating to apprenticeship, which conform to the regulations published by the U.S. Secretary of Labor, 29 C.F.R. Part 30 (June 12, 1978).

History Note: Authority G.S. 94-1; 94-2; 94-4; 94-8;
Eff. February 1, 1984.
Recodified from Rules 14A .0201 and 14A .0801 Eff. March 15, 2010;
Amended Eff. December 1, 2010.

13 NCAC 14B .0103 VETERANS TRAINING ASSISTANCE ALLOWANCES

- (a) The department has been designated, pursuant to 38 U.S.C. 3671(a), as the State Approving Agency for this state with authority to approve programs of apprenticeship and other on-the-job training, in accordance with 38 U.S.C. 3687 as suitable for the participation of people eligible to receive training assistance allowances from the U.S. Department of Veterans Affairs. As executive head of the department, the commissioner has appointed the director to administer the functions of the State Approving Agency.
- (b) The director shall approve all apprenticeship and on-the-job training programs registered pursuant to Section .0200 of this Subchapter and on-the-job training programs approved pursuant to Section .0300 of this Subchapter, as suitable for the participation of eligible veterans and other eligible persons to receive training assistance allowances whenever the sponsor submits to the director a written request for approval and a Designation of Certifying Official(s) form.

History Note: Authority G.S. 94-1; 94-2; 94-4;
Eff. February 1, 1984;
Recodified from Rules 14A .0401 and 14A .0402 Eff. March 15, 2010;
Amended Eff. December 1, 2010.

13 NCAC 14B .0104 DEFINITIONS

In addition to the definitions contained in G.S. 94-5, the following definitions apply throughout this Subchapter:

- (1) "Accredited College or University" means a college or university in the state that has received its accreditation from a national or regional accrediting agency approved by the U.S. Department of Education.
- (2) "Apprenticeable Occupation" means an occupation having the characteristics set forth in Rule .0201 of this Subchapter.
- (3) "Apprenticeship Association" means an association of employers who operate or participate in apprenticeship or OJT programs where the programs are operated in a manner similar to the programs operated by other members of the association, the purpose of the association being to assist the members in designing, registering, operating, and participating in an apprenticeship or OJT program.
- (4) "Approval" means the recognition by the director and the recording with the division of an apprenticeship or OJT program, signifying that the program is suitable for participation of veterans or other people eligible to receive training allowances from the U.S. Department of Veterans Affairs.
- (5) "Cancellation" means the termination of the registration of a program at the request of the sponsor, or termination of an Apprenticeship Agreement at the request of the apprentice, in accordance with Section .0400 of this Subchapter.
- (6) "Certification" means written acknowledgment by the director that:
 - (a) An individual is a registered apprentice in a registered apprenticeship program or a registered trainee in a registered OJT program; and
 - (b) That an employer is participating in a registered apprenticeship program or OJT program, that a sponsor is operating a registered apprenticeship program or OJT program, or that an apprenticeship program or an OJT program is registered. Certification may acknowledge any combination in this Paragraph as appropriate.
- (7) "Commissioner" means the Commissioner of Labor for the State of North Carolina. The commissioner may authorize a representative to administer the duties and responsibilities prescribed by this Subchapter.
- (8) "Competency" means the attainment of manual, mechanical or technical skills and knowledge, as specified by an occupational standard and demonstrated by written and hands-on proficiency measurements.
- (9) "Completer" means an individual who has completed the normal term of elementary and

- secondary education but has not been awarded a diploma because of not passing the state's educational competency examination.
- (10) "Completion rate" means the percentage of an apprenticeship cohort who receives a certificate of apprenticeship completion within one year of the projected completion date. An apprenticeship cohort is the group of individual apprentices registered to a specific program during a one year time frame, except that a cohort does not include the apprentices whose apprenticeship agreement has been cancelled during the probationary period.
- (11) "Department" means the North Carolina Department of Labor.
- (12) "Director" means the director of apprenticeship for the State of North Carolina. The director or commissioner may authorize a representative to administer the duties and responsibilities prescribed for the director by this Subchapter.
- (13) "Division" means the Apprenticeship and Training Division within the department.
- (14) "Electronic Media" means media that utilize electronics or electromechanical energy for the end user (audience) to access the content; and includes electronic storage media, transmission media, the Internet, extranet, lease lines, dial-up lines, private networks, and the physical movement or removable/transportable electronic media and interactive distance learning.
- (15) "Employers' Group or Association" means an organization composed of employers who employ apprentices or trainees, the purpose of such group being, at least in part, to act as the sponsor of an apprenticeship or OJT program.
- (16) "Fully Qualified Worker" means a worker has attained a level of skill, abilities and competencies recognized within an industry as having mastered the skills and competencies required for the occupation.
- (17) "Group Program" means an apprenticeship or OJT program including or designed to include more than one employer.
- (18) "Journeyman" means a fully qualified worker in an apprenticeable occupation. Use of the term may also refer to a mentor, technician, specialist or other skilled worker who has documented skills and knowledge in an occupation through either formal apprenticeship or through practical on-the-job experience and formal training.
- (19) "OJT" means on-the-job training.
- (20) "OJT Agreement" means a written agreement between a trainee and his sponsor, which agreement satisfies the requirements of Rule .0305 of this Subchapter.
- (21) "OJT Program" means a program providing for the qualification, recruitment, selection, employment, and training on the job of people other than apprentices.
- (22) "Provisional registration" means the one year initial provisional approval of newly registered apprenticeship programs that meet the required standards for program registration, after which program approval may be made permanent, continued as provisional, or rescinded following a review by the department.
- (23) "Quality Assurance Assessment" means a comprehensive review conducted by the department regarding all aspects of an apprenticeship program's performance, including determining if apprentices are receiving: on-the-job learning in all phases of the apprenticeable occupation; scheduled wage increases consistent with the registered standards; related instruction through appropriate curriculum and delivery systems; and that the department is receiving notification of all new registrations, cancellations, and completions as required by this Subchapter.
- (24) "Registration" means the recognition by the director and the recording with the division of an apprenticeship or OJT program, apprenticeship or OJT agreement, or apprentice or trainee, signifying that the program, agreement, or individual complies with the rules, requirements, criteria, and standards of this Subchapter regarding apprenticeship or OJT.
- (25) "Related Instruction" means an organized and systematic form of instruction designed to provide the apprentice or trainee with knowledge of the theoretical and technical subjects related to his trade or occupation. Such instruction may be given in a classroom, through occupational or industrial courses, by correspondence courses, through electronic media, or through other forms of self-study.
- (26) "Revision" means any substantive modification or change of the program standards of apprenticeship (including an affirmative action plan and a written description of the selection procedure), of the program standards for OJT, or of an apprenticeship or OJT agreement.
- (27) "Standards" means the program standards of apprenticeship as set forth in Rule .0202 of this Subchapter or the program standards for OJT as set forth in Rule .0301 of this Subchapter.
- (28) "Technical Assistance" means guidance provided by the division staff in the development, revision, amendment, or processing of a potential or current program

sponsor's Standards of Apprenticeship, Apprenticeship Agreements, or advice or consultation with a program sponsor to further compliance with this Subchapter or guidance from the department on how to remedy nonconformity with this Subchapter.

- (29) "Trainee" means a worker, other than an apprentice, who is employed to learn an occupation in an OJT program.
- (30) "Transfer" means a shift of apprenticeship registration from one program to another or from one employer within a program to another employer within that same program, where there is agreement between the apprentice and the affected apprenticeship committees or program sponsors.

History Note: Authority G.S. 94-1; 94-2; Eff. February 1, 1984;
Recodified from Rule 14A .0102 Eff. March 15, 2010;
Amended Eff. December 1, 2010.

13 NCAC 14B .0201 CRITERIA FOR APPRENTICEABLE OCCUPATIONS

An apprenticeable occupation possesses all of the following characteristics:

- (1) It is customarily learned in a practical way through a structured, systematic program of on-the-job supervised learning;
- (2) It is identified and commonly recognized by an industry;
- (3) It involves manual, mechanical, or technical skills and knowledge which normally require not less than 2,000 hours of reasonably continuous on-the-job learning; and
- (4) It normally requires not less than 144 hours of related instruction for every 2,000 hours of on-the-job learning to supplement the on-the-job supervised learning.

History Note: Authority G.S. 94-1; 94-2; 94-4; Eff. February 1, 1984;
Recodified from Rule 14A .0202 Eff. March 15, 2010;
Amended Eff. December 1, 2010.

13 NCAC 14B .0203 PROGRAM PERFORMANCE STANDARDS

(a) Programs shall have at least one registered apprentice in order to retain registration, except for the following periods of time which may not exceed one year:

- (1) Between the date when a program is registered and the date of registration for its first apprentice(s); or
- (2) Between the date that a program graduates an apprentice and the date of registration for the next apprentice(s) in the program.

(b) The department shall evaluate performance of registered apprenticeship programs as follows:

- (1) The tools and factors to be used shall include:

- (A) Quality assurance assessments;
 - (B) Equal Employment Opportunity (EEO) Compliance Reviews; and
 - (C) Completion rates.
- (2) Any additional tools and factors used by the department in evaluating program performance shall adhere to the goals and policies of the department articulated in this Subchapter and in guidance issued by the U.S. Department of Labor's Office of Apprenticeship.

(c) In order to evaluate completion rates, the department shall review a program's completion rates in comparison to the national average for completion rates. Based on the review, the department shall provide technical assistance to programs with completion rates lower than the national average.

(d) Cancellation of apprenticeship agreements during the probationary period will not have an adverse impact on a sponsor's completion rate.

History Note: Authority G.S. 94-1; 94-2; 94-4; Eff. December 1, 2010.

13 NCAC 14B .0204 REGISTRATION REQUEST PROCEDURE

(a) Upon request by a prospective sponsor to an official of the department, or upon the initiative of an official of the department, a representative of the division shall arrange a meeting or series of meetings between a representative of the division and the prospective sponsor for the purpose of discussing the requirements for registration and the procedures necessary to register and operate an apprenticeship program.

(b) If the prospective sponsor elects to request registration of an apprenticeship program, it shall complete and submit to the director the following:

- (1) A written request, signed by the prospective sponsor, for registration of an apprenticeship program meeting the requirements of Rule .0202 of this Subchapter;
- (2) An original of the program standards of apprenticeship required under Rule .0202(a)(4) of this Subchapter, including an affirmative action plan according to Rule .0607 of this Subchapter and a written description of the selection procedure according to Rule .0608 of this Subchapter, unless exempted under Rule .0603 of this Subchapter;
- (3) Any written agreement to comply with the program standards by a participating employer as provided by Rule .0106(b) of this Subchapter; and
- (4) One of the following:
 - (A) A written acknowledgment of union agreement or "no objection" to the registration when the program standards, collective bargaining agreement, or other instrument provides for participation by a union in any manner in the operation of the substantive matters of the

apprenticeship program and such participation is exercised;

- (B) A written acknowledgment of a union's receipt of a copy of the completed application forms when the union represents employees in the trade which is an objective of the apprenticeship training, unless an acknowledgment under Part (A) of this Subparagraph is required; or
- (C) A signed statement by the sponsor that no unions represent employees of the sponsor or participating employers in the trade which is an objective of the apprenticeship training.

(c) If the director has received the completed application forms and has determined that the requirements for an apprenticeship program, as set forth in Rule .0202 of this Subchapter, are met, the program shall be approved and registered with the division. The sponsor shall be notified in writing of the registration.

History Note: Authority G.S. 94-1; 94-2; 94-4; Eff. February 1, 1984; Recodified from Rule 14A .0301 Eff. March 15, 2010; Amended Eff. December 1, 2010.

13 NCAC 14B .0209 REGISTRATION OF APPRENTICE AND AGREEMENT

(a) A sponsor or an individual, or a person or organization on behalf of the individual, shall request that an apprenticeship agreement between the individual and his sponsor be registered by submitting to the director a copy of the apprenticeship agreement.

(b) If the following requirements are met, then the director shall approve the apprenticeship agreement and cause it to be recorded by the division, which constitutes registration of the agreement:

- (1) The agreement is complete and applies to a registered apprenticeship program;
- (2) The agreement meets the requirements of Rule .0208 of this Subchapter; and
- (3) The individual meets the minimum qualifications for an apprentice.

(c) If the director approves the apprenticeship agreement, he shall also and simultaneously cause the name of the individual who is to be trained under the agreement to be recorded by the division, which constitutes registration of the individual.

(d) All apprenticeship registrations are subject to a registration fee and an annual fee in accordance with G.S. 94-12.

History Note: Authority G.S. 94-1; 94-2; 94-4; 94-8; 94-12; Eff. February 1, 1984; Emergency Amendment Eff. August 27, 2009; Temporary Amendment Eff. October 29, 2009; Recodified from Rule 14A .0303 Eff. March 15, 2010; Temporary Amendment Expired August 13, 2010; Amended Eff. December 1, 2010.

13 NCAC 14B .0212 TERMINATION AND EXTENSION OF AGREEMENTS

(a) An apprenticeship agreement terminates when the period of the apprenticeship identified by the terms of the agreement expires.

(b) The agreement may be extended for a specified period by agreement of the apprentice and sponsor with the approval of the director. The sponsor shall obtain the director's approval of an extension in the manner provided in Rule .0211 of this Subchapter for revision of program standards of apprenticeship or an apprenticeship agreement, except that an extension becomes effective within 30 days of the director's receipt of the proposed extension unless the director, in writing, disallows the revision within that time, stating the reason(s) for disallowance.

Note: The director's approval of an extension does not indicate whether the extension will affect the apprentice's eligibility for a VA training allowance; in some cases an extension, although approved, may disqualify an apprentice for VA purposes.

(c) Nothing in this Rule shall be construed to prevent a sponsor and an individual meeting the minimum qualifications of an apprentice, as set forth in Rule .0207 of this Subchapter from executing an apprenticeship agreement.

History Note: Authority G.S. 94-1; 94-2; 94-4; 94-6; Eff. February 1, 1984; Recodified from Rule 14A .0308 Eff. March 15, 2010; Amended Eff. December 1, 2010.

SECTION .0300 – ON-THE-JOB TRAINING (OJT) PROGRAMS

13 NCAC 14B .0301 STANDARDS FOR OJT PROGRAMS

(a) In order to be eligible for registration by the department, an OJT program shall be set forth in a written document signed by the sponsor containing the terms and conditions of employment, training, and supervision of one or more trainees in the trainable occupation, which includes the following provisions and is denominated the program standards for OJT:

- (1) The nature of the occupation which is the objective of the training;
- (2) The term of the course of training consistent with the criteria for OJT programs where the term of training is for a period of not less than six months (1,000 hours) and not more than two years (4,000 hours) of reasonably continuous work experience. The length of the program shall not be longer than the time customarily required by training establishments in the community, or if there are no other training establishments in the community, then not longer than is reasonably necessary to provide a trainee with the skills, knowledge, technical information, and other facts which the trainee needs to learn in order to become competent in the occupation which is the objective of the training;

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| <p>(3) An outline of the work processes in which the trainees are to receive supervised work experience and training on the job, the approximate allocation of time to be spent in each major process, and the specific location of the training site(s);</p> <p>(4) An outline of related instruction to be provided the trainees, if any is required;</p> <p>(5) A schedule of progressively increasing wages to be paid the trainees, established by the sponsor with the approval of the director as follows:</p> <p style="padding-left: 20px;">(A) The prevailing rate in the geographic area for fully qualified workers in the occupation which is the objective of the training will be determined;</p> <p style="padding-left: 20px;">(B) A rate for fully qualified workers applicable to the OJT program will be established based upon the determination made in Part (a)(5)(A) of this Rule;</p> <p style="padding-left: 20px;">(C) The trainees' wages will be no less than 50 percent of the applicable rate for fully qualified workers established in Part (a)(5)(B) of this Rule and will increase in regular periodic increments until, not later than the last full month of the training period, they are at least 85 percent of the applicable rate; provided that in any event the wages are no less than the applicable state or federal minimum wage;</p> <p>(6) An assurance that all trainees in the program, regardless of whether they receive VA training allowances, will be provided the same training and instruction and will in all respects be treated the same under the program, in accordance with the criteria for OJT programs;</p> <p>(7) A provision requiring periodic review and evaluation of the trainees' progress in job performance and related instruction, if any, identifying the person(s) responsible for such review, and further requiring maintenance of progress records;</p> <p>(8) A provision requiring that the ratio of trainees to fully qualified workers will not exceed two to one at each job site, work force, department, or plant except as follows:</p> <p style="padding-left: 20px;">(A) In the building and construction trades, the ratio of trainees to fully qualified workers shall not exceed one to one at each job site, work force, department, or plant; and</p> <p style="padding-left: 20px;">(B) No such specific ratios are required where prohibited or otherwise provided for by an applicable collective bargaining agreement;</p> | <p>(9) A provision requiring a probationary period not to exceed 25 percent of the length of the program, with full credit given for such period toward completion of OJT. During the probationary period, either party may unilaterally submit a written request to the director requesting that the agreement be de-registered;</p> <p>(10) An assurance that adequate and safe equipment and facilities for training and supervision will be provided and that trainees will be provided safe training on the job and in any related instruction;</p> <p>(11) The granting of advanced standing or credit for demonstrated competence, acquired experience, training, or skills for all applicants equally, with commensurate wages for any progression step so granted;</p> <p>(12) A statement that an employer who is unable to fulfill its obligation under the OJT agreement may, with the written approval of the director, transfer the agreement to another employer under the same program who agrees to assume the obligations of the agreement, if both the trainee and the sponsor consent to the transfer and comply with the following provisions:</p> <p style="padding-left: 20px;">(A) The transferring trainee will be provided a transcript of related instruction, if applicable, and on-the-job training by the program sponsor;</p> <p style="padding-left: 20px;">(B) The transfer shall be to the same occupation; and</p> <p style="padding-left: 20px;">(C) A new OJT agreement shall be executed when the transfer is to occur between program sponsors;</p> <p>(13) A provision for the registration and cancellation of the program, and for the submission of any program standard modification or amendment to the department for approval;</p> <p>(14) A provision for the registration, modification and amendment of OJT agreements, and for giving notice to the department of transfers, suspensions and cancellations of OJT agreements, including a statement of the reasons therefore, and of persons who have successfully completed OJT programs;</p> <p>(15) A provision that the sponsor will maintain all records of the OJT program, including payroll records, for a period of five years and shall make them available for review to department personnel or their authorized representative upon the request of the department personnel or, whenever the records pertain to a program with trainees who have received or are receiving VA training allowances, to VA personnel upon their request; the location of the records shall be specified;</p> |
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- (16) A provision that the sponsor will notify the director and the VA Regional Office in writing whenever a trainee receiving a VA training allowance is paid wages in an amount equal to or more than the applicable rate for fully qualified workers as established in Subparagraph (a)(5) of this Rule;
- (17) Contact information, including name, title, address, telephone number and e-mail address, of the appropriate person(s) with authority under the program to receive, process, and resolve complaints;
- (18) A statement of the minimum qualifications for trainees which the sponsor may require;
- (19) An assurance that the OJT program complies with the criteria set forth in Rule .0403 of this Subchapter;
- (20) The following pledge: "The recruitment, selection, employment, and training of trainees during OJT shall be without discrimination because of race, color, religion, national origin, or sex;" and
- (22) A provision that each trainee in the OJT program will be a party to an OJT agreement meeting the requirements of Rule .0305 of this Subchapter, and that the sponsor will provide each trainee with a copy of the agreement.

(b) The program standards for OJT shall constitute a statement of the actual program operating or to be operated and not a statement of the goals, objectives, or aspirations of the sponsor.

*History Note: Authority G.S. 94-1; 94-2; 94-4;
Eff. February 1, 1984;
Amended Eff. August 1, 1990;
Recodified from Rule 14A .0404 Eff. March 15, 2010;
Amended Eff. December 1, 2010.*

**13 NCAC 14B .0302 REGISTRATION REQUEST
PROCEDURE FOR OJT PROGRAMS**

- (a) Upon request by a prospective sponsor to an official of the department, or upon the initiative of an official of the department, a representative of the division shall arrange a meeting or series of meetings between a representative of the division and the prospective sponsor for the purpose of discussing the relevant criteria and standards and the procedures necessary to register and to operate an approved OJT program.
- (b) If the prospective sponsor elects to request that a training program be registered, it shall complete and submit to the director the following:
 - (1) A written request, signed by the prospective sponsor, for registration of a training program meeting the requirements of Rule .0301 of this Subchapter;
 - (2) An original copy of the program standards for OJT;
 - (3) Any written agreement to comply with the program standards by a participating employer as provided by Rule .0106(b) of this Subchapter; and

- (4) A Designation of Certifying Official(s) form.
- (c) If the director has received the completed application forms and has determined that the requirements for an OJT program, as set forth in Rule .0303 of this Subchapter, are met, the program shall be registered with the division. The director shall notify the sponsor in writing of the registration.

*History Note: Authority G.S. 94-1; 94-2; 94-4;
Eff. February 1, 1984;
Recodified from Rule 14A .0406 Eff. March 15, 2010;
Amended Eff. December 1, 2010.*

**13 NCAC 14B .0303 ELIGIBILITY AND
PROCEDURE FOR REGISTRATION OF OJT
PROGRAMS**

The director may register an OJT program only when:

- (1) The sponsor offering the training has submitted to the director the forms required in Rule .0302(b) of this Subchapter; and
- (2) The director finds upon investigation that the following criteria are met:
 - (a) The nature of the occupation which is the objective of the training is one in which progression and appointment to the next higher classification are based upon skills learned through organized and supervised training on the job and not upon such factors as length of service and normal turnover;
 - (b) The training content of the program is adequate to qualify the trainee for a job in the occupation which is the objective of the training;
 - (c) The sponsor provides adequate space, equipment, instructional material, and instructor personnel for safe and satisfactory on-the-job training;
 - (d) The OJT program does not provide training for people already qualified by training and experience for the occupation which is the objective of the training;
 - (e) Each trainee's wages are paid according to the schedule set out in the program standards for OJT but in no event are less than the applicable state or federal minimum wage; and
 - (f) There is a reasonable certainty that a job in the occupation which is the objective of the training will be available to the trainee at the end of the OJT course of training.

*History Note: Authority G.S. 94-1; 94-2; 94-4;
Eff. February 1, 1984;
Recodified from Rule 14A .0403 Eff. March 15, 2010;
Amended Eff. December 1, 2010.*

13 NCAC 14B .0305 OJT AGREEMENT

An OJT agreement shall contain the following in order to be registered:

- (1) The contact information, including names, addresses, telephone numbers, and e-mail addresses of the program sponsor or employer, and their signatures;
- (2) The date of birth of the trainee;
- (3) The name and signature of the trainee, and if the trainee is a minor, the signature of the trainee's parent or guardian;
- (4) The nature of the occupation which is the objective of the trainee's training;
- (5) The schedule of wages for the trainee, either expressly or by specific reference to the trainee's place on the schedule set forth in the program standards for OJT;
- (6) The number of hours to be spent by the trainee in work on the job and the number of hours to be spent in related instruction;
- (7) Statements providing that the OJT agreement may be cancelled in accordance with Rule .0407 of this Subchapter;
- (8) A statement that a complaint procedure is provided, and that details of the procedure are set out in the program standards for OJT in accordance with Rule .0301 of this Subchapter, including the contact information for the person(s) designated under the program to receive, process and resolve controversies;
- (9) A statement that the trainee will be afforded equal opportunity in employment and training without discrimination because of race, color, religion, national origin, or sex;
- (10) A reference incorporating as a part of the agreement the program standards for OJT as they exist on the date the agreement is executed and as they may be revised or amended during the period of the agreement; and
- (11) Such other terms of agreement between the parties as are consistent with the rules in this Section and the purposes of OJT training in general.

History Note: Authority G.S. 94-1; 94-2; 94-4; Eff. February 1, 1984; Recodified from Rule 14A .0405 Eff. March 15, 2010; Amended Eff. December 1, 2010.

13 NCAC 14B .0306 REGISTRATION OF OJT AGREEMENTS

- (a) The sponsor shall request that an OJT agreement between the individual and sponsor be registered by submitting to the director a copy of the OJT agreement.
- (b) If the following requirements are met, then the director shall approve the OJT agreement and cause it to be recorded by the division, which constitutes registration of the agreement:

- (1) The agreement is complete and applies to an approved OJT program; and
- (2) The agreement meets the requirements of Rule .0305 of this Subchapter.

- (c) If the director approves the OJT agreement, he shall also and simultaneously cause the name of the individual who is to be trained under the agreement to be recorded by the division, which constitutes registration of the individual.

History Note: Authority G.S. 94-1; 94-2; 94-4; Eff. February 1, 1984; Recodified from Rule 14A .0407 Eff. March 15, 2010; Amended Eff. December 1, 2010.

13 NCAC 14B .0309 TERMINATION AND EXTENSION OF AGREEMENTS

- (a) An OJT agreement terminates when the period of the course of training identified by the terms of the agreement expires.
- (b) The agreement may be extended for a specified period by agreement of the trainee and sponsor with the approval of the director. The sponsor shall obtain the director's approval of an extension in the manner provided in Rule .0211 of this Subchapter for revision of program standards of apprenticeship or an apprenticeship agreement, except that an extension becomes effective within 30 days of the director's receipt of the proposed extension unless the director, in writing, disallows the revision within that time, stating the reason(s) for disallowance.

Note: The director's approval of an extension does not indicate whether the extension will affect the trainee's eligibility for a VA training allowance; in some cases an extension, although approved, may disqualify the trainee for VA purposes.

- (c) Nothing in this Rule shall be construed to prevent a sponsor and an individual who is not fully qualified by training and experience for the occupation which is the objective of the training from executing an OJT agreement.

History Note: Authority G.S. 94-1; 94-2; 94-4; Eff. February 1, 1984; Recodified from Rule 14A .0410 Eff. March 15, 2010; Amended Eff. December 1, 2010.

13 NCAC 14B .0402 DE-REGISTRATION OF PROGRAM

The director may de-register an apprenticeship or OJT program only:

- (1) Upon request of the sponsor, according to Rule .0403 of this Section;
- (2) For reasonable cause, according to Rule .0404 of this Section; or
- (3) For inactivity, according to Rule .0405 of this Section.

History Note: Authority G.S. 94-1; 94-2; 94-4; Eff. February 1, 1984; Recodified from Rule 14A .0502 Eff. March 15, 2010; Amended Eff. December 1, 2010.

13 NCAC 14B .0403 VOLUNTARY DE-REGISTRATION

If a sponsor voluntarily requests de-registration of a program operated by the sponsor, the director may de-register the program by:

- (1) Notifying the sponsor in writing that the program is de-registered and the effective date thereof;
- (2) Requiring the sponsor, within 15 days of receipt of the notice of de-registration:
 - (a) To notify each apprentice in the program that the de-registration automatically cancels the apprentice's individual registration and removes the apprentice from coverage for federal or state purposes requiring registration of an apprenticeship program or to notify each trainee in the program that the program is no longer approved; and
 - (b) To notify each apprentice or trainee in the program who is receiving VA training allowances that the program is no longer approved for participation for people eligible to receive training allowances;
- (3) If applicable, notifying the VA Regional Office that approval for the program is withdrawn and the effective date thereof; and
- (4) Causing the de-registration to be recorded by the division, and publishing or posting public notice of the de-registration.

History Note: Authority G.S. 94-1; 94-2; 94-4; Eff. February 1, 1984; Recodified from Rule 14A .0503 Eff. March 15, 2010; Amended Eff. December 1, 2010.

13 NCAC 14B .0404 DE-REGISTRATION

(a) If the director has notified a sponsor of a lack of compliance in accordance with Rule .0401 of this Section and the sponsor has failed to remedy the lack of compliance within the time allotted, the director shall send a notice to the sponsor by registered or certified mail, return receipt requested, stating the following:

- (1) The notice is sent pursuant to this Rule;
- (2) The sponsor was notified of certain deficiencies (identifying them) resulting in a lack of compliance with the applicable rules, requirements, criteria, or standards and was advised of the remedial action required, with the date(s) such notice was given;
- (3) The sponsor has failed to remedy the lack of compliance within the time allotted;
- (4) The director has therefore found reasonable cause that the sponsor's program should be de-registered; and

- (5) The director will de-register the sponsor's program unless the sponsor requests a hearing in accordance with Paragraph (b) of this Rule.

(b) If the sponsor desires a hearing regarding the de-registration of the sponsor's apprenticeship or OJT program, it shall file a petition for a hearing as provided in Chapter 150B of the North Carolina General Statutes and the hearing process shall be conducted as therein provided.

(c) If the sponsor does not request a hearing, the director shall de-register the program.

(d) Whenever the director decides to de-register a program for reasonable cause, he shall follow the procedure provided in Rule .0403 of this Section for voluntary de-registration. In addition, the director shall notify apprentices and trainees as provided in Rule .0403 of this Section if the director has reason to believe that the sponsor may not do so or if the director chooses so to do. The director shall publish or post public notice of the de-registration.

History Note: Authority G.S. 94-1; 94-2; 94-4; Eff. February 1, 1984; Amended Eff. August 1, 1988; Recodified from Rule 14A .0504 Eff. March 15, 2010; Amended Eff. December 1, 2010.

13 NCAC 14B .0405 DE-REGISTRATION FOR INACTIVITY

(a) Whenever an apprenticeship or OJT program registered by the division has failed to enroll any apprentices or trainees for a period of at least one year, the director shall send a notice to the sponsor stating the following:

- (1) The notice is sent pursuant to this Rule;
- (2) The sponsor's program has failed to enroll any apprentices or trainees, as applicable, for a period of at least one year; and
- (3) The director will de-register the sponsor's program unless the sponsor protests in writing within 15 days of receipt of the notice, stating the reasons why the program should not be de-registered.

(b) If a sponsor protests following notice from the director, the director shall consider the protest before deciding to de-register the sponsor's program.

(c) After receiving and considering the sponsor's protest or after allowing sufficient time for the sponsor to protest, the director may notify the sponsor by registered or certified mail, return receipt requested, that the sponsor's program will be de-registered for inactivity as provided by this Rule unless the sponsor requests a hearing in accordance with Paragraph (d) of this Rule.

(d) If the sponsor desires a hearing regarding the de-registration of the sponsor's apprenticeship or OJT program, it shall file a petition for a hearing as provided in Chapter 150B of the North Carolina General Statutes and the hearing process shall be conducted as therein provided.

(e) If the sponsor does not request a hearing, the director shall de-register the program by:

- (1) Causing the de-registration to be recorded by the division and publishing or posting public notice of the de-registration;
- (2) Notifying the sponsor of the de-registration and the effective date thereof; and
- (3) If applicable, notifying the VA Regional Office that approval for the program is withdrawn and the effective date thereof.

History Note: Authority G.S. 94-1; 94-2; 94-4; Eff. February 1, 1984; Amended Eff. August 1, 1988; Recodified from Rule 14A .0505 Eff. March 15, 2010; Amended Eff. December 1, 2010.

13 NCAC 14B .0406 REINSTATEMENT OF REGISTRATION

- (a) Any apprenticeship or OJT program which has been de-registered involuntarily within the preceding year may be re-registered by the director if he finds upon investigation and presentation of evidence by the sponsor that the program is capable of operating in accordance with the applicable rules, requirements, criteria, or standards under this Chapter.
- (b) Any apprenticeship or OJT program which has been de-registered voluntarily within the preceding year may be re-registered by the director upon request of the sponsor.
- (c) Whenever an apprenticeship program is re-registered according to Paragraph (a) or (b) of this Rule, apprenticeship agreements and individuals must be registered in accordance with Rule .0209 of this Chapter regardless of any prior registration in the de-registered program. Whenever an OJT program is re-registered, OJT agreements must be submitted in accordance with Rule .0306 of this Chapter regardless of any prior recording.
- (d) Nothing in this Rule shall be construed to prevent a sponsor who has operated a program which has been de-registered from requesting registration of a program according to the procedures provided in this Chapter.

History Note: Authority G.S. 94-1; 94-2; 94-4; Eff. February 1, 1984; Recodified from Rule 14A .0507 Eff. March 15, 2010; Amended Eff. December 1, 2010.

13 NCAC 14B .0503 COMPLAINT PROCEDURE

- (a) A complaint must:
 - (1) be in writing;
 - (2) be signed by the complainant or its representative;
 - (3) set forth the specific matter(s) complained of and a brief statement of the facts; and
 - (4) be accompanied by copies of pertinent documents and correspondence.
- (b) Complaints must be filed within 180 days of the incident or circumstances complained of or within 60 days of a final local decision, whichever is later.
- (c) Upon receipt, the director shall:
 - (1) acknowledge receipt of the complaint;
 - (2) investigate the nature of the dispute;

- (3) make reasonable efforts to arrive at a mutually agreeable resolution of the dispute between the parties involved;
- (4) render a decision regarding the dispute within 90 days of receiving the complaint, unless a mutually agreeable resolution has been reached prior to his decision; and
- (5) furnish the parties and other people as may be appropriate with copies of his decision, if any, and the reason(s) therefor.

- (d) Nothing in this Rule precludes an apprentice from pursuing any other remedy authorized under another Federal, State, or local law.

History Note: Authority G.S. 94-1; 94-2; 94-4; 94-7; Eff. February 1, 1984; Amended Eff. August 1, 1988; Recodified from Rule 14A .0603 Eff. March 15, 2010; Amended Eff. December 1, 2010.

13 NCAC 14B .0616 NONCOMPLIANCE WITH FEDERAL AND STATE EQUAL OPPORTUNITY REQUIREMENTS

A pattern or practice of noncompliance by a sponsor (or where the sponsor is a joint apprenticeship committee, by one of the parties represented on such committee) with Federal or state laws or regulations requiring equal opportunity is grounds for the imposition of sanctions in accordance with 13 NCAC 14B .0612 and 29 CFR 30.13 if such noncompliance is related to the equal opportunity of apprentices or graduates of such an apprentice program under this Section. The sponsor shall take affirmative steps to assist and cooperate with employers and unions in fulfilling their equal opportunity obligations.

History Note: Authority G.S. 94-1; 94-2; 94-4; Eff. December 1, 2010.

TITLE 15A – DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

15A NCAC 28 .0502 SALES OF ALCOHOL OR CONTROLLED SUBSTANCES

No person shall sell or attempt to sell controlled or illegal substances or any other intoxicating or impairing substance on Aquarium property. Beer and wine may be sold pursuant to a valid Alcohol Beverage Control permit at an event held at the Aquarium if written approval is given by the Division Director prior to the event. The Director's approval shall be given when the applicant agrees that the beverages' alcohol content will not exceed 16 percent, the alcoholic beverages will be served through a caterer or bartender insured by a general liability insurance policy containing per occurrence coverage, and alcohol service will be discontinued at least 30 minutes prior to the conclusion of the event.

*History Note: Authority G.S. 143B-289.41(a)(1b); 143B-289.41(b);
Eff. February 1, 1987;
Amended Eff. November 1, 2010; May 1, 2010.*

TITLE 21 – OCCUPATIONAL LICENSING BOARDS AND COMMISSIONS

CHAPTER 02 - BOARD OF ARCHITECTURE

21 NCAC 02 .0109 DEFINITIONS

In addition to the statutory definitions in G.S. 83A-1, as used in these Rules, the following terms shall have the following meanings:

- (1) "Delinquent" is the status of a license registration that has not been renewed in accordance with 21 NCAC 02 .0213(b) for individuals and 21 NCAC 02 .0214(d) for firms.
- (2) "Licensed" means holding a license to practice architecture in the State of North Carolina as defined by North Carolina General Statute Chapter 83A. "Registered" has the same meaning as licensed.
- (3) "Fictitious name" is any assumed name, style or designation other than the proper name of the entity using such name. The surname of a person, standing alone or coupled with words that describe the business, is not a fictitious business name. The inclusion of words that suggest additional owners, such as "Company", "& Company", "& Sons", "& Associates", makes the name an assumed or fictitious name. For partnerships, the last name of all partners must be listed or the fictitious name definition applies.
- (4) "Responsible control" has the meaning described in Rule .0206(d).
- (5) "Firm" or "Architectural Firm" means any Professional Corporation or Professional Limited Liability Company approved by the Board and engaged in the practice of architecture.
- (6) "Procurement" means purchasing or pricing of materials to construct a building or structure.
- (7) Direct Supervision as used in North Carolina General Statute 83A means responsible control.

*History Note: Authority G.S. 83A-6;
Eff. November 1, 2010.*

21 NCAC 02 .0201 ARCHITECT, FIRM OR PARTNERSHIP CONTACT INFORMATION AS ON FILE WITH THE BOARD

(a) Every individual licensee shall keep the Board advised of his/her preferred current contact information, including physical

mailing address, email and phone numbers, principle place of business and electronic mail address and the name of the firm or partnership where he/she is employed.

(b) Each firm or partnership shall within 30 days notify the Board of all changes in ownership, of association, contact information, electronic email or physical address. Upon the dissolution of a firm, the architect in responsible control of the firm at the time of dissolution shall within 30 days notify the Board concerning such dissolution, and of the succeeding status and addresses of the firm. This requirement is in addition to registration, listing and renewal requirements set out elsewhere in rules of this Chapter.

*History Note: Authority G.S. 83A-5; 83A-6;
Eff. February 1, 1976;
Readopted Eff. September 29, 1977;
Amended Eff. November 1, 2010; June 1, 1995.*

21 NCAC 02 .0205 NAME OF FIRM

(a) A licensee shall not engage in the practice of architecture under a firm name which is misleading or deceptive in any way as to the legal form of the firm or the persons who are partners, officers, members, or shareholders in the firm. The Board shall approve all firm names to be used in this State. Examples of misleading or deceptive firm names include the following:

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

(b) Failure of the firm to register a fictitious name shall be prima facie evidence of the name being misleading or deceptive.

*History Note: Authority G.S. 55B-5; 83A-6; 83A-9; 83A-12;
Eff. February 1, 1976;
Readopted Eff. September 29, 1977;
Amended Eff. November 1, 2010; July 1, 2006; June 1, 1995,
April 1, 1991; May 1, 1989.*

21 NCAC 02 .0208 DISHONEST CONDUCT

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

(b) Contributions. An architect shall not pay or offer to pay, either directly or indirectly, any commission, political contribution, gift, or other consideration in order to secure work. Gifts of nominal value (including, reasonable entertainment and hospitality) and securing salaried positions through employment agencies are permitted.

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

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

History Note: Authority G.S. 14-353; 83A-6; 83A-14; 83A-15;

Eff. February 1, 1976;

Readopted Eff. September 29, 1977;

Amended Eff. November 1, 2010; July 1, 2006; December 1, 1995; June 1, 1995; October 1, 1989; May 1, 1989.

21 NCAC 02 .0209 UNPROFESSIONAL CONDUCT

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

- (1) **Compliance With Laws.** It is unprofessional conduct for an architect, in the conduct of his or her professional practice, to knowingly violate any state or federal criminal law. A criminal conviction shall be deemed prima facie evidence of knowingly violating the law.
- (2) **Compliance With Foreign Registration.** It is unprofessional conduct for an architect to knowingly violate the laws governing the practice of architecture or the rules promulgated by any other architectural licensing board in any United States jurisdiction. A finding by a foreign architectural registration board that an architect has violated a law or rule governing the practice of architecture shall be deemed prima facie evidence of knowingly violating the law or rule.
- (3) **Product Specification.** It is unprofessional conduct for an architect to solicit or accept financial or other valuable consideration from material or equipment suppliers for specifying their products.
- (4) **Advertising.** It is unprofessional conduct for an architect to engage in any false, deceptive, fraudulent, or misleading advertising.
- (5) **False Statements.** It is unprofessional conduct for an architect to knowingly make false statements about the professional work of; or to maliciously injure the prospects, practice, or employment position of others active in the design and construction of the physical environment.
- (6) **Evasion is:**
 - (a) It is unprofessional conduct for an architect, through employment by contractors (whether or not the contractors are licensed under G.S.

89), or by another individual or entity not holding an individual or firm registration from the Board, to enable the employer to offer or perform architectural services, except as provided in G.S. 83A-13. In design/build arrangements, the architect shall not be an employee of a person or firm not holding a registration to practice architecture in North Carolina.

(b) It is unprofessional conduct for an architect to furnish limited services in such manner as to enable owners, draftsmen, or others to evade the public health and safety requirements of Chapter 83A, G.S. 133-2, G.S. 153A-357, or G.S. 160A-417.

(c) When building plans are begun or contracted for by persons not licensed and qualified, it is unprofessional conduct for an architect to take over, review, revise, or sign or seal such drawings or revisions thereof for such persons, or do any act to enable either such persons or the project owners, directly or indirectly, to evade the requirements of Chapter 83A, G.S. 133-2, G.S. 153A-357, or G.S. 160A-417.

(7) **Branch Office.** It is unprofessional conduct for an individual architect or firm to maintain or represent by sign, listing, or other manner that he/she maintains an architectural office or branch office in North Carolina unless such office has a registered resident architect in North Carolina whose principle place of business is in that office. This item does not apply to on-site project offices during construction of a project.

(8) **Misrepresentation Regarding Prior Experience.** An architect shall accurately represent to a prospective or existing client or employer his/her qualifications and the scope of his/her responsibility in connection with work for which he is claiming credit. Misrepresentation shall be as follows:

(a) Each architect shall state his or her prior professional experience and the firm the architect is representing while presenting qualifications to prospective clients, both public and private. If an architect uses visual representations of prior projects or experience, all architects-of-record must be identified. Architect-of-record means persons or entities whose seals appear on plans,

specifications and contract documents.

- (b) An architect who has been an employee of another architectural practice may not claim credit for projects contracted for in the name of the previous employer. The architect shall indicate, next to the listing for each project, that individual experience gained in connection with the project was acquired as an employee, and identify the previous architectural firm. The architect shall also describe the nature and extent of his/her participation in the project.
- (c) An architect who was formerly a principal in a firm may make additional claims provided he/she discloses the nature of ownership in the previous architectural firm (e.g. stockholder or junior partner) and identifies with specificity his/her responsibilities for that project.
- (d) An architect who presents a project that has received awards or public recognition must comply with the requirements in Item (8) of this Rule with regard to project presentation to the public and prospective clients.
- (e) Projects which remain unconstructed and which are listed as credits shall be listed as "unbuilt" or a similar designation.
- (9) Fee Bidding on Public Projects. An architect shall not knowingly cooperate in a violation of any provisions of G.S. 143-64.31.
- (10) An architect shall cooperate with the Board in connection with any inquiry it shall make. Cooperation includes responding in a timely manner to all inquiries of the Board or its representative which is mailed in accordance with 21 NCAC 02 .0201.
- (11) Copyright Infringement. It is unprofessional conduct for an architect to be found by a court to have infringed upon the copyrighted works of other architects or design professionals.

History Note: Authority G.S. 83A-6; 83A-14; 83A-15;
Eff. February 1, 1976;
Amended Eff. February 24, 1976;
Readopted September 29, 1977;
Amended Eff. November 1, 2010; July 1, 2006; June 1, 1995;
July 1, 1992; October 1, 1989; May 1, 1989.

21 NCAC 02 .0216 ANNUAL LISTING OF PARTNERSHIP

History Note: Authority G.S. 83A-6; 83A-9;
Eff. May 1, 1991;

Amended Eff. June 1, 1995;
Repealed Eff. November 1, 2010.

21 NCAC 02 .0219 REGISTERED LIMITED LIABILITY PARTNERSHIPS

History Note: Authority G.S. 83A-6; 59-84.2; 59-84.3;
Eff. June 1, 1995;
Repealed Eff. November 1, 2010.

21 NCAC 02 .0301 APPLICATION FOR REGISTRATION BY EXAM

(a) All persons desiring to submit an application to take the Architectural Registration Exam (ARE) shall complete the application for licensure by exam and submit the non-refundable application fee as established in Rule .0108. If an application is complete and the applicant is otherwise qualified by statute and the rules of the Board to sit for the examination, the Board shall send notice of ARE eligibility to the applicant.

(b) The fees for examination, or parts thereof, are set by the National Council of Architecture Registration Boards. Fee information will be made available to all applicants for examination on the Board web site and may be obtained from the National Council of Architecture Registration Boards.

History Note: Authority G.S. 83A-4; 83A-6; 83A-7;
Eff. February 1, 1976;
Readopted Eff. September 29, 1977;
Amended Eff. November 1, 2010; July 1, 1996; December 1, 1992; May 1, 1989.

21 NCAC 02 .0302 EXAMINATION

(a) Licensure Examination. All applicants for architectural registration in North Carolina by examination shall pass the Architectural Registration Examination (ARE), prepared by the National Council of Architectural Registration Boards (NCARB). Provided, applicants who have never been registered in any NCARB recognized jurisdiction may transfer credits for portions of the examination previously passed in another jurisdiction if at the time of initial approval to take the exam in said jurisdiction they otherwise qualified for taking the exam under the rules in this Chapter. The qualifications necessary for eligibility to take the ARE are as follows:

- (1) be of good moral character as defined in G.S. 83A-1(5);
- (2) be at least 18 years of age;
- (3) the professional education qualification is the NAAB (National Architectural Accrediting Board) accredited professional degree in architecture;
- (4) all applicants who apply for architectural registration by exam are required to follow the Intern Development Program (IDP) through NCARB or a program approved as equivalent by the North Carolina Board of Architecture in order to satisfy the requirements of this Section.
- (5) The Board shall grant eligibility to take the exam, to those individuals who have obtained

the required NAAB accredited degree, have enrolled in the NCARB IDP and have had verified by NCARB at least 2000 training units of the IDP as approved by NCARB. Upon successful completion of all sections of the ARE, fulfillment of the practical training requirement and fulfillment of all remaining IDP requirements an individual may submit the application and fee for licensure by exam and may then be granted a license to practice architecture.

(b) Retention of credit for purposes of licensure by examination in North Carolina.

- (1) Passing scores received after July 1, 2006 on any part of the ARE remain valid for a period of time established by the exam provider, NCARB.
- (2) As of July 1, 2011, passing scores received on any part of the ARE prior to July 1, 1996 are invalid.
- (3) As of July 1, 2014, passing scores received on any part of the ARE after July 1, 1996 and prior to July 1, 2006 are invalid.

(c) Practical training means practical experience and diversified training as defined by the Intern Development Program through the NCARB. However, the Board may judge each case on its own merits.

(d) Personal interview. During the application process, the applicant may be interviewed by the Board members. The purpose of the interview is to augment the evidence submitted in an application with regard to qualifications required in Subparagraph (a)(1) of this Rule.

(e) The ARE shall be graded in accordance with the methods and procedures recommended by NCARB. An exam candidate must receive a passing grade in each division of the Architectural Registration Exam.

(f) A person currently employed under the responsible control of an architect, who holds a Professional Degree from a NAAB accredited program, and who is enrolled in and maintains good standing or has successfully completed a National Council of Architectural Registration Boards Record in the Intern Development Program (IDP) may use the title "Architectural Intern" or "Intern Architect" in conjunction with his/her current employment.

History Note: Authority G.S. 83A-1; 83A-6; 83A-7; Eff. February 1, 1976; Readopted Eff. September 29, 1977; Amended Eff. November 1, 2010; July 1, 2006; July 1, 2000; July 1, 1996; June 1, 1995; December 1, 1992; July 1, 1991.

21 NCAC 02 .0303 LICENSURE BY RECIPROCITY

(a) An individual who holds a current license in good standing from a National Council of Architecture Registration Boards (NCARB) recognized jurisdiction and a Certified Council Certificate (also known as "Blue Cover") issued by NCARB may qualify for licensure by reciprocity. Upon receipt of a certified record from NCARB and the Board application for licensure by reciprocity and fee, the Board may issue a license to

an applicant as provided in G.S. 83A-7(b). Revocation of the certificate by NCARB shall automatically suspend the architect's license to practice in North Carolina until such time as the certificate is reinstated by NCARB.

(b) Licensure by Direct Reciprocity with another NCARB recognized jurisdiction. The Board may grant a reciprocal license to an individual who submits a non-certified NCARB record (also known as the "Buff Cover") or other verified evidence that he/she meets the following requirements:

- (1) the applicant has been continuously licensed in good standing in another jurisdiction; and
- (2) the applicant otherwise met the requirements for a certified NCARB record or North Carolina license in effect at the time of his/her original licensure as an architect.

The Board may interview with the applicant to satisfy the Board, or its designee that the applicant has had sufficient recent architectural practice experience to be able to competently practice architecture in this state.

History Note: Authority G.S. 83A-6; 83A-7; Eff. February 1, 1976; Readopted Eff. September 29, 1977; Amended Eff. November 1, 2010; July 1, 2006; July 1, 2000; October 1, 1995; May 1, 1989; October 1, 1984; September 1, 1982.

21 NCAC 02 .0701 CONTINUANCES FAILURE TO APPEAR

(a) The presiding officer may grant continuances and adjournments only in compelling circumstances.

(b) Should a party fail to appear at a hearing or fail to appear following the granting of a continuance adjournment, the hearing shall be conducted in the party's absence.

History Note: Authority G.S. 83A-6; 150B-11; 150B-38; 150B-40; Eff. February 1, 1976; Readopted Eff. September 29, 1977; Amended Eff. November 1, 2010; May 1, 1989.

21 NCAC 02 .0703 SUBPOENAS

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

(b) Subpoenas shall contain:

- (1) the caption of the case; the name and address of the person subpoenaed;
- (2) the date, hour and location of the hearing in which the witness is commanded to appear;
- (3) a particularized description of the books, papers, records or objects the witness is directed to bring with him to the hearing, if any;

- (4) the identity of the party on whose application the subpoena was issued; the date of issue;
- (5) the signature of one of the members of the Board or the Board's Secretary; and
- (6) a "return of service." The "return of service" form, as filled out, shows the name and capacity of the person serving the subpoena, the date on which service was made, the person on whom service was made, the manner in which service was made, and the signature of the person making service.

(c) The subpoena shall be issued in duplicate, with a "return of service" form attached to each copy. A person serving the subpoena shall fill out the "return of service" form for each copy and return one copy of the subpoena, with the attached "return of service" form completed, to the Board.

(d) Any person receiving a subpoena from the Board may object thereto by filing a written objection to the subpoena with the Board's office.

(e) Such objection shall include a concise, but complete, statement of reasons why the subpoena should be revoked or modified. These reasons may include lack of relevancy of the evidence sought, or any other reason sufficient in law for holding the subpoena invalid, such as that the evidence is privileged, that appearance or production would be so disruptive as to be unreasonable in light of the significance of the evidence sought, or other undue hardship.

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

(g) The party who requested the subpoena, in such time as may be granted by the presiding officer, may file a written response to the objection. The written response shall be served by the requesting party on the objecting witness simultaneously with filing the response with the Board.

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

(i) After the close of such hearing, a majority of the Board members hearing the contested case shall rule on the challenge and issue a written decision. A copy of the decision shall be issued to all parties and made a part of the record.

History Note: Authority G.S. 83A-6; 150B-11; 150B-38; 150B-39;

Eff. February 1, 1976;

Readopted Eff. September 29, 1977;

Amended Eff. November 1, 2010; May 1, 1989.

**CHAPTER 30 - NC BOARD OF MASSAGE AND
BODYWORK THERAPY**

**21 NCAC 30 .0629 STUDENT ENROLLMENT
AGREEMENT**

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

- (1) Name and telephone number of the school and location of where the student will attend classes;
- (2) Student's name, address, telephone number;
- (3) Name of the program in which student is enrolling, number of clock or credit hours of the program, beginning and ending dates, length of program in weeks or months, and expected graduation date;
- (4) Program tuition and all related costs, including application and registration fees and estimated cost of books and supplies;
- (5) Refund and cancellation policies, including student's right to cancel;
- (6) Payment methods, including cash, installment payment plans, or financial aid (as applicable); interest charged; and methods used to collect delinquent tuition;
- (7) Placement guarantee disclaimer;
- (8) Grounds for dismissal from the school;
- (9) Statement that you must hold a North Carolina massage and bodywork therapy license in order to practice massage and bodywork therapy in North Carolina;
- (10) Statement that good moral character is a requirement for licensure as a massage and bodywork therapist in North Carolina and, pursuant to G.S. 90-629.1, the North Carolina Board of Massage and Bodywork Therapy may deny a license to practice massage and bodywork therapy if an applicant has a criminal record or there is other evidence that indicates the applicant lacks good moral character;
- (11) Statement referencing the school catalog and student handbook as a part of the enrollment agreement;
- (12) Statement certifying that student has read and understands all terms of the enrollment agreement; and
- (13) Signature lines for school official and student.

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

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

Eff. October 1, 2007;

Amended Eff. November 1, 2010.

CHAPTER 32 – MEDICAL BOARD

21 NCAC 32S .0216 CONTINUING MEDICAL EDUCATION

(a) A physician assistant must complete at least 100 hours of continuing medical education (CME) every two years, at least 40 hours of which must be American Academy of Physician Assistants Category I CME. CME documentation must be available for inspection by the board or its agent upon request. The two year period shall run from the physician assistant's birthday, beginning in the year 1999, or the first birthday following initial licensure, whichever occurs later.

(b) A physician assistant who possesses a current certification with the National Commission on Certification of Physician Assistants (NCCPA) will be deemed in compliance with the requirement of Paragraph (a) of this Rule. The physician assistant must attest on his or her annual renewal that he or she is currently certified by the NCCPA.

History Note: Authority G.S. 90-5.1(a)(3); 90-9.3 and (10); 90-18(c)(13); 90-18.1;
Eff. September 1, 2009;
Amended Eff. November 1, 2010.

21 NCAC 32S .0219 LIMITED PHYSICIAN ASSISTANT LICENSE FOR DISASTERS AND EMERGENCIES

(a) The Board shall, pursuant to G.S. 90-12.5, issue a limited physician assistant license under the following conditions:

- (1) the Governor of the State of North Carolina has declared a disaster or state of emergency, or in the event of an occurrence for which a county or municipality has enacted an ordinance to deal with states of emergency under G.S. 14-288.12, 14-288.13, or 14-288.14, or to protect the public health, safety or welfare of its citizens under Article 22 of Chapter 130A of the General Statutes, G.S. 160A-174(a) or G.S. 153A-121(a);
- (2) the applicant provides government-issued photo identification;
- (3) the applicant provides proof of licensure, certification or authorization to practice as a physician assistant in another state, the District of Columbia, US Territory or Canadian province;
- (4) applicant affirms under oath that such license is in good standing; and
- (5) no grounds exist pursuant to G.S. 90-14(a) for the Board to deny a license.

(b) In response to the specific circumstances presented by a declared disaster or state of emergency and in order to best serve the public interest, the Board may limit the physician assistant's scope of practice including, but not limited to, the following: geography; term; type of practice; prescribing, administering and dispensing therapeutic measures, tests, procedures and drugs; supervision; and practice setting.

(c) The physician assistant must practice under the direct supervision of an on-site physician. The supervising physician must be licensed in this State or approved to practice in this State during a disaster or state of emergency pursuant to G.S. 90-

12.5 and 21 NCAC 32B .1705. The physician assistant may perform only those medical acts, tasks, and functions delegated by the supervising physician and not limited by the physician assistant's scope of practice as set out in Paragraph (b) of this Rule.

(d) A team of physician(s) and physician assistant(s) practicing pursuant to this Rule is not required to maintain on-site documentation describing supervisory arrangements and instructions for prescriptive authority as otherwise required by 21 NCAC 32S .0213.

(e) A physician assistant holding a Limited Physician Assistant License for Disasters and Emergencies shall not receive any other or additional compensation outside his or her usual compensation, either direct or indirect, monetary, in-kind, or otherwise for the provision of medical services during a disaster or emergency.

History Note: Authority G.S. 90-9.3; 90-12.5; 90-18(c)(13); 166A-6;
Eff. September 1, 2009;
Amended Eff. November 1, 2010.

21 NCAC 32S .0220 EXPEDITED APPLICATION FOR PHYSICIAN ASSISTANT LICENSURE

(a) An physician assistant who has been licensed, certified, or authorized to practice in at least one other state, the District of Columbia, U.S. Territory or Canadian province for at least five years, has been in active clinical practice during the past two years and who has a clean license application, as defined in Paragraph (c) of this Rule, may apply for a license on an expedited basis.

(b) In order to apply for an expedited Physician Assistant License, an applicant shall:

- (1) submit a completed application, using the Board's form, attesting under oath that the information on the application is true and complete, and authorizing the release to the Board of all information pertaining to the application;
- (2) submit documentation of a legal name change, if applicable;
- (3) on the Board's form, submit a recent photograph, at least two inches by two inches, certified as a true likeness of the applicant by a notary public;
- (4) supply a certified copy of applicant's birth certificate if applicant was born in the United States or a certified copy of a valid and unexpired US passport. If the applicant does not possess proof of U.S. citizenship, the applicant must provide information about applicant's immigration and work status, which the Board will use to verify applicant's ability to work lawfully in the United States;
- (5) provide proof that applicant had held an active license, certification or authorization as a physician assistant in at least one other state or jurisdiction for the last five years immediately preceding this application;

- (6) submit proof of successful completion of the Physician Assistant National Certifying Examination;
 - (7) submit proof of current certification by the National Commission on Certification of Physician Assistants;
 - (8) provide proof of an active clinical practice, providing patient care for an average of 20 hours or more per week, for at least the last two years;
 - (9) submit a NPDB/HIPDB report dated within 60 days of applicant's oath;
 - (10) submit a FSMB Board Action Data Bank report;
 - (11) submit two completed fingerprint cards supplied by the Board;
 - (12) submit a signed consent form allowing a search of local, state, and national files to disclose any criminal record;
 - (13) pay to the Board a non-refundable fee of two hundred dollars (\$200.00), as required by 21 NCAC 32S .0202, plus the cost of a criminal background check;
 - (14) upon request, supply any additional information the Board deems necessary to evaluate the applicant's qualifications.
- (c) A clean license application means that the physician assistant has none of the following:
- (1) professional liability insurance claim(s) or payment(s);
 - (2) criminal record;
 - (3) medical condition(s) which could affect the physician assistant's ability to practice safely;
 - (4) regulatory board complaint(s), investigation(s), or action(s) (including applicant's withdrawal of a license application);
 - (5) adverse action taken by a health care institution;
 - (6) investigation(s) or action(s) taken by a federal agency, the US military, medical societies or associations; or
 - (7) suspension or expulsion from any school, including an educational program for physician assistants.
- (d) All reports must be submitted directly to the Board from the primary source, when possible.
- (e) An application must be completed within one year of the date on which the application fee is paid. If not, the applicant shall be charged a new application fee.

*History Note: Authority G.S. 90-9.3; 90-13.1;
Eff. November 1, 2010.*

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

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STATE OF NORTH CAROLINA

2010 AUG 25 AM 9:13

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS

COUNTY OF PITT

09 CPS 5985

Office of
Administrative Hearings

JOHN ROSE (FLIPTASTIC, INC.),
Petitioner,

v.

NORTH CAROLINA DEPARTMENT OF
CRIME CONTROL AND PUBLIC SAFETY,
Respondent.

DECISION

A petition commencing this contested case was filed on November 02, 2009. This case was heard before Beecher R. Gray, administrative law judge, on August 09, 2010 in Greenville, North Carolina.

APPEARANCES

Petitioner: John Rose, appearing pro se

Respondent: Jess D. Mekeel, Assistant Attorney General

ISSUE

Whether Respondent's issuance of a \$780 civil penalty against Petitioner for operating a 15,700 pound former school bus on the public roads of North Carolina with a 4,000 pound registration and license tag issued in the category of private automobile by the North Carolina Department of Transportation, Division of Motor Vehicles or its licensing agent, after Petitioner brought the bus to the licensing agency for the agency's inspection to determine the correct registration and license tag is supported by the evidence.

FINDINGS OF FACT

1. The parties received notice of hearing by certified mail more than 15 days prior to the hearing and each stipulated on the record that notice was proper.
2. Petitioner began his pre-school Tumblebus gymnastics program approximately seven years ago in the Pitt County, Greenville area. Petitioner purchased two former school buses which had all seats but the driver's seat removed and replaced with padded walls, floors, and removable equipment. Petitioner does not haul any children in his buses and only uses them for on-site gymnastics lessons at the various day care and pre-school facilities to which he travels in the Greenville area. Petitioner designated the buses Funbus1 and Funbus2.

3. Upon receiving Funbus1, Petitioner took it to the Division of Motor Vehicles office in Greenville so that the DMV staff could see the bus first hand and assist him in getting the correct registration and license plate for it. He explained how he operated the bus and gave the staff full access for inspection so that a proper registration and licensing decision could be made by them. The DMV office, following his discussions with the staff and their inspection of the re-worked school bus, issued a Private Auto registration and personalized license plate with a weight of 4,000 pounds.
4. Approximately one month later Petitioner received his second former school bus, the Funbus2, and physically took it to the local license plate agency, agent for the North Carolina Division of Motor Vehicles, in Greenville so that the staff could see the bus first hand and assist him in getting the correct registration and license plate for it. As he previously had done with Funbus1 at the DMV office, Petitioner explained how he operated the bus and gave the staff full access for inspection so that a proper registration and licensing decision could be made by them. Petitioner was issued a Private Auto registration and personalized license plate with a weight of 4,000 pounds.
5. On September 03, 2009, Master Trooper Michael A. Gerard observed Petitioner's Funbus2 on a public road in Washington, North Carolina and noticed that it had a personalized plate associated with an ordinary automobile. Trooper Gerard recognized that a bus the size of Funbus2 properly would not be tagged with a personalized automobile plate which carries a licensed weight of 4,000 pounds. Trooper Gerard stopped Petitioner's bus and, upon weighing the bus, discovered that it weighed 15,700 pounds. Trooper Gerard issued a Citation and Notice of Assessment against Fliptastic, Incorporated, as owner of Funbus2, for an overweight violation. Trooper Gerard calculated the overweight based upon a bus scale weight of 15,700 pounds, less the license weight of 4,000 pounds, less a legal tolerance of 500 pounds, for a total overweight of 11,200 pounds. Trooper Gerard calculated an overweight penalty of \$780.00.
6. Petitioner filed an internal appeal with the State Highway Patrol which upheld the Citation as issued.

CONCLUSIONS OF LAW

Based upon the foregoing findings of fact, I make the following conclusions of law.

1. The parties properly are before the Office of Administrative Hearings.
2. The State Highway Patrol is a constituent agency of the State of North Carolina under one of the State's principal departments, the Department of Crime Control and Public Safety.
3. The Division of Motor Vehicles is a constituent agency of the State of North Carolina under one of the State's principal departments, the Department of Transportation.

4. Local license plate offices under contract with the Division of Motor Vehicles act as agents of the Division when performing duties under the laws and rules implementing and regulating motor vehicle licensing laws of North Carolina.
5. It is the law in North Carolina that the State of North Carolina may be subject to the equitable principle of estoppel under certain conditions. The North Carolina Court of Appeals has stated that:

An estoppel may arise against a [governmental entity] out of a transaction in which it acted in a governmental capacity, if an estoppel is necessary to prevent loss to another, and if such estoppel will not impair the exercise of the governmental powers of the [entity]. *The Holland Group, Inc. v. North Carolina Department of Administration, State Construction Office*, 130 N.C.App. 721, 726, 504 S.E.2d 300, 304 (1998).

6. The North Supreme Court has stated that estoppel "rests upon principles of equity and is designed to aid the law in the administration of justice when without its intervention injustice would result." *Thompson v. Soles*, 299 N.C. 484, 486, 263 S.E.2d 599, 602 (1980).
7. In the instant case, I find that the State of North Carolina, by and through its agencies and agents, acted in a governmental capacity in this matter, that an estoppel is necessary to prevent loss to this Petitioner, and that such estoppel will not impair the exercise of the governmental powers of the State of North Carolina or its constituent agencies and agents in implementing, regulating, and enforcing the laws and rules governing motor vehicle licensing and motor vehicle law enforcement in the State of North Carolina. Petitioner relied to his detriment and loss upon the advice and actions of agents and agencies of the State of North Carolina in obtaining a license and registration for his Funbus2 and will suffer this loss in the absence of an estoppel against the State of North Carolina and its agents and agencies involved.

DECISION

Based upon the foregoing findings of fact and conclusions of law, I find that The State of North Carolina, by and through its constituent agencies and agents in or through the Department of Transportation and the Department of Crime Control and Public Safety should be, and hereby is, estopped to assess a fine or civil penalty against Petitioner for operating an overweight vehicle on the public roads of North Carolina. Respondent's decision to assess a civil penalty in the amount of \$780 against Petitioner for operation of an overweight vehicle, under the facts of this case, is contrary to fairness and justice and is REVERSED.

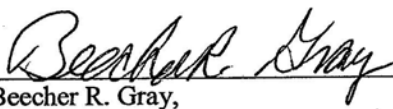
NOTICE

The Agency that will make the final decision in this contested case is the North Carolina Department of Crime Control and Public Safety.

The Agency is required to give each party an opportunity to file exceptions to the decision and to present written arguments to those in the Agency who will make the final decision. N.C. Gen. Stat. § 150-36(a). The Agency is required by N.C. Gen. Stat. § 150B-36(b) to serve a copy of the final decision on all parties and to furnish a copy to the parties' attorneys of record and to the Office of Administrative Hearings.

In accordance with N.C. Gen. Stat. § 150B-36 the Agency shall adopt each finding of fact contained in the Administrative Law Judge's decision unless the finding is clearly contrary to the preponderance of the admissible evidence. For each finding of fact not adopted by the agency, the agency shall set forth separately and in detail the reasons for not adopting the finding of fact and the evidence in the record relied upon by the agency in not adopting the finding of fact. For each new finding of fact made by the agency that is not contained in the Administrative Law Judge's decision, the agency shall set forth separately and in detail the evidence in the record relied upon by the agency in making the finding of fact.

This the 25 day of August, 2010.

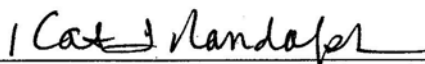

Beecher R. Gray,
Administrative Law Judge

A copy of the foregoing was mailed to:

John Rose
Fliptastic, Inc.
PO Box 118
Simpson, NC 27879
PETITIONER

Jess D. Mekeel
Assistant Attorney General
N. C. Department of Justice
9001 Mail Service Center
Raleigh, NC 27699-9001
ATTORNEY FOR RESPONDENT

This, the 25th day of August, 2010.


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

Filed

STATE OF NORTH CAROLINA

2010 SEP -1 AM 10: 58

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
09 DHR 4932

COUNTY OF WAKE

NICOL SMITH

Office of
Administrative Hearings

Petitioner,

v.

N.C. DEPARTMENT OF HEALTH
AND HUMAN SERVICES

Respondent.)

DECISION

THIS MATTER came on for hearing on April 5, 2010, before the Honorable Donald W. Overby, Administrative Law Judge, in Raleigh, North Carolina. The Petitioner was represented by Claudia N. McClinton. The Respondent was represented by Jane R. Thompson, Assistant Attorney General.

ISSUE

Whether the Respondent properly revoked Petitioner's family foster home license based on a substantiation of neglect against the Petitioner and lack of compliance with foster home licensing rules.

EVIDENCE

Exhibits 1 – 8 were introduced by Petitioner and received into evidence.

Exhibits 1, 3 -8 were introduced by Respondent and received into evidence.

FINDINGS OF FACT

1. Petitioner moved to Wake County in May 2003 with two minor cousins, R. G. and S. S., having received legal guardianship of them from New York social services. She also adopted a daughter named D from New York. S S was later returned by Petitioner to New York because of behavior problems. The Petitioner was licensed by the Respondent as a foster parent beginning in 2006, and her last two-year license expired on March 24, 2010. Her supervising agency was Lutheran Family Services.

2. The first foster child placed with her in North Carolina was J. whom she adopted in 2008. Petitioner was in the process of adopting another foster child, T., at the time of the license revocation notice. A, a foster child with Orange County DSS, was placed with her in September 2008.

3. Respondent received a Notification of CPS Case Decision from Wake County DSS, along with case dictation, two summaries of the child protective services investigation of the Petitioner, dated May 11 and June 2, 2009, an initial incident report from Lutheran Family Services about the investigation, and a letter from Lutheran Family Services in support of Petitioner retaining her license. This information formed the basis of Respondent's decision to revoke Petitioner's family foster home license.

4. These documents describe a child protective services (CPS) investigation that began in March 2009 when seven year old A reported to her therapist that she had been choked by Petitioner. She made drawings of the choking and said another child had been choked as well. The therapist told A's Orange County DSS social worker that she may have seen previous marks on A's face that could be consistent with this report. The therapist did not report the previous observation but would have been required by law to report suspected abuse. The therapist did not testify.

5. The Orange County DSS social worker, Teresa Cousins, spoke with A on 3/12/09. A did not testify. According to Ms. Cousins, A related the following to her: A stated she wanted Petitioner "to keep her hands to herself" and described three incidents when the Petitioner choked or grabbed her. In two of them, Petitioner put her hand around her throat and jerked A toward her. In the third one, Petitioner grabbed her face. This last incident had actually occurred that morning when A had wet the bed, made up the bed without changing the sheets and not taken a bath. A also stated she did not get along with D, Petitioner's adopted daughter, who was given more favorable treatment and was mean to her, and she wanted a new home. It is reported that she knew she could not return to her mother, but wanted another family.

6. A Wake County DSS CPS worker, Michelle Abegunrin, conducted the CPS investigation. She spoke with Petitioner, minor children A, D and R, the therapist, and several collateral sources. On her first visit to Petitioner's home, she made it clear to the Petitioner that she would interview the children the next day at school, and they should not be told about the investigation. When she interviewed the children the next day, it appeared to her the children had been told of the investigation. Petitioner denies that she spoke to the children about the investigation before they were interviewed other than to tell them that people might be asking questions and they were to tell the truth. In the interview, D denied any problems and said A told her she was going to tell something so she could live with her mother again. R said A admitted the night before that she made up the allegations, and he was told to tell anyone who asked that A made them up. A was consistent as she described the same three incidents to Ms. Abegunrin that she had previously discussed with Ms. Cousins.

7. Three collateral sources spoke very highly of Petitioner and her parenting abilities, especially with the two younger special needs children. Lutheran Family Services continued to support Petitioner.

8. One collateral source, a school secretary, was asked about A's behavior at school and stated she had caused no problems, but on one occasion Petitioner had caused a scene at school. She described Petitioner as a "hothead" who became angry with D's tutor and "ranted and raved" for 45 minutes at the school during that one incident. Petitioner recalled getting into the discussion with the secretary, but she had gone to the school to discuss with the principal troubling issues at the school which had come to light in a televised report. She does not agree with the description of the events as accredited to the secretary. The Secretary did not testify.

9. The case was investigated by law enforcement, but no charges were filed. No law enforcement officer testified at the hearing. No juvenile petition has been filed. No court of competent jurisdiction has heard any evidence of the allegations by direct testimony.

10. In April 2009 Petitioner requested Lutheran Family Services to remove A immediately from her home because she felt A was jeopardizing her license. Ms. Cousins did not know about this move initially. Ms Cousins still felt that the Petitioner was a good placement even after the incidents in question.

11. On April 28, 2009, Wake County "staffed" the case and substantiated neglect for improper discipline of Alana. By this time, A had already been removed from Petitioner's home. Petitioner asked for a review of this case decision by the Wake County DSS director, and that review concluded on June 2 with a confirmation of the neglect substantiation. The director was concerned that Petitioner spoke to her children about the case when asked not to. He was concerned about an alleged admission by Petitioner that she locked herself in her room to keep from choking her cousin S before returning her to New York approximately six years prior to the incidents at issue herein, and he used that information in making his decision. Petitioner vehemently denies ever having made such a statement and says that she had never even heard about such a statement until the reports were issued in this matter. The director found A's statements consistent and credible, and Petitioner's complete denial of any problems not to be credible. Petitioner complied with all recommendations of the county. There has not been any recommendation from the county to revoke Petitioner's license since that is within the discretion of the Respondent.

12. The Respondent's Regulatory and Licensing Unit "staffed" this case on July 23, 2009, reviewed the materials before it, and made the decision to revoke Petitioner's family foster home license.

13. Respondent's Notice of Administrative Action was mailed on July 24, 2009. The Notice set out the licensing rule, 10A NCAC 70E .0708(a)(b), that governs revocation based on a substantiation of child neglect and violations of licensing rules. Specifically, Respondent found that Petitioner was in violation of 10A NCAC 70E .1101(a)(9), which requires discipline in accordance with the child's age, intelligence, emotional makeup and past experience, and 70E .1101(a)(11), providing that no foster child be subjected to corporal punishment.

14. Revocation of a foster home license based on a substantiation of abuse or neglect or violation of licensing rules is in the discretion of the Respondent, and the Respondent made the decision to revoke based on several factors. First, corporal punishment is prohibited in foster homes. Second, the acts of Petitioner in grabbing A by the neck and face would never be appropriate corporal punishment for any child. Third, the improper discipline by Petitioner was administered in anger. The Respondent determined it was not willing to take the risk that Petitioner would repeat this behavior with other foster children in the future.

15. Angelina Spencer, Respondent's licensing consultant, testified. Ms. Spencer stated that she had no role in the investigation of this matter but was testifying only to describe the process of the revocation. When asked if the basis for the substantiation was improper, would that make the revocation action improper, Ms. Spencer stated that it was not the State's role to ascertain the accuracy of the substantiation.

16. In addition Respondent presented the testimony of the Wake County DSS investigating social worker, Michelle Abegunrin, and the Orange County DSS social worker, Teresa Cousins, and both were subject to cross-examination by the Petitioner. Ms. Cousins saw a small cut and bump in the inside of A's lip later on the same day that A said the third incident occurred. Ms. Cousins had known A since 2004, and A had never made an allegation against any caregiver except the Petitioner. According to Ms. Cousins, A was also one of the most "normal" children in Ms. Cousins' caseload.

17. Ms. Cousins saw a journal kept by A, describing family events, during a visit to Petitioner's home. Petitioner refused to give Ms. Cousins the journal after A left her home, stating she would provide her copies. Those copies provided to Ms. Cousins did not include all pages seen during the visit, and Petitioner later claimed she could not find the journal. Petitioner brought the journal to this hearing where Ms. Cousins reviewed it. Ms. Cousins contends pages were missing.

18. Petitioner testified that she never hurt A or improperly disciplined her. She detailed the children who had been in her care, and denied harming any of them, including her cousin S. Her adopted son, J, has both physical impairments and developmental delays. T suffers from sickle cell anemia. She presented six letters supporting her character and child caring abilities. She also introduced a psychological evaluation conducted in August 19, 2009, at the request of Wake County DSS to assess whether Petitioner should be allowed to adopt T. That evaluation found that she generally manages life well, is fulfilled by a life of service to children and her community, and loves her children. It also found that she has unrealistically high standards of behavior for herself and others, always wants to be viewed as a good person, and becomes defensive when she feels threatened, which seems to be a normal human reaction. Petitioner admitted being upset when Ms. Cousins gave A a journal to write in because in her opinion it was "unacceptable for a social worker to try to get a foster child to write down bad things about her home."

19. Two social workers from Lutheran Family Services, a juvenile court guardian ad litem for T, and another foster parent testified on Petitioner's behalf. The foster parent, Ellen Eady, had A in her custody after Petitioner and she related the difficulties she had with A, including untruthfulness, fighting at school and theft. After ten months, Ms. Eady asked to have A removed from her home. During the time A stayed with Ms. Eady she received intensive services.

20. The minor child T, whose adoption by Petitioner was almost complete, was removed from Petitioner's care despite absolutely no evidence or even a hint of misdeed toward the other children. T was bonded to Petitioner. His guardian ad litem testified on Petitioner's behalf, giving an outstanding report.

21. There is no evidence that anyone involved in this "investigation" ever saw minor child A's Medicaid Person Centered Plan which would have been instructive about issues with this child. The Plan introduced is an "update/revision" plan dated 8/26/2008 and shows that the child's primary diagnosis is "adjustment disorder with mixed disturbance of emotions and conduct" and one of the secondary diagnoses as "relational problem related to mental disorder or general medical condition." The Plan points out that A "continues to demonstrate poor judgment and decision-making skills . . . continues to have difficulty managing her anger. . . ." The majority of the Plan relates A's desire to be with family.

22. Tarsha LeSane was Petitioner's primary contact with Lutheran Family Services. In her opinion, A should have been placed in a therapeutic foster home, but she was not responsible for the placement. She is qualified to make the determination of the type of placement.

23. Throughout the course of this investigation, such as it is, the Petitioner and the minor children in her care were accorded little to no credibility. Numerous collateral sources were supportive of Petitioner, but were accorded little to no weight. The only direct witness given credibility is the seven year old minor child A, who was consistent in relating the story to several people, although she did not testify in this hearing.

CONCLUSION OF LAW

1. The Office of Administrative Hearings has both subject matter and personal jurisdiction. All parties were properly noticed for the hearing.

2. 10A NCAC 70E .0708(a) is discretionary in that a license may be revoked when an appropriate agency finds that a foster parent has abused or neglected a child. (Emphasis added) Although the county did not at any time recommend revocation and Petitioner complied with the counties recommendations, there has been no showing that the Respondent abused its discretion.

3. 10A NCAC 70E .0708(c) is mandatory in that it requires consideration of four criteria upon which to base the revocation. Although there is no specific recitation of Respondent having considered the four factors, the evidence presented shows that the factors were considered.

4. The Respondent's relies on the provisions of 10A NCAC 09 .1903(b) to justify that it cannot interview children when DSS has already interviewed them. The provisions of 10A NCAC 09 .1900 *et seq.* must be read *in pari materi* with 10A NCAC 70E .0101 *et seq.* The Respondent's contention that it does not have a duty to investigate allegations of abuse and neglect is not in accord with those provisions of the North Carolina Administrative Code. Although the Respondent routinely relies on information from county departments of social services and licensed supervising agencies for information as in this case, 10A NCAC 09 .1903 places an affirmative duty on the Respondent to conduct its own investigation. It is clear from the language of the rules that the duty is to the Division and not to merely rely upon the findings of the county DSS office. In fact, the rules specify that the Division is to continue with its investigation even if the county does not find justification to continue to investigate.

5. Further, 10A NCAC 09 .1903 is very specific as to the rules for the Division to follow in conducting its investigation. The Respondent is not to interview children when the county DSS has interviewed them, however, that does not prevent Respondent from independently investigating reports of abuse or neglect or licensing violations as required in the rules.

6. There are any number of reasons why or how the DSS and/or law enforcement reports may be defective, biased or just wrong which would make an unverified reliance on such reports dangerous. The Administrative Code contemplates such danger and that is why it is required for the Division to conduct its own investigation. In the instant case, even though DSS "substantiated" its findings, there was not enough evidence to pursue a juvenile petition or criminal charges. No court of competent jurisdiction has heard sworn testimony concerning the allegations herein because there has not been enough evidence to even bring the matter to court, yet it is asserted as enough to be the reason for revoking Petitioner's license.

7. The Respondent's reliance on the blanket "substantiation" of a local investigation as sufficient to revoke a license is dangerous and, nothing else showing, may deprive the licensee of valuable property without due process. "Substantiations" must be tested for reliability and in fact are tested in constitutional judicial forums. Reliance on hearsay or hearsay upon hearsay is likewise dangerous in forming such a decision with such drastic consequences as revocation of a license. It is for that reason that the Administrative Code requires the Respondent to conduct an independent investigation.

8. In the instant contested case, there has been sufficient evidence to believe that Petitioner engaged in acts of neglect by using improper discipline. This Tribunal specifically considered the constitutionality of Respondent's actions as applied

in this case, and concluded that there is not a constitutional violation in this case. The Petitioner has had an opportunity to confront the allegations against her and has not carried her burden of showing by a preponderance of the evidence that the Respondent abused its discretion or acted erroneously in revoking her family foster home license. There is no evidence to support a finding of any endangerment of the other children in Petitioner's care as found by Wake County's Director.

9. The Court concludes that the Respondent had a reasonable basis for its decision to revoke Petitioner's family foster home license and that there was sufficient evidence to support its revocation decision.

DECISION

The Department of Health and Human Services will make the final decision in this contested case. It is hereby decided that the agency's decision to revoke the Petitioner's foster home license should be upheld.

ORDER

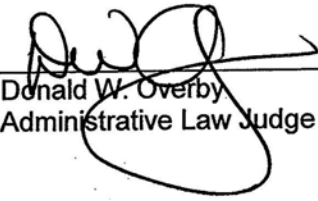
It is hereby ordered that the agency serve a copy of the final decision on the Office of Administrative Hearings, in accordance with N.C.G.S. 150B-36(b3).

NOTICE

The decision of the Administrative Law Judge in this contested case will be reviewed by the agency making the final decision according to standards found in N.C.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. N.C.G.S. 150B-36(a).

The agency that will make the final decision in this contested case is the North Carolina Department of Health and Human Services.

This the 1st day of Sept, 2010.



Donald W. Overby
Administrative Law Judge

A copy of the foregoing was mailed to:

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Attorney at Law
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Raleigh, NC 27602-4850
ATTORNEY FOR PETITIONER

Jane Rankin Thompson
Assistant Attorney General
NC Department of Justice
792 Arbor Road
Winston Salem, NC 27104
ATTORNEY FOR RESPONDENT

This the 1st day of September, 2010.



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STATE OF NORTH CAROLINA
COUNTY OF BURKE

FILED IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
10 DHR 0248

2010 SEP -2 A 11:05

Lai-Fong Li
Petitioner,

OFFICE OF
ADMINISTRATIVE
HEARINGS

v.

DECISION

Department of Health and Human Services
Division of Health Service Regulation
Respondent.

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)
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)
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THIS MATTER came on for hearing before the undersigned, the Honorable J. Randall May, Administrative Law Judge, on June 11, 2010, in Statesville, North Carolina.

APPEARANCES

For Petitioner: Andrew Cogdell, Esq.
Niya Fonville, Esq.
Legal Aid of North Carolina, Inc.
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Morganton, NC 28655-3449

For Respondent: Vaughn S. Monroe
Assistant Attorney General
North Carolina Department of Justice
P.O. Box 629
Raleigh, NC 27602-0629

ISSUES

(A) Whether the Health Care Personnel Registry failed to use proper procedures or otherwise failed to act as required by law under the provisions of N.C. Gen. Stat. §131E-256(i), *et. seq.*, which requires that:

The Department shall establish a procedure to permit health care personnel to petition the Department to have his or her name removed from the registry upon a determination that:

(1) The employment and personal history of the nurse aid does not reflect a pattern of abusive behavior or neglect;

(2) The neglect involved in the original finding was a singular occurrence; and

(3) The petition for removal is submitted after the expiration of the one-year period which began on the date the petitioner's name was added to the registry under subdivision (1) of subsection (a) of this section.

- (B) Whether the Petitioner's name should be removed from the Health Care Personnel Registry pursuant to N.C. Gen. Stat. §131E-256(i).

APPLICABLE STATUTES AND RULES

N.C. Gen. Stat. §131E-256

N.C. Gen. Stat. §150B-23

42 C.F.R. §488.301

10A N.C.A.C. 130.0101

EXHIBITS

Petitioner's exhibits 1 through 4, and Respondent's exhibits 1 through 12, were admitted into the record.

The Findings of Fact are made after careful consideration of the sworn testimony, whether visual and/or audio, of the witnesses presented at the hearing, and the entire record in this proceeding. 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 interests, 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. From the sworn testimony and the admitted evidence, or the lack thereof, the undersigned makes the following:

FINDINGS OF FACT

1. N.C. Gen. Stat. §131E-256(a)(1)(a) requires the Health Care Personnel Registry ("HCPR") to maintain a registry containing the names of all health care personnel working in health care facilities in North Carolina who have been subject to findings of neglect of a resident.

2. Neglect is defined in 42 C.F.R. §488.301 as the failure to provide goods and services necessary to avoid physical harm, mental anguish or mental illness. It is the obligation

of the HCPR to protect the health and safety of the resident. Thus, the HCPR must ensure that unlicensed staff in health care facilities has the ability to provide goods and services necessary to avoid physical harm, mental anguish or mental illness.

3. A petitioner may request removal of a listing of neglect from the HCPR. In order to remove a finding of neglect against a name, the petitioner is required to do so pursuant to the provisions of N.C. Gen. Stat. § 131E-256(i) which provides:

In the case of a finding of **neglect** under subdivision (1) of subsection (a) of this section, the Department shall establish a procedure to permit health care personnel to petition the Department to have his or her name removed from the registry upon a determination that:

- (1) The employment and personal history of the nurse aid does not reflect a **pattern of abusive behavior or neglect**;
- (2) The neglect involved in the original finding was a **singular occurrence**; and
- (3) The petition for removal is submitted after the expiration of the **one-year period** which began on the date the petitioner's name was added to the registry under subdivision (1) of subsection (a) of this section.

N.C. Gen. Stat. § 131E-256(i) (2005) (emphasis added).

4. The HCPR established a policy and procedure to permit health care personnel with a finding of neglect to petition to have his or her name removed from the registry.

5. Petitioner's name was placed on the HCPR in September 2005. The nature of the allegation for the entry of finding into the HCPR states, "On or about 8/21/2003, Li 'Louise' Lai-Fong, health care personnel, neglected a resident (A.W.) by leaving resident on [a] 'high tub' unsupervised". The neglect finding involved only one resident.

6. In October 2006, petitioner requested that her name be removed from the HCPR, based upon the fact that it has been more than one year since her name was added to the Registry, that her employment and personal history allegedly do not reflect a pattern of abusive behavior or neglect, and that the neglect in the finding was a singular occurrence.

7... In January 2010, the HCPR notified petitioner that she had not met the state requirements for removal of the neglect finding. In response, she timely filed this petition with the Office of Administrative Hearings.

8. Petitioner immigrated to the United States from Hong Kong in 1997. She became a naturalized citizen in 2005.

9. Petitioner's native language is Cantonese Chinese. Although she took English as a foreign language in school, she did not speak English fluently when she came to the United States and for many years thereafter.

10. Petitioner went to work at the J. Iverson Riddle Developmental Center ("Center"), a state-operated facility, in Morganton, North Carolina as a Trainer I in July 2000.

11. Petitioner provided direct hands-on care for severely developmentally delayed adults at the Center. Her patients were profoundly retarded; they could not feed, dress, bathe, or toilet themselves, and were almost totally non-communicative.

12. Petitioner's inability to speak fluent English affected her interactions and relations with her co-workers throughout the time that she worked at the Center.

13. Petitioner resigned from her position at the Center in August 2003 after she received a written warning for leaving a patient unattended on a high tub, which resulted in her listing on the HCPR. In that instance, a nurse had directed petitioner to prepare a quadriplegic patient for a procedure. Petitioner used a hoist to place and laid the patient on the high tub, and then waited for the nurse to return. When she failed to return after at least five minutes, and after the patient had fallen asleep, petitioner went to the door to the bathing room to look for the nurse, or seek the attention of another employee. While standing at the door, another employee saw her and directed her to return to the side of the patient while she alerted the nurse, who subsequently returned and completed the procedure. The patient did not suffer any injury or harm.

14. Petitioner had previously received a written warning in December 2001 accusing her of resident abuse and failure to maintain a harmonious working relationship with her co-workers. This incident involved a verbal exchange with a co-worker while petitioner was mopping the wet floor underneath a resident in her care before she removed him from the toilet. Petitioner had previously complained to the Center about her difficulties with this same co-worker, but they were never addressed. The co-worker, who was bathing another patient nearby, yelled at petitioner for being under her feet. Petitioner became upset and left the room. She returned later, still in an agitated state, to discuss her perceived mistreatment with the co-worker. After a further exchange of words, a supervisor separated the parties, ending the matter.

15. Although several residents of the Center were present during this incident, none of the petitioner's action was directed toward them. Furthermore, none of the residents seemed to be aware of or react to her actions, and none of them exhibited any problems or distress at any time throughout the remainder of the day or evening.

16. The Center reported this incident to the HCPR, but it declined to either investigate or substantiate the allegations, and did not take any adverse action against petitioner.

17. Petitioner did not receive any further warnings or reprimands of any kind due to conflicts with her co-workers while she worked at the Center.

18. Petitioner received one other written warning while she worked at the Center. In March 2003, she received a reprimand for taking a can of vegetable juice from the Center's kitchen facility and drinking it. This item did not belong to any particular resident, and it did not affect or deprive any patient at the Center. Petitioner's conduct, which she admitted and conceded to be wrongful, did not constitute neglect of a patient in any way, shape, or form.

19. Petitioner has a favorable criminal record. She does not have a history of any offenses evidencing either abuse or neglect in any setting.

20. The Center is the only health care facility at which petitioner has ever worked. Petitioner sought recommendations from her former supervisors at the Center, but other than verifying her dates of employment, position, and salary, they declined to provide them, citing the State Personnel Act.

21. Petitioner did obtain and submit favorable references from three former co-workers at the Center, each of whom worked directly with petitioner and were familiar with the care and concern that she provided to her patients.

22. Cynthia Caldwell, a nurse and twenty-seven-year employee of the Center (as of 2006), worked with petitioner when she was hired as a part-time Trainer I. She stated: "I was able to observe the care that she provided. The basic care was excellent. She was responsible for bathing and feeding clients along with other staff. She was friendly with the client, her coworker, and supervisor. She followed the rules of the facility taught by the Staff Development Department and her supervisor. She also noted: Louise's accent was quite thick so she would ask questions until she got a clear understanding of what was expected. She also questioned staff to ensure they understood her. She concluded: "If I were an employer at a health care facility, I would hire Louise. These setting (sic) need a dependable employee with a caring attitude for clients and co-workers. She seeks to understand and be understood."

23. Sandra Bristol, a recreational therapist and coordinator at the Center for over twenty years, worked with petitioner in Cedar View Home. She stated: "I thoroughly enjoyed our working relationship because Lai Fong Li assisted me in a variety of activities and events. She did far and above her Trainer I responsibilities by coming in on her time off to assist the Recreation Department in setting up and preparing for campus wide events such as International Day, and other festivities." Upon learning of the petitioner's resignation from the Center, she indicated: "I was very disappointed because I know her to be a very genuine person with good intentions for the well being of individuals we work with. She is honest with her endeavors and has a true sense of high standards, which will enable her to serve as a capable responsible employee." She also noted that the petitioner "sometimes has difficulty translating and understanding the English Language." She concluded: "Lai Fong Li has a very caring disposition, which is continuously appreciated by friends and co-workers."

10. Respondent listed petitioner on the HCPR for leaving a patient on a high tub unattended. The other warnings and reprimands that petitioner received while she worked at the Center were substantially different in kind and quality and do not indicate a pattern of abusive behavior or neglect.

11. Petitioner's other employment and personal history does not reflect a pattern of abusive behavior or neglect.

12. The Department has failed to use proper procedures for the removal of a finding of neglect, and therefore, it did not act as required by law under the provisions of N.C. Gen. Stat. § 131E-256(i).

13. This procedure and decision is not in compliance with N.C. Gen. Stat. §131E-256(i) which requires the removal of a finding of neglect if the employment history of the health care personnel does not reflect a pattern of abusive behavior or neglect.

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

DECISION

The statutes, definitions of "pattern", and the somewhat disparate acts of the Petitioner do not rise to the level of a permanent listing on the HCPR, which is tantamount to imposing a "life sentence" that prohibits this type of work. The facts in this case should not mandate the permanent exclusion required by our general statutes. Therefore, Respondent's refusal to remove the finding of neglect at Petitioner's name on the Health Care Personnel Registry is REVERSED.

NOTICE

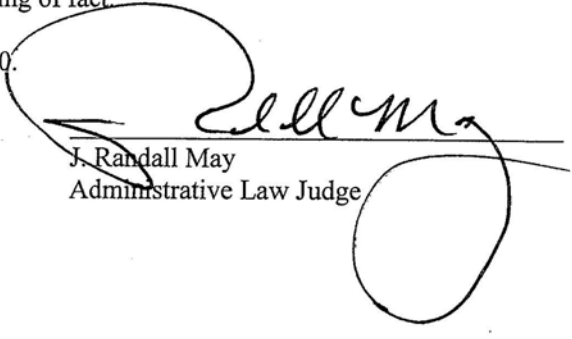
The Agency that will make the final decision in this contested case is the North Carolina Department of Health and Human Resources, Division of Facility Services.

The Agency is required to give each party an opportunity to file exceptions to the recommended decision and to present written arguments to those in the Agency who will make the final decision. N.C. Gen. Stat. §150-36(a). The Agency is required by N.C. Gen. Stat. §150B-36(b) to serve a copy of the final decision on all parties and to furnish a copy to the parties' attorney of record and to the Office of Administrative Hearings.

In accordance with N.C. Gen. Stat. §150B-36 the Agency shall adopt each finding of fact contained in the Administrative Law Judge's decision unless the finding is clearly contrary to the preponderance of the admissible evidence. For each finding of fact not adopted by the Agency, the Agency shall set forth separately and in detail the reasons for not adopting the finding of fact and the evidence in the record relied upon by the Agency in not adopting the finding of fact. For each new finding of fact made by the Agency that is not contained in the Administrative Law

Judge's decision, the Agency shall set forth separately, and in detail, the evidence in the record relied upon by the Agency in making the finding of fact.

This the 1 day of September, 2010.



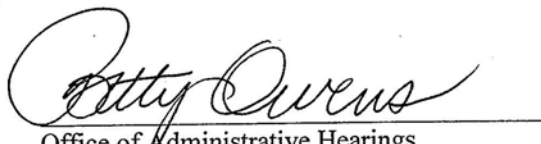
J. Randall May
Administrative Law Judge

A copy was mailed to:

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ATTORNEY FOR PETITIONER

Vaughn S. Monroe
Assistant Attorney General
NC Department of Justice
PO Box 629
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ATTORNEY FOR RESPONDENT

This the 2nd day of September, 2010.



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Filed

NORTH CAROLINA
PITT COUNTY

2010 SEP 24 PM 3:16

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
09 TFC 6833

Office of
Administrative Hearings

ELIZABETH DANIAL DOMINIQUE,
Petitioner,

vs.

NORTH CAROLINA TEACHING FELLOWS
COMMISSION,
Respondent.

DECISION

THIS MATTER came on for hearing on June 23, 2010, before the undersigned
Administrative Law Judge (ALJ), Joe L. Webster, at the Halifax County Courthouse, Halifax,
North Carolina.

APPEARANCES

For Petitioner: Leslie S. Robinson,
1510 Arlington Boulevard
Post Office Drawer 15
Greenville, NC 27858

For Respondent: Thomas Ziko,
Assistant Attorney General
Post Office Box 629
Raleigh, NC 27699-6714

EXHIBITS

For Petitioner: Exhibits: 1 and 3-6

For Respondent: Exhibits: 3-14 and 20

WITNESSES

For Petitioner:

Jo Ann Norris

Elizabeth Danial Dominique

For Respondent:

Jo Ann Norris

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 North Carolina Teaching Fellows for a final decision.

FINDINGS OF FACT

1. Petitioner is a resident of Pitt County, North Carolina.
2. Respondent was established pursuant to G.S. § 115C-363.22, and exercises its powers and functions under Article 24 of Chapter 115C of the North Carolina General Statutes.

3. Respondent administers the *Teaching Fellows Program*, pursuant to G.S. 115C-363.23(A).
4. The *Teaching Fellows Program* is administered to provide a four (4) year scholarship loan to North Carolina high school seniors interested in teaching in the public schools of North Carolina.
5. Pursuant to the authority granted in G.S. § 115-C-363.23(A), respondent shall adopt very stringent standards, including minimum grade point average and scholastic aptitude test scores for awarding these scholarship loans to ensure that only the best high school seniors receive them. The General Assembly has expressly authorized the Teaching Fellows Commission to terminate the scholarship of students who do not meet the standards set by the Commission. N.C. Gen Stat § 115C-363.23A(d).
6. The scholarship loans offered are evidenced by a *Promissory Note and Scholarship Loan Agreement* made payable to respondent and executed by the recipient and her surety.
7. The scholarship loan is referred to as the *North Carolina Teaching Fellows Scholarship* and those students awarded such scholarships are referred to as *Teaching Fellows*.
8. Applicants for the *North Carolina Teaching Fellows Scholarship* must complete a local and regional interview whereby screening committees consider the Scholastic Profile of the candidate, including their GPA and SAT scores, the applicant's assessment by her school, a personal interview, and writing samples and references. Once the local and regional committee's screenings are completed, applicants deemed appropriate are presented to Respondent for consideration. Only 500 scholarships are awarded state-wide each year.
9. Petitioner completed a written application for the *North Carolina Teaching Fellows Scholarship* prior to March 13, 2007. Petitioner was interviewed and screened by the local and regional committees and her application and all criteria carefully considered by respondent.
10. On 13 March 2007, Dominique, hereinafter referred to as Petitioner was 1 of 500 in the State of North Carolina awarded a *Teaching Fellows Scholarship* by respondent. The Promissory Note and Scholarship Loan Agreement executed by the parties obligated Respondent to provide scholarship funds for eight (8) school semesters and obligated Petitioner to teach for four (4) years at a public school in North Carolina.
11. Petitioner accepted the scholarship and on March 28, 2007, entered into a *Promissory Note and Scholarship Loan Agreement* prepared by respondent. (Resp. Ex. 6) Under the terms of

the Promissory Note, Petitioner agreed not only to “continuously compl[y] with all of the terms, conditions and policies of the Commission and institutions of higher education” but also agreed that her “[f]ailure to comply with any of the terms and conditions stated herein” would constitute a default of her obligations in the Note. (Resp. Ex 6, ¶. 1 and 14.)

12. The *Promissory Note and Scholarship Loan Agreement* was also executed by Petitioner’s grandmother as surety on October 28, 2007. Pursuant to the *Promissory Note and Scholarship Loan Agreement*, Respondent provided scholarship funds on the following dates for the semester specified:

<u>Date:</u>	<u>Amount:</u>	<u>Semester:</u>
9-1-2007	\$3050.00	Fall 2007
1-15-2008	\$3050.00	Spring 2008
9-15-2008	\$3050.00	Fall 2008
1-15-2009	\$3050.00	Spring 2009
9-15-2009	\$3150.00	Fall 2009

13. On each occasion referenced in paragraph 12 above, Petitioner acknowledged receipt of the funds specified by execution of a *Certificate of Receipt of Scholarship Funds*. (Resp. Exs. 7, 8, 9, 10 and 11).

14. Under the terms of those Certificates of Receipt of Scholarship Funds, Petitioner reaffirmed her obligation to abide by the terms and provisions of the Promissory Note and any subsequent modifications.

15. The Teaching Fellows Commission has established terms, conditions and policies for the Teaching Fellows, including the Program Goals and Applicant Eligibility standards published in the Teaching Fellows Commission Policy Manual. (Resp. Exs. 4 and 5).

16. The Teaching Fellows Commission policies expressly state that the Commission may revoke a scholarship if the Teaching Fellow engages in misconduct that “may adversely affect his or her effectiveness as a teacher.” (Resp. Ex. 5, ¶¶ 2.3).

17. When she signed the Promissory Note, Dominique agreed not only to abide by the Teaching Fellows policies but also to comply with the policies of her institution of higher education. (Resp. Ex. 6, ¶ 10).
18. As a student at East Carolina University (ECU), Dominique was subject to the ECU Student Code of Conduct. (Resp. Ex. 13)
19. The ECU Code of Conduct specifically applies to on and off campus conduct. (Resp. Ex. 13, ¶ 1)
20. The ECU Code of Conduct also specifically prohibits students from illegally displaying, possessing or using alcohol. (Resp. Ex. 13, Section K).
21. The ECU Code of Conduct also subjects a student to discipline for violation of a university policy, city ordinances or state or federal laws. (Resp. Ex. 13, Section W).
22. It is a violation of North Carolina law for a person under the age of 21 years to possess or consume alcoholic beverages. (N.C. Gen. Stat. § 18B-302(b)).
23. On June 5, 2009, Petitioner was issued a citation charging her with the underage possession of alcohol.
24. The charge was dismissed on February 15, 2010 by an assistant district attorney presiding for the Three-A Judicial District.
25. On September 28, 2009, Jo Ann Norris, Teaching Fellows Program Administrator, wrote to Petitioner to notify her that the Teaching Fellows Commission had received information that both *The Daily Reflector* and WITN had reported that in June 2009 Petitioner had been cited for underage drinking at Tie Breakers, a bar in Greenville, North Carolina. (Resp. Ex. 14).
26. Norris notified Petitioner that, if the reports were true, her conduct violated Teaching Fellows Commission's standards in that it was a violation of North Carolina law, brought shame

to the Teaching Fellows Program, could adversely affect her effectiveness as a teacher and her eligibility for licensure, and could jeopardize Petitioner's Teaching Fellows Scholarship. (Resp. Ex. 14).

27. Norris notified Petitioner that she was directed to appear before the Teaching Fellows Commission to answer inquiries regarding the citation she received on October 28, 2009. (Resp. Ex. 14).

28. On October 28, 2009, Petitioner and her grandmother as surety, appeared before the North Carolina Teaching Fellows Commission.

29. During the hearing before the Teaching Fellows Commission, Petitioner admitted that she had illegally consumed alcohol as reported, that she had illegally consumed alcohol on numerous occasions after she became a Teaching Fellow, and that she continued to illegally consume alcohol even after she was cited for illegally consuming and possessing alcohol at Tie Breakers in September 2007 and after her citation was reported in the Pitt County press and on television.

30. Petitioner also acknowledged that her illegal conduct damaged the image of the Teaching Fellows Program.

31. Based upon Petitioner's admission and other evidence that she had publicly violated and continued to violate North Carolina alcohol control laws and brought potential damage to the image of the Teaching Fellows Program, the Teaching Fellows Commission decided to withhold \$6,500 of Petitioner's Teaching Fellows Scholarship funds for the spring and fall semesters of 2010 while requiring that she continue to comply with the terms and conditions of her Promissory Note. (Resp. Ex. 20).

32. On October 30, 2009, Respondent, acting through Jo Ann Norris, forwarded correspondence to Petitioner that Respondent had decided to unilaterally modify the

Promissory Note and Scholarship Loan Agreement entered into between Respondent and Petitioner. Respondent advised Petitioner of its intent and plan to withhold scholarship funds for the spring 2010 and fall 2010 semesters, a total of \$6,300.00, while still requiring Petitioner to teach for four years, pursuant to the Promissory Note and Scholarship Loan Agreement. The October 30th correspondence did not specify the factual or legal basis used by Respondent to reach its position.

33. The Teaching Fellows Commission also directed Petitioner to submit a report to the Teaching Fellows Commission by May 14, 2010, and include in the report:

- a. A report on the Code of Ethics for NC Educators and the Code of Professional Practice and Conduct for NC Educators regarding the implications of alcohol violations;
- b. The results of her consultation with an attorney to check her criminal record to determine if her violations will appear in any background check which could adversely affect her ability to enter a school to complete her Teaching Fellows obligations; and
- c. Information regarding which school systems would allow her to enter their schools if the charges appear in a background check. (Resp. Ex. 20).

34. The Teaching Fellows Commission also directed Dominique to meet with her Teaching Fellows Campus Director and stay on track for graduation. Resp. Ex. 20.

35. The Teaching Fellows Commission does not investigate Teaching Fellows to determine whether they are violating their obligations but does review and, when appropriate, act on information that it receives regarding inappropriate conduct by Teaching Fellows.

36. At the hearing, Petitioner introduced into evidence, without objection, a list of those persons who are Teaching Fellows with scholarships at East Carolina University. Petitioner also introduced certified true and accurate copies of the criminal charges issued against eleven of those students at East Carolina University who had *Teaching Fellows Scholarships*. Those charges are as follows:

Teaching Fellows:

Susannah Lea Bennett

Carla Paige Hamm

Taylor Alan Kluttz

Robyn Ann McLawhorn

Hannah Raheal Murphy

Allison Elizabeth Parker

Alisa Proctor

Anna Denise Riddick

Mary Catherine Roberts

Jasmin Rode

Lauren E. Williams

Criminal Charges:

Driving while impaired
Speeding 44 mph in a 25 mile per hour zone
Driving after consuming under 21

Harassing phone call

Simple affray

Possession of less than ½ ounce of
Marijuana
Harassing phone call
Felony manufacturing schedule VI
controlled substance
Felony maintain a dwelling for keeping
controlled substances

Underage possession of a mixed beverage

Underage consumption of alcohol

Misdemeanor larceny
Underage consumption of alcohol

Resisting a public officer
Open container in passenger area of motor
vehicle
Underage consumption of alcohol

Underage consumption of alcohol

Possession of less than ½ ounce of
Marijuana
Possession of drug paraphernalia

Underage possession of a malt beverage

Attempt to obtain alcohol with fraudulent ID
Possession of fictitious ID
Underage possession of a malt beverage
Attempt to purchase malt beverage being
less than 21

37. Petitioner brought to the attention of Respondent in correspondence dated December 4, 2009, that there were similarly situated *Teaching Fellows* who had received charges similar to Petitioner's citation and who were not being treated the same as petitioner was by Respondent.

38. Petitioner again raised the issue of her disparate treatment when compared to other similarly situated *Teaching Fellows* when she filed her *Petition For Contested case Hearing* on December 30, 2009. Specifically, Petitioner alleged that *Teaching Fellows* engaged in similar actions and conduct and did not received the sanctions levied by respondent in her case, and thus, Respondent had acted arbitrarily and capriciously.

39. Despite the allegations of disparate treatment detailed in the correspondence dated December 4, 2009, and the *Petition For Contested Case Hearing* on December 30, 2009, Respondent, as of the date of Administrative Hearing, had not taken any steps to investigate the allegations.

40. The evidence introduced by Petitioner clearly shows that there are at least ten other *Teaching Fellows* who received criminal charges, including misdemeanors more serious in nature than Petitioner's citation, and felonies, and received no sanctions at all.

41. Respondent through the testimony of its Administrator, conceded that it was not familiar with ten (10) of the eleven individuals identified by Petitioner.

42. Respondent acting by and through its Administrator, was familiar with Anna Denise Riddick who was charged on 17 October 2008 with resisting a public officer, possession of an open container in passenger area of a motor vehicle and underage consumption of alcohol by

Officer J. Guthrie with the East Carolina University Police Department. Respondent did not issue any financial sanctions against Riddick.

43. Respondent offered no explanation, reason or excuse to justify why it imposed financial sanctions totaling \$6300.00 against Petitioner and no financial sanctions against Riddick when Riddick's charges are clearly more serious in nature and greater in number.

44. Respondent offered no explanation, reason or excuse to justify its failure to conduct any investigation into other individuals who were similarly situated as petitioner and who were *Teaching Fellows* at East Carolina University when the allegations were made over seven (7) months ago.

45. During the hearing before the undersigned ALJ, Petitioner admitted that she had illegally consumed alcohol as reported, that she had illegally consumed alcohol on numerous occasions after she became a Teaching Fellow, and that she continued to illegally consume alcohol even after she was cited for illegally consuming and possessing alcohol at Tie Breakers in September 2007 and after her citation was reported in the Pitt County press and on television.

46. Petitioner also admitted that she had illegally consumed alcohol as a minor before she became a Teaching Fellow.

47. Petitioner admitted that, when she was applying for the Teaching Fellows Scholarship, she did not tell the people who submitted recommendations to the Teaching Fellows Commission on her behalf that she illegally consumed alcohol because it might affect her ability to win a Teaching Fellows Scholarship.

48. Petitioner admitted she is aware that if she were caught illegally consuming alcohol she could lose her Teaching Fellows Scholarship.

49. Petitioner admitted that her conduct brought disrepute to the Teaching Fellows Program. The undersigned finds that whether Petitioner's conduct brought disrepute to the Teaching Fellows Program is ultimately a matter of law for the undersigned to determine.
50. Petitioner admitted that her conduct violated the ECU Code of Student Conduct which prohibits the display or possession of illegal alcohol and violation of state laws. (Resp. Ex. 13, Sections K and W).
51. While Petitioner admitted possession and consumption of alcohol violated Teaching Fellows Commission and ECU policies and her obligations under the Promissory Note, Section 2.3 of the North Carolina Teaching Fellows Commission Policy Manual has not been violated. Respondent's correspondence dated October 30, 1009, recited Respondent's belief that Petitioner has "much to offer as a classroom teacher..." The Administrator for Respondent also admitted during her testimony that Petitioner had not violated any provision of Section 2.3.
52. Respondent does not have any written policies concerning the underage consumption of alcohol.
53. Petitioner has complied with all obligations imposed by the *Teaching Fellows Program*, including participation in all experiences designed for her class by the campus director at East Carolina University, summer experiences designed by respondent, which included a Discovery Trip for rising sophomores, and Junior Enrichment and Junior Conference for rising juniors. The Administrator for respondent conceded this compliance in her testimony.
54. Petitioner maintains an overall grade point average of 3.6 at East Carolina University.
55. Petitioner's conduct would not prohibit her from meeting the licensure requirements for a teacher in the State of North Carolina.

56. The Division of Academic and Student Affairs through East Carolina University has not taken any action against petitioner for the subject conduct and as such, she is in full compliance with the policies of East Carolina University.
57. Respondent attempts to analogize Petitioner's case to that of the public school teachers and rules that govern their conduct. The *Code of Professional Practice* and *Code of Ethics for North Carolina Educators* addresses only the possession or consumption of alcohol on school premises or at a school sponsored activity, and further, specifies that an educator not commit any act referenced in G.S. § 115C-332.
58. G.S. § 115C-332 refers to specific crimes for which a person has been *convicted*. Petitioner's conduct does not fall within the description of any crime set forth in G.S. § 115C-332 and further, petitioner was never convicted of the citation issued to her.
59. Section 14 of the *Promissory Note and Scholarship Loan Agreement* entered into by Petitioner and Respondent specifically addresses criminal conduct other than minor traffic cases, and specifies that only *convictions* of the same shall be a default of the *Promissory Note and Scholarship Loan Agreement*.
60. Petitioner is on track to graduate with a four year degree in May 2011, with honors.
61. No evidence was introduced that the citation issued to petitioner or her admission to the underage possession and/or consumption of alcohol affects her ability to be a leader or teacher, or that such is in violation of any written terms, conditions or policies of respondent and made a part of the *Promissory Note and Scholarship Loan Agreement*.
62. While acknowledging that the underage possession of alcohol is prohibited by statute, the General Assembly has allowed a person who is convicted of this offense to have all records related to the charge expunged under G.S. 15A-145 and for the Court to enter an order that such

person be restored to the status she occupied before such arrest. Further, the General Assembly has enacted provisions that no person as to whom such order has been entered shall be held thereafter under any provision of any laws to be guilty of perjury or otherwise giving a false statement about the reason of her failure to recite or acknowledge such arrest upon inquiry made of her for any purpose.

CONCLUSIONS OF LAW

1. The Office of Administrative Hearings has personal and subject matter jurisdiction over this contested case. The parties received proper notice of the hearing in the matter. To the extent that the Findings of Fact contain Conclusions of law, or that the Conclusions of Law are Findings of Fact, they should be considered without regard to the given labels.
2. Petitioner bears the burden of proving by a preponderance of the evidence that the North Carolina Teaching Fellows Commission exceeded its authority or jurisdiction, acted erroneously, failed to use proper procedure, acted arbitrarily or capriciously, or failed to act as required by law or rule when it decided to withhold \$6,300.00 from Petitioner for the Spring 2010 and Fall 2010 semesters.
3. Based upon the facts found and recited, Respondent exceeded its authority to modify the *Promissory Note and Scholarship Loan Agreement*; acted erroneously and failed to act as required by law.
4. Petitioner has proven by a preponderance of the evidence that she did not violate Section 2.3 of the North Carolina Teaching Fellows Commission Policy Manual which is the provision of Respondent's policy in which Respondent reserves the right to revoke a scholarship on certain specified grounds.

4. Based upon the facts found and recited, respondent acted erroneously, arbitrarily and capriciously. While our courts have held that an agency decision should not be reversed as arbitrary or capricious unless the decision is “patently in bad faith,” or “whimsical” in the sense that the decision “indicates a lack of fair and careful consideration” or “fails to indicate any course of reasoning and the exercise of judgment...” Lewis v. North Carolina Department of Human Resources, 92 N.C. App. 737 (1989). Here Respondent’s Administrator admits she knew of a similar case involving one of its scholarship recipients who was charged on October 17, 2008 with resisting a public officer, possession of an open container in passenger area of a motor vehicle and underage consumption of alcohol and Respondent did not issue any financial sanctions against the scholarship recipient. The undersigned finds as a matter of law that Respondent’ decision to withhold \$6,300.00 from Petitioner, while not sanctioning another scholarship recipient at East Carolina University who was charged with more serious offenses than Petitioner, “indicates a lack of fair and careful consideration” and therefore arbitrary and capricious. The preponderance of the evidence indicates disparate treatment of Petitioner and the selective enforcement of the very policies under which Petitioner’s scholarship was withheld. This disparate treatment of Petitioner also violates all notions of fairness and equal protection of the laws that our system of justice was designed to protect. To rule otherwise would send a signal to Petitioner that disparate treatment of her students in the years to come would also be an acceptable practice to follow.

DECISION

The decision of the North Carolina Teaching Fellows Commission to withhold \$6,300.00 from the Petitioner for the Spring 2010 and Fall 2010 semesters is hereby **REVERSED**.

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 North Carolina Teaching Fellows Commission.

This the 23rd day of September, 2010.



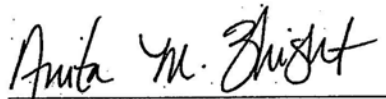
Joe L. Webster
Administrative Law Judge

A copy of the foregoing was mailed to:

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This the ^{24th} 23rd day of September, 2010.


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