

# ***NORTH CAROLINA REGISTER***

**VOLUME 26 • ISSUE 02 • Pages 44 - 75**

**July 15, 2011**

<b>I. IN ADDITION</b>	
Board of Elections – Written Advisory Opinion .....	44 – 45
Decision Letters on "Changes Affecting Voting" from US Attorney General ...	46 – 48
<b>II. PROPOSED RULES</b>	
<b>Commerce, Department of</b>	
Alcoholic Beverage Control Commission.....	49 – 52
<b>Justice</b>	
Alarm Systems Licensing Board.....	56 – 58
Private Protective Services Board.....	52 – 56
<b>Occupational Licensing Boards and Commissions</b>	
Medical Board.....	58 – 62
<b>III. TEMPORARY RULES</b>	
<b>Health and Human Services, Department of</b>	
Public Health, Commission for .....	63 – 64
<b>IV. RULES REVIEW COMMISSION</b> .....	65 – 73
<b>V. CONTESTED CASE DECISIONS</b>	
Index to ALJ Decisions .....	74 – 75

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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.**

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116 West Jones Street (919) 807-4700  
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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: 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

### **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 2011 – December 2011

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 <sup>th</sup> day from publication in the Register
25:13	01/03/11	12/08/10	01/18/11	03/04/11	03/21/11	05/01/11	05/2012	09/30/11
25:14	01/18/11	12/22/10	02/02/11	03/21/11	03/21/11	05/01/11	05/2012	10/15/11
25:15	02/01/11	01/10/11	02/16/11	04/04/11	04/20/11	06/01/11	05/2012	10/29/11
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25:17	03/01/11	02/08/11	03/16/11	05/02/11	05/20/11	07/01/11	05/2012	11/26/11
25:18	03/15/11	02/22/11	03/30/11	05/16/11	05/20/11	07/01/11	05/2012	12/10/11
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26:12	12/15/11	11/22/11	12/30/11	02/13/12	02/20/12	04/01/12	05/2012	09/10/12

## 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.



**STATE BOARD OF ELECTIONS**

6400 Mail Service Center • Raleigh, North Carolina 27699-6400

GARY O. BARTLETT  
Executive Director

MAILING ADDRESS:  
P.O. BOX 27255  
RALEIGH, NC 27611-7255

June 16, 2011

Mr. Jason Kay, General Counsel  
Office of Speaker Thom Tillis  
NC House of Representatives  
16 W. Jones Street, Room 2304  
Raleigh, North Carolina 27601-1096

Re: Request for Advisory Opinion

Dear Mr. Kay:

I write in response to your request for an advisory opinion pursuant to N.C. Gen. Stat. § 163-278.23. By email on June 16, 2011, you requested guidance regarding the acceptance of contributions by legislators during time the General Assembly has adjourned or recessed. More specifically, you asked when a legislator may accept contributions when the General Assembly has adjourned or recessed for a time certain that is more than 10 days.

North Carolina law prohibits a "limited contributee" from accepting or soliciting contributions from "limited contributors" while the General Assembly is in "regular session."<sup>1</sup> As you know, legislators cannot receive contributions from lobbyists at any time. However, outside of regular sessions of the General Assembly, "limited contributees" may accept contributions from other "limited contributors."

The General Assembly is in "regular session" from the date set by law or resolution that the General Assembly convenes until the General Assembly either adjourns sine die or recesses or adjourns for more than 10 days." N.C. Gen. Stat. § 163-278.13B(3).

If the General Assembly adjourns or recesses for a time certain that is more than 10 days, legislators and other "limited contributees" could accept contributions immediately after the General Assembly has adjourned or recessed. If a time certain that is more than 10 days is not

<sup>1</sup> "Limited contributee" means a member of or candidate for the Council of State, a member of or candidate for the General Assembly." N.C. Gen. Stat. § 163-278.13B(a)(2). "Limited contributor" means a lobbyist registered under Chapter 120C of the General Statutes, that lobbyist's agent, that lobbyist's principal as defined in G.S. 120C-100(11) or a political committee that employs or contracts with or whose parent entity employs or contracts with a lobbyist registered under Chapter 120C of the General Statutes." N.C. Gen. Stat. § 163-278.13B(a)(1).

LOCATION: 506 NORTH HARRINGTON STREET • RALEIGH, NORTH CAROLINA 27603 • (919) 733-7173

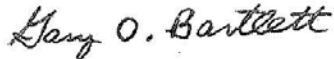
designated at the time of adjournment or recess, legislators and other "limited contributees" must wait until day 11 after the General Assembly adjourns or recesses to accept contributions from "limited contributors" other than lobbyists.

If the General Assembly adjourns or recesses for a time certain that is more than 10 days and a legislator or other "limited contributee" accepts a contribution on the same day of adjournment or recess, that legislator or other "limited contributee" should obtain a statement from the permitted "limited contributor" specifying that the contribution is being made after the General Assembly has adjourned or recessed. This statement should include a declaration signed by the legislator or other "limited contributee" that the contribution was received after the General Assembly had adjourned or recessed.

This opinion is based upon the information provided in your June 16, 2011, request for advisory opinion. If any information in that request should change, you should consult with our office to ensure that this opinion would still be binding. Finally, this opinion will be filed with the Codifier of Rules to be published unedited in the North Carolina Register and the North Carolina Administrative Code.

If you have any further questions, please contact me or Kim Strach, Deputy Director-Campaign Finance.

Sincerely,



Gary O. Bartlett  
Executive Director

cc: Julian Mann, Codifier of Rules



U.S. Department of Justice  
Civil Rights Division

TCH:RSB:MSR:SHH:par  
DJ 166-012-3  
2011-1570

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

June 9, 2011

Don Wright, Esq.  
General Counsel  
North Carolina State Board of Elections  
P.O. Box 27255  
Raleigh, North Carolina 27611

Dear Mr. Wright:

This refers to S.L. 2011-31 (HB 21) (2011), which repeals North Carolina Statute Sections 163-281(e), which authorized the appointment of political party observers at partisan municipal elections and Section 163-285(b), which required municipalities to provide county boards of elections with maps and election boundaries, for the State of 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 April 21, 2011.

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,

T. Christian Herren, Jr.  
Chief, Voting Section

RECEIVED

JUN 13 2011

N.C. BOARD OF ELECTIONS



U.S. Department of Justice  
Civil Rights Division

TCH:RSB:KR:SMC:par  
DJ 166-012-3  
2011-1579

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

June 13, 2011


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

Dear Mr. Holec:

This refers to the one-time change in the general election date from November 8, 2011 to May 8, 2012, and the one-time change in the candidate qualifying period from July 25, 2011 through August 12, 2011, to February 13, 2012 through February 29, 2012, for 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 April 22, 2011.

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,

  
for T. Christian Herren, Jr.  
Chief, Voting Section





U.S. Department of Justice  
Civil Rights Division

TCH:RSB:JR:SHH:par  
DJ 166-012-3  
2011-2133

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

June 16, 2011

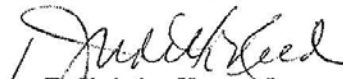
Richard J. Rose, Esq.  
Poyner Spruill  
P.O. Box 353  
Rocky Mount, North Carolina 27802-0353

Dear Mr. Rose:

This refers to the rescheduling of the 2011 election from October 11, 2011, to May 8, 2012, for the City of Rocky Mount in the Counties of Edgecombe and Nash, 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 June 3, 2011.

The Attorney General does not interpose any objection to the specified change. 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 change. In addition, as authorized by Section 5, we reserve the right to reexamine this submission if additional information that would otherwise require an objection comes to our attention during the remainder of the sixty-day review period. Procedures for the Administration of Section 5 of the Voting Rights Act of 1965, 28 C.F.R. 51.41 and 51.43.

Sincerely,

  
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 04 – DEPARTMENT OF COMMERCE**

*Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Alcoholic Beverage Control Commission intends to adopt the rule cited as 04 NCAC 02R .1711; amend the rules cited as 04 NCAC 02R .0902, .1703, 1706; 02S .0201, .1011; and repeal the rule cited as 04 NCAC 02S .1010.*

**Proposed Effective Date:** November 1, 2011

**Public Hearing:**

**Date:** August 10, 2011

**Time:** 10:00 a.m.

**Location:** NC Alcoholic Beverage Control Commission's Office, 400 East Tryon Road, Raleigh, NC 27610

**Reason for Proposed Action:** *The NC Alcoholic Beverage Control Commission proposes this action will address both the legislation that has been enacted by the General Assembly previously and needed technical changes.*

**Procedure by which a person can object to the agency on a proposed rule:** *Interested persons may present oral or written comments at the Rule-Making Hearing. In addition, the record will be open for receipt of written comments from July 15, 2011, to September 13, 2011. Written comments not presented at the hearing should be directed to Robert Hamilton. The proposed rules are available for public inspection and copies may be obtained at the Commission's office at: 400 East Tryon Road, Raleigh, NC 27610.*

**Comments may be submitted to:** Robert A. Hamilton, 4307 Mail Service Center, Raleigh, NC 27699-4307; phone (919) 779-0700 ext. 436; fax (919) 661-6165; email bob@adminrule.com

**Comment period ends:** September 13, 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.

**Fiscal Impact:**

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

**CHAPTER 02 - ALCOHOLIC BEVERAGE CONTROL COMMISSION**

**SUBCHAPTER 02R - ORGANIZATIONAL RULES: POLICIES AND PROCEDURES**

**SECTION .0900 - FISCAL RULES FOR LOCAL BOARDS**

**04 NCAC 02R .0902 MAINTENANCE OF WORKING CAPITAL**

(a) As used in this Rule, "~~Working Capital~~" "working capital" means the total of cash, investments and inventory less all unsecured liabilities.

(b) A local board shall set its ~~Working Capital~~ working capital requirements at not less than two weeks' average gross sales of the latest fiscal year nor greater ~~than four months' average gross sales of the latest fiscal year.~~ than:

- (1) four months of the latest fiscal year for boards with gross sales less than one million five hundred thousand dollars (\$1,500,000);
- (2) three months of the latest fiscal year for boards with gross sales less than fifty million dollars (\$50,000,000) and greater than or equal to one million five hundred thousand dollars (\$1,500,000); and
- (3) two months of the latest fiscal year for boards with gross sales equal to or greater than fifty million dollars (\$50,000,000).

Gross sales means gross receipts from the sale of alcoholic beverages less distributions as defined in G.S. 18B-805(b)(2),(3), and (4).

(c) A local board is considered insolvent if all of the following conditions apply:

- (1) the local board does not adhere to the working capital requirements as stated in Paragraph (b) of this Rule;
- (2) the local board's current assets are less than the local board's current liabilities and the current portion of long term debt;

- (3) the local board is unable to pay its debts as they fall due; and
- (4) the Commission believes that continued operation of the local board will not lead to profits in the next fiscal year.

(d) As used in this Rule, "long term debt" means the loans and financial obligations lasting over one year.

Authority G.S. 18B-100; 18B-203(a)(20); 18B-702(e); 18B-805(d).

**SECTION .1700 - RETAIL SALES OF ALCOHOLIC BEVERAGES**

**04 NCAC 02R .1703 STORES: APPEARANCE AND STATE LIST**

(a) Interior Appearance of Stores. Stores shall meet the following standards:

- (1) Stores shall be well lighted and immaculately clean at all times, well lit and free of trash; Stores not in compliance may be ordered closed by the Commission until deficiencies are corrected.
- (2) Floors shall be clean;
- (3) Bottles and shelves shall be dusted weekly;
- (4) Signs and displays shall not be faded or worn;
- (5) Televisions that are on shall be tuned to news or weather when not providing liquor related information and the volume shall be kept low enough so as not to interfere with sales;
- (6) Smoking shall not be permitted in any stores, warehouses or storage areas; and
- (7) Security systems shall be up-to-date and functional.

(b) Exterior Appearance of Stores. Stores shall meet the following standards:

- (1) Areas around stores shall be well lit and free of trash; and
- (2) Signs shall not be faded or worn.

~~(b)(c)~~ State List to be Available. Every store shall make available for its customers' inspection a copy of the most current complete state price list and any supplemental price lists. A local board may draw up and post its own price list for items or brands sold in its stores, provided the items and prices listed on the local list are also listed on the complete state list.

(d) Stores not in compliance with this Rule shall be ordered closed by the Commission until the deficiencies are corrected.

Authority G.S. 18B-100; 18B-102(a); 18B-203(a)(20); 18B-807.

**04 NCAC 02R .1706 CUSTOMER SERVICE**

(a) ~~It is the duty of the~~ The manager and the employees in every store to shall see that customers are waited on promptly, quietly and courteously. Loitering of customers should be discouraged.

(b) If a local board has a price discrepancy between the price on the shelf or bottle and the cash register, and the price on the shelf or bottle is lower, the local board shall sell the item at the shelf or bottle price and correct the shelf or bottle price to match the Commission's published price.

(c) If a customer inquires about a product that a local board does not carry, the local board's manager or employee shall inform the customer that a case of the product can be special ordered. The manager or employee shall also inform the customer what guidelines must be followed to place the special order.

Authority G.S. 18B-100; 18B-203(a)(20); 18B-807.

**04 NCAC 02R .1711 SHELF MANAGEMENT**

(a) Each local board shall establish and maintain a shelf management plan that allocates space per brand and category to optimize profits. The plan shall:

- (1) set the higher price items on the upper shelves at eye level and set the low price items on the bottom shelves;
- (2) require block categories in vertical sets per their category;
- (3) require that bottle sizes increase left to right of the same item;
- (4) require that brand billboard be created by stacking all brand sizes together;
- (5) require that after a product has been carried for a year, shelf space for the product be set equal to market share for the individual store;
- (6) require that all bottles be set and maintained at the front of the shelf; and
- (7) require that low profit slow moving items be discontinued.

(b) Each local board shall keep a copy of its shelf management plan at each store location and, upon request, provide a copy to a Commission representative.

Authority G.S. 18B-100; 18B-203(a)(20).

**SUBCHAPTER 02S - RETAIL BEER: WINE: MIXED BEVERAGES: BROWNBAGGING: ADVERTISING: SPECIAL PERMITS**

**SECTION .0200 - GENERAL RULES AFFECTING RETAILERS AND BROWNBAGGING PERMITTEES**

**04 NCAC 02S .0201 GENERAL GUIDELINES**

~~(a) Statutory Requirements. Every person holding an ABC permit shall comply with the ABC Statutes in addition to the rules of the Commission.~~

~~(a)(b) Burden on Permittee to Comply. The permittee shall ensure that the Commission's rules governing the sale, possession, transportation, storage, and consumption of alcoholic beverages on the licensed premises are adhered to by employees and patrons. Further, a permittee shall ensure that all Commission rules on the operation of a business with ABC permits are adhered to by employees and patrons. Failure to comply with the statutes or the rules of the Commission by permittees, employees and patrons may result in the suspension or revocation of all ABC permits held by a permittee.~~

(b) Wrist bands, ink stamps or other similar devices are not reasonable indications of age of a purchaser at the time of sale as referenced by G.S. 18B-302(d)(2).

(c) The permittee is responsible for the actions of all sellers and servers of alcoholic beverages on the permitted premises.

*Authority G.S. 18B-100; 18B-104; 18B-207; 18B-302(d)(2); 18B-1003(b).*

**SECTION .1000 - ADVERTISING**

**04 NCAC 02S .1010 ADVERTISING OF MIXED BEVERAGES**

**(a) Interior Advertising.**

- (1) ~~Point of Sale. A mixed beverages permittee shall not utilize any point of sale advertising that names or makes reference to a particular spirituous liquor brand or company name. This Rule shall not be construed, however, to prohibit a guest room cabinet permittee from placing in a guest room a list and description of the liquor brands available from the cabinet.~~
- (2) ~~Price Information. A mixed beverages permittee may utilize table tents and price information displays that list the price and description of mixed beverages offered for sale.~~
- (3) ~~Menus. A mixed beverages permittee may use printed menus listing the brands and types of spirituous liquor available and the price and description of mixed beverages offered for sale. Descriptions of mixed beverages may include photographs or drawings that feature the brands of liquor used in the drinks.~~
- (4) ~~Mixing Station Display. A mixed beverages permittee may use and display spirituous liquor containers at permanent mixing stations.~~
- (5) ~~Restriction. Interior advertising, including table tents and menus, shall be designed and purchased by the retail permittee. A mixed beverages permittee shall not accept or utilize any spirituous liquor advertising material or menu produced or provided by a distiller, importer or rectifier of spirituous liquor, or representative thereof.~~
- (6) ~~Window Displays Prohibited. A mixed beverages permittee shall not place liquor containers in a window display.~~

**(b) Exterior Advertising.**

- (1) ~~Restaurant or Hotel. A restaurant or hotel mixed beverages permittee may have no more than one exterior sign referring to the availability of mixed beverages. The sign shall be attached to the building and shall not contain lettering more than five inches in height. No term, symbol or reference, other than the words "mixed beverages," "all ABC permits," "mixed drinks," "cocktails," or "spirits," shall be used on this exterior sign. No exterior sign advertising or referring to the sale of mixed beverages shall be neon or otherwise self illuminated.~~

(2) ~~Private Club. A private club shall not display any exterior sign advertising the availability of mixed beverages.~~

(3) ~~Billboards. A mixed beverages permittee shall not advertise mixed beverages or the availability of alcoholic beverages by means of a billboard or outdoor sign.~~

(4) ~~Aerial Displays. A mixed beverages permittee shall not advertise mixed beverages by means of an aerial display or an inflatable.~~

**(c) Media Advertising.**

(1) ~~A mixed beverages permittee may advertise the price and description or picture of mixed beverages offered for sale by means of circular, newspaper, magazine, radio and television. This advertising shall not name, display, picture or make reference to a particular spirituous liquor brand or company name.~~

(2) ~~Restriction. A mixed beverages permittee shall not accept or utilize any spirituous liquor advertising material produced or provided by a distiller, importer or rectifier of spirituous liquor, or representative thereof.~~

*Authority G.S. 18B-105.*

**04 NCAC 02S .1011 ADVERTISING OF SPIRITUOUS LIQUORS**

(a) ABC Stores. An ABC store may have one or more outside signs located on the premises for the purpose of identifying the outlet if the sign is not prohibited by local ordinance and it has been approved by the Commission. During the approval process the Commission shall consider the following factors:

- (1) the proximity of the ABC store to schools and churches;
- (2) the number and size of the signs requested;
- (3) the text and graphics on the sign;
- (4) the materials that make up the sign; and
- (5) the public concern in matters of the public's welfare.

(b) Aerial Displays. No distiller, importer, or rectifier of spirituous liquor, or representative thereof, nor any retail permittee, shall advertise by means of an aerial display or inflatable the brand name or availability of spirituous liquor.

(c) Billboards; Media. Industry members may advertise spirituous liquor on outdoor billboards, by radio, television, newspaper, magazine or internet, and by other similar means. Outdoor billboards or signs shall not be displayed on the premises of any retail permittee's establishment nor in areas where sale of that product is unlawful.

(d) Point-of-Sale. Point-of-sale and advertising specialties for spirituous liquor may be used in ABC stores but not in retail establishments holding permits issued by the Commission. Advertising used in ABC stores shall conform to the provisions of Rule .1005 of this Section, and in addition shall not:

- (1) incorporate the use of any present or former athlete or athletic team; or

- (2) refer to the availability of or offer any alcoholic beverages by mail.

All point-of-sale advertising material, advertising specialties, and recipes, booklets or brochures intended for use and display in ABC stores shall first be submitted to the Commission prior to their display in an ABC store.

(e) Local ABC Boards. Local ABC boards may advertise on their web site or social networking page the following information:

- (1) general information such as the history of the ABC board, locations, hours of operation, contact information, employment opportunities, alcohol enforcement, alcohol education and underage drinking education; and
- (2) liquor products and prices, as long as:
  - (A) no logos are shown;
  - (B) when a product is listed, all products that are offered are listed;
  - (C) when a product's regular price is listed, all products' regular prices offered by the board are listed; and
  - (D) when a special price is listed for a product, all products with special prices offered by the board are listed.

(f) Local boards may join local chambers of commerce or visitor's bureaus and may provide them general board information which includes store locations and hours to be distributed through the chambers of commerces' or visitor's bureaus' media information.

Authority G.S. 18B-100; 18B-105; 18B-207; 18B-801.

**TITLE 12 – DEPARTMENT OF JUSTICE**

*Notice is hereby given in accordance with G.S. 150B-21.2 that the Private Protective Services Board intends to amend the rules cited as 12 NCAC 07D .0201, .0203, .0701, .0706, .0801, .0806 and .0902.*

**Proposed Effective Date:** November 1, 2011

**Public Hearing:**

**Date:** August 1, 2011

**Time:** 2:00 p.m.

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

**Reason for Proposed Action:** *These proposed changes are to update the photograph requirements to require digital photographs and to ensure that applicants are fiscally responsible.*

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

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

**Comment period ends:** September 13, 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.

**Fiscal Impact:**

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

**CHAPTER 07 – PRIVATE PROTECTIVE SERVICES BOARD**

**SUBCHAPTER 07D - PRIVATE PROTECTIVE SERVICES BOARD**

**SECTION .0100 - ORGANIZATION AND GENERAL PROVISIONS**

**12 NCAC 07D .0201 APPLICATION FOR LICENSES AND TRAINEE PERMITS**

(a) Each applicant for a license or trainee permit shall submit an original and one copy of the application to the Board. The application shall be accompanied by:

- (1) two sets of classifiable fingerprints on an applicant fingerprint card;
- (2) one head and shoulders digital photograph of the applicant in JPG format of acceptable quality for identification, ~~one inch by one inch in size,~~ taken within six months prior to ~~submission;~~ submission and submitted preferably by e-mail to PPSASL-Photos@ncdoj.gov, by compact disc, or on a 3.5 floppy diskette;
- (3) certified statement of the result of a criminal history records search by the appropriate governmental authority housing criminal record information or clerk of superior court in each county where the applicant has resided within the immediately preceding 60 months;

- (4) the applicant's non-refundable application fee; ~~and~~
- (5) actual cost charged to the Private Protective Services Board by the State Bureau of Investigation to cover the cost of criminal record checks performed by the State Bureau of Investigation, collected by the Private Protective Services ~~Board~~-Board; and
- (6) an Equifax credit check run within 30 days of the license application submission date.

(b) Applications for trainee permits shall be accompanied by a notarized statement on a form provided by the Board and signed by the applicant and his prospective supervisor, stating that the trainee applicant shall at all times work with and under the direct supervision of that supervisor.

(c) Private investigator trainees applying for a license must make available for inspection a log of experience on a form provided by the Board.

(d) Each applicant must provide evidence of high school graduation either by diploma, G.E.D. certificate, or other acceptable proof.

(e) Each applicant for a license shall meet personally with either a Board investigator, the Screening Committee; the Director, or a Board representative designated by the Director prior to being issued a license. The applicant shall discuss the provisions of G.S. 74C and the administrative rules during the personal meeting. The applicant shall sign a form provided by the Board indicating that they have reviewed the information with the Board's representative and that they have an understanding of G.S. 74C and the administrative rules.

Authority G.S. 74C-2; 74C-5; 74C-8; 74C-8.1.

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

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

- (1) a head and shoulders digital color photograph of the applicant in JPG format of a quality sufficient for identification, ~~one inch by one inch in size and~~ taken within six months of the ~~application;~~ application and submitted preferably by e-mail to PPSASL-Photos@ncdoj.gov, by compact disc, or on a 3.5 floppy diskette;
- (2) statements of the result of a local criminal history records search by the city-county identification bureau or clerk of superior court in each county where the applicant has resided within the immediate preceding 12 months or a criminal record check from a third party criminal record check provider;
- (3) the applicant's renewal fee; and
- (4) proof of liability insurance as set out in G.S. 74C-10(e).

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

- (1) an Application For Reinstatement of an Expired License;
- (2) one set of classifiable fingerprints on an applicant fingerprint card;
- (3) one head and shoulders photograph(s) of the applicant of a quality sufficient for identification, one inch by one inch in size and taken within six months of the application;
- (4) statements of the result of a local criminal history records search by the city-county identification bureau or clerk of superior court in each county where the applicant has resided within the immediate preceding 60 months or a criminal record check from a third party criminal record check provider;
- (5) the applicant's non-refundable application fee;
- (6) proof of liability insurance as set out in G.S. 74C-10(e); and
- (7) a separate check or money order made payable to the State Bureau of Investigations to cover criminal record checks performed by the State Bureau of Investigations.

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

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

**SECTION .0700 - SECURITY GUARD REGISTRATION (UNARMED)**

**12 NCAC 07D .0701 APPLICATION FOR UNARMED SECURITY GUARD REGISTRATION**

(a) Each employer or his designee shall submit and sign an application form for the registration of each employee to the Board. This form shall be accompanied by:

- (1) two sets of classifiable fingerprints on an applicant fingerprint card;
- (2) two head and shoulders color digital photographs of the applicant in JPG format of acceptable quality for identification, ~~one inch by one inch in size,~~ taken within six months prior to ~~submission;~~ submission and submitted preferably by e-mail to PPSASL-Photos@ncdoj.gov, by compact disc, or on a 3.5 floppy diskette;
- (3) certified statement of the result of a criminal records search from the appropriate governmental authority housing criminal

record information or clerk of superior court in each area where the applicant has resided within the immediately preceding 48 months;

(4) the applicant's non-refundable registration fee; and

(5) actual cost charged to the Private Protective Services Board by the State Bureau of Investigation to cover the cost of criminal record checks performed by the State Bureau of Investigation, collected by the Private Protective Services Board.

(b) The employer of each applicant for registration shall give the applicant a copy of the application and shall retain a copy of the application in the individual's personnel file in the employers' office.

(c) The applicant's copy of the application shall serve as a temporary registration card which shall be carried by the applicant when he is within the scope of his employment and which shall be exhibited upon the request of any law enforcement officer or authorized representative of the Board.

(d) A statement signed by a certified trainer that the applicant has successfully completed the training requirements of 12 NCAC 7D .0707 shall be submitted to the Director with the application.

(e) A copy of the statement specified in Paragraph (d) of this Rule shall be retained by the licensee in the individual applicant's personnel file in the employer's office.

Authority G.S. 74C-5; 74C-8.1; 74C-11.

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

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

- (1) two recent head and shoulders color digital photographs of the applicant in JPG format of acceptable quality for identification, ~~one inch by one inch in size; taken within six months prior to submission and submitted preferably by e-mail to PPSASL-Photos@ncdoj.gov, by compact disc, or on a 3.5 floppy diskette;~~
- (2) statements of any criminal record obtained from the appropriate authority in each area where the applicant has resided within the immediate preceding 12 months or a criminal record check from a third party criminal record check provider;
- (3) the applicant's renewal fee; and
- (4) actual cost charged to the Private Protective Services Board by the State Bureau of Investigation to cover the cost of criminal record checks performed by the State Bureau of Investigation, collected by the Private Protective Services Board.

(b) Each applicant for reissue of a registration identification card shall complete, and his employer shall sign a form provided

by the Board. This form shall be submitted to the Board and accompanied by:

- (1) two recent head and shoulders color digital photographs of the applicant in JPG format of acceptable quality for identification, ~~one inch by one inch in size; and taken within six months prior to submission and submitted preferably by e-mail to PPSASL-Photos@ncdoj.gov by compact disc, or on a 3.5 floppy diskette; and~~
- (2) the applicant's reissue fee.

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

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

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

**SECTION .0800 - ARMED SECURITY GUARD FIREARM REGISTRATION PERMIT**

**12 NCAC 07D .0801 APPLICATION/ARMED SECURITY GUARD FIREARM REGISTRATION PERMIT**

(a) Each armed security guard employer or his designee shall submit and sign an application form for the registration of each armed security guard applicant to the Board. This form shall be accompanied by:

- (1) two sets of classifiable fingerprints on an applicant fingerprint card;
- (2) two head and shoulders color digital photographs of the applicant in JPG format of sufficient quality for identification, ~~one inch by one inch in size; taken within six months prior to submission and submitted preferably by e-mail to PPSASL-Photos@ncdoj.gov, by compact disc, or on a 3.5 floppy diskette;~~
- (3) certified statement of the result of a criminal records search from the clerk of superior court in each county where the applicant has resided within the immediate preceding 48 months. If the applicant has resided out of state within the immediate preceding 48 months, the applicant shall provide a certified statement of the result of a criminal records search from the appropriate governmental authority housing criminal record information in each area where the applicant has resided within the immediate preceding 48 months;

- (4) the applicant's non-refundable registration fee; and
- (5) a statement signed by a certified trainer that the applicant has successfully completed the training requirements of 12 NCAC 07D .0807;
- (6) a certification by the applicant that he or she is at least 21 years of age.

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

(c) The applicant's copy of the application shall serve as a temporary registration card which shall be carried by the applicant when he is within the scope of his employment and which shall be exhibited upon the request of any law enforcement officer or authorized representative of the Board.

(d) Applications submitted without proof of completion of a Board approved firearms training course shall not serve as temporary registration cards unless the contract security company or proprietary security organization has obtained prior approval from the Director. The Director shall grant prior approval if the contract security company or proprietary security organization provides proof satisfactory to the Director that the applicant has received prior firearms training.

(e) The provisions of Paragraphs (a), (b), and (c) of this Rule also apply to any employee whose employment is terminated within 30 days of employment.

Authority G.S. 74C-5; 74 C-9; 74C-13.

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

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

- (1) two ~~recent~~ head and shoulders color digital photographs of the applicant in JPG format of acceptable quality for identification, ~~one inch by one inch in size;~~ taken within six months prior to submission and submitted preferably by e-mail to PPSASL-Photos@ncdoj.gov, by compact disc, or on a 3.5 floppy diskette;
- (2) statements of any criminal record obtained from the appropriate area where the applicant has resided within the immediate preceding 12 months or a criminal record check from a third party criminal record check provider;
- (3) the applicant's renewal fee; and
- (4) actual cost charged to the Private Protective Services Board by the State Bureau of Investigation to cover the cost of criminal record checks performed by the State Bureau of Investigation, collected by the Private Protective Services Board.

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

(c) Applications for renewal shall be accompanied by a statement signed by a certified trainer that the applicant has successfully completed the training requirements of 12 NCAC 07D .0807.

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

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

**SECTION .0900 – TRAINER CERTIFICATE**

**12 NCAC 07D .0902 APPLICATION FOR FIREARMS TRAINER CERTIFICATE**

Each applicant for a firearms trainer certificate shall submit an original and one copy of the application to the Board. The application shall be accompanied by:

- (1) two sets of classifiable fingerprints on an applicant fingerprint card;
- (2) one ~~recent~~ head and shoulders color digital photograph of the applicant in JPG format of adequate quality for identification, ~~one inch by one inch in size;~~ taken within six months prior to submission and submitted preferably by e-mail to PPSASL-Photos@ncdoj.gov, by compact disc, or on a 3.5 floppy diskette;
- (3) certified statement of the result of a criminal history records search by the appropriate governmental authority housing criminal record information or clerk of superior court in each county where the applicant has resided within the immediate preceding 60 months;
- (4) actual cost charged to the Private Protective Services Board by the State Bureau of Investigation to cover the cost of criminal record checks performed by the State Bureau of Investigation, collected by the Private Protective Services Board;
- (5) the applicant's non-refundable registration fee;
- (6) a certificate of successful completion of the training required by 12 NCAC 07D .0901(3) and (4). This training shall have been completed within 60 days of the submission of the application; and
- (7) actual cost charged to the Private Protective Services Board by the North Carolina Justice Academy to cover the cost of the firearms training course given by the N.C. Justice



Academy and collected by the Private Protective Services Board.

CHAPTER 11 - NORTH CAROLINA ALARM SYSTEMS LICENSING BOARD

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

SECTION .0200 - PROVISIONS FOR LICENSEES

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Alarm Systems Licensing Board intends to amend the rules cited as 12 NCAC 11 .0201, .0204, .0301 and .0306.

Proposed Effective Date: November 1, 2011

Public Hearing:

Date: August 2, 2011

Time: 2:00 p.m.

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

Reason for Proposed Action: The proposed changes are to update the photograph requirements to require digital photographs and to ensure that applicants are fiscally responsible.

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

Comments may be submitted to: Terry Wright, Alarm Systems Licensing Board, 1631 Midtown Place, Suite 104, Raleigh, NC 27609

Comment period ends: September 13, 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.

Fiscal Impact:

- State
Local
Substantial Economic Impact (>=\$3,000,000)
None

12 NCAC 11 .0201 APPLICATION FOR LICENSE

(a) Each applicant for a license shall complete an application form provided by the Board. This form and one additional copy shall be submitted to the administrator and shall be accompanied by:

- (1) one set of classifiable fingerprints on an applicant card provided by the Board;
(2) two head and shoulders digital color photographs of the applicant in JPG format of acceptable quality for identification one inch by one inch in size; taken within six months prior to submission and submitted preferably by e-mail to PPSASL-Photos@ncdoj.gov, by compact disk, or on a 3.5 floppy diskette;
(3) statements of the results of a local criminal history records search by the city-county identification bureau or clerk of superior court in each county where the applicant has resided within the immediately preceding 48 months or a statewide criminal history records search for the past five years conducted by an Administrative Offices of the Courts' approved firm that conducts criminal history searches and bases its search on the criminal history database maintained by the North Carolina Administrative Offices of the Courts; and
(4) the applicant's application fee; fee; and
(5) an Equifax credit check run within 30 days of the license application submission date.

(b) Each applicant must provide evidence of high school graduation either by diploma, G.E.D. certificate, or other equivalent documentation.

(c) Each applicant for a license shall meet personally with either a Board investigator, the Screening Committee, the Director, or a Board representative designated by the Director prior to being issued a license. The applicant shall discuss the provisions of G.S. 74D and the administrative rules during the personal meeting. The applicant shall sign a form provided by the Board indicating that they have reviewed the information with the Board's representative and that they have an understanding of G.S. 74D and the administrative rules.

(d) Each applicant for a branch office license shall complete an application form provided by the Board. This form and one additional copy shall be submitted to the administrator and shall be accompanied by the branch office application fee.

Authority G.S. 74D-2; 74D-3; 74D-5; 74D-7.

12 NCAC 11 .0204 RENEWAL OR RE-ISSUE OF LICENSE

(a) Each applicant for a license renewal shall complete a renewal form provided by the Board. This form shall be submitted to the administrator not less than 30 days prior to

expiration of the applicant's current license and shall be accompanied by:

- (1) two head and shoulders digital color photographs of the applicant in JPG format of acceptable quality for identification ~~one inch by one inch in size;~~ taken within six months of the application and submitted preferably by e-mail to PPSASL-Photos@ncdoj.gov, by compact disc, or on a 3.5 floppy diskette;
- (2) statements of the result of a local criminal history records search by the City/County Identification Bureau or Clerk of Superior Court in each county where the applicant has resided within the immediately preceding 24 months;
- (3) the applicant's renewal fee; and
- (4) proof of liability insurance pursuant to G.S. Sec. 74D-9.

(b) Applications for renewal shall be submitted not less than 30 days before the expiration date of the license. In no event shall renewal be granted more than 90 days after the date of expiration of a license. Renewals shall be dated on the next day following expiration of the prior license.

(c) Applications for renewal submitted after the expiration date of the license shall be accompanied by the late renewal fee established by 12 NCAC 11 .0203 and must be submitted not later than 90 days after the expiration date of the license.

(d) The administrator shall approve or deny all applications for renewal. Any denials shall be submitted to the Board for a final board decision.

(e) Members of the armed forces whose license is in good standing and to whom G.S. 105-249.2 grants an extension of time to file a tax return are granted the same extension of time to pay the license renewal fee and to complete the continuing education requirements prescribed by 12 NCAC 11 .0500. A copy of the military order or the extension approval by the Internal Revenue Service or by the North Carolina Department of Revenue must be furnished to the Board.

Authority G.S. 74D-2(a); 74D-5; 93B-15.

**SECTION .0300 - PROVISIONS FOR REGISTRANTS**

**12 NCAC 11 .0301 APPLICATION FOR REGISTRATION**

(a) Each licensee or his appointed agent shall submit and sign an application form for the registration of his employee on a form provided by the Board. This form, when sent to the board, shall be accompanied by a set of classifiable fingerprints on a standard F.B.I. applicant card, two ~~recent~~ digital photographs in JPG format of acceptable quality for identification ~~one inch by one inch in size;~~ taken within six months of the application and submitted preferably by e-mail to PPSASL-Photos@ncdoj.gov, by compact disc, or on a 3.5 floppy diskette, statements of the results of a local criminal history records search by the city-county identification bureau or clerk of superior court in each county where the applicant has resided within the immediately preceding 48 months or a statewide criminal history records search for the preceding 48 months conducted by an

Administrative Offices of the Courts' approved firm that conducts criminal history searches and bases its search on the criminal history database maintained by the North Carolina Administrative Offices of the Courts, and the registration fee required by 12 NCAC Chapter 11 .0302.

(b) The employer of an applicant who is currently registered with another alarm business, shall complete an application form provided by the Board. This form shall be accompanied by the applicant's multiple registration fee.

(c) The employer of each applicant for registration shall retain a copy of the applicant's application in the individual applicant's personnel file in the employer's office.

(d) The employer of each applicant for registration shall complete and submit to the Board a certification of the background and criminal record check of every applicant signed by the licensee or qualifying agent. A copy of this certification shall be retained in the individual applicant's personnel file in the employer's office.

Authority G.S. 74D-5; 74D-8.

**12 NCAC 11 .0306 RENEWAL OR REREGISTRATION OF REGISTRATION**

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

- (1) two head and shoulders digital color photographs of the applicant in JPG format of acceptable quality for identification ~~one inch by one inch in size;~~ taken within six months of the application and submitted preferably by e-mail to PPSASL-Photos@ncdoj.gov, by compact disc, or on a 3.5 floppy diskette;
- (2) statements of the result of a local criminal history records search by the City/County Bureau or Clerk of Superior Court in each county where the applicant has resided within the immediately preceding 24 months; and
- (3) the applicant's renewal fee.

(b) Each licensee shall provide each applicant for registration or re-registration an application form provided by the Board. This form shall be submitted to the Board and accompanied by:

- (1) two head and shoulders digital photographs in JPG format of the applicant of acceptable quality for identification ~~one inch by one inch in size;~~ taken within six months of the application and submitted preferably by e-mail to PPSASL-Photos@ncdoj.gov, by compact disc, or on a 3.5 floppy diskette; and
- (2) the applicant's reregistration fee.

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

(d) Members of the armed forces whose registration is in good standing and to whom G.S. 105-249.2 grants an extension of

time to file a tax return are granted that same extension of time to pay the registration renewal fee and to complete the continuing education requirements prescribed by 12 NCAC 11 .0500. A copy of the military order or the extension approval by the Internal Revenue Service or by the North Carolina Department of Revenue must be furnished to the Board.

Authority G.S. 74D-7; 74D-8; 93B-15.

TITLE 21 – OCCUPATIONAL LICENSING BOARDS AND COMMISSIONS

CHAPTER 32 – NORTH CAROLINA MEDICAL BOARD

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Medical Board intends to adopt the rules cited as 21 NCAC 32N .0106-.0113 and repeal the rules cited as 21 NCAC 32N .0101-.0105.

Proposed Effective Date: December 1, 2011

Public Hearing:

Date: September 13, 2011

Time: 10:00 a.m.

Location: NC Medical Board, 1203 Front Street, Raleigh, NC

Reason for Proposed Action: The purpose of the proposed adoptions and repeals is to provide clarification and procedures for carrying out requirements arising out of legislation enacted in 2009 and to provide clarification regarding existing investigative and disciplinary processes.

Procedure by which a person can object to the agency on a proposed rule: A person may submit objections to the proposed amendments, in writing by September 13, 2011, to the Rules Coordinator, NC Medical Board, 1203 Front Street, Raleigh, NC 27609 or email at rules@ncmedboard.org using "32N – disciplinary rules" in the subject line.

Comments may be submitted to: Rules Coordinator, NC Medical Board, P.O. Box 20007, Raleigh, NC 27619-0007; phone (919) 326-1100; fax (919) 326-0036; email rules@ncmedboard.org

Comment period ends: September 13, 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.

Fiscal Impact:

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

SUBCHAPTER 32N - FORMAL AND INFORMAL PROCEEDINGS

21 NCAC 32N .0101 INITIATION OF FORMAL HEARINGS

Formal hearings shall be initiated pursuant to G.S. 90-14.1 or G.S. 90-14.2 and shall be conducted as provided in G.S. 90-14.4 through G.S. 90-14.7.

Authority G.S. 90-14.1; 90-14.2; 90-14.3; 90-14.4; 90-14.5.

21 NCAC 32N .0102 CONTINUANCES

Any person summoned to appear before the Board at a formal hearing pursuant to G.S. 90-14.1 or G.S. 90-14.2 may seek to obtain a continuance of that hearing by filing with the Executive Secretary of the Board, as soon as the reason for continuance is known, a motion for continuance setting forth with specificity the reason the continuance is desired. Motions for continuances shall be ruled upon by the President and Executive Secretary of the Board or in the absence of the President, by the Secretary and Executive Secretary. Continuances will be granted only upon a showing of good cause.

Authority G.S. 90-14.1; 90-14.2; 150B-11(1); 150B-38(h).

21 NCAC 32N .0103 DISQUALIFICATION FOR PERSONAL BIAS

Any person summoned to appear before the Board at a formal hearing pursuant to G.S. 90-14.1 or G.S. 90-14.2 may challenge on the basis of personal bias or other reason for disqualification the fitness and competency of any member of the Board to hear and weigh evidence concerning that person. Challenges must be stated by way of motion accompanied by affidavit setting forth with specificity the grounds for such challenge and must be filed with the Executive Director of the Board on a timely basis. Nothing contained in this Rule shall prevent a person appearing before the Board at a formal hearing from making timely personal inquiry of members of the Board as to their knowledge of and personal bias concerning that person's case.

Authority G.S. 90-14.1; 90-14.2; 150B-38(h).

21 NCAC 32N .0104 DISCOVERY

In any formal proceeding pursuant to G.S. 90-14.1 and G.S. 90-14.2, discovery may be obtained as provided in G.S. 150B-39 by either the Board or the person summoned to appear before the Board. Any request for discovery made by a person summoned

to appear before the Board shall be filed with the Executive Director of the Board.

Authority G.S. 90-14.1; 90-14.2; 150B-38(h); 150B-39.

21 NCAC 32N .0105 INFORMAL PROCEEDINGS

(a) In addition to formal hearings pursuant to G.S. 90-14.1 or G.S. 90-14.2, the Board may conduct certain informal proceedings in order to settle on an informal basis certain matters of dispute. A person practicing medicine pursuant to a license or other authority granted by the Board may be invited to attend a meeting with the Board or a committee of the Board on an informal basis to discuss such matters as the Board may advise in its communication to the person inviting him or her to attend such meeting. No public record of such proceeding shall be made nor shall any individual be placed under oath to give testimony. Matters discussed by a person appearing informally before the Board may, however, be used against such person in a formal hearing if a formal hearing is subsequently initiated.

(b) As a result of such informal meeting, the Board may recommend that certain actions be taken by such person, may offer such person the opportunity to enter into a consent order which will be a matter of public record, may institute a formal public hearing concerning such person, or may take other public or non public action as the Board may deem appropriate in each case.

(c) Attendance at such an informal meeting is not required and is at the sole discretion of the person so invited. A person invited to attend an informal meeting shall be entitled to have counsel present at such meeting.

Authority G.S. 150B-11(1); 150B-38(h).

21 NCAC 32N .0106 DEFINITIONS

As used in this Section:

- (1) Disciplinary Proceedings means hearings conducted pursuant to G.S. 90-14.2 through 90-14.7, and Article 3A of Chapter 150B.
(2) Good cause related to motions or requests to continue or for additional time for responding includes:
(a) death or incapacitating illness of a party, or attorney of a party;
(b) a court order requiring a continuance;
(c) lack of proper notice of the hearing;
(d) a substitution of the attorney of a party if the substitution is shown to be required;
(e) agreement for a continuance by all parties if either more time is demonstrated to be necessary to complete mandatory preparation for the case, such as authorized discovery, and the parties and the Board have agreed to a new hearing date or the parties have agreed to a settlement of the case that has been or is likely to be approved by the Board; and

(f) where, for any other reason, either party has shown that the interests of justice require a continuance or additional time.

(3) Good cause related to motions or requests to continue or for additional time for responding shall not include:

- (a) intentional delay;
(b) unavailability of counsel because of engagement in another judicial or administrative proceeding unless all other members of the attorney's firm familiar with the case are similarly engaged, or if the notice of the other proceeding was received subsequent to the notice of the hearing for which the continuance is sought;
(c) unavailability of a witness if the witness testimony can be taken by deposition; and
(d) failure of the attorney or respondent to use effectively the statutory notice period provided in G.S. 90-14.2(a) to prepare for the hearing.

(4) Licensee means all persons to whom the Board has issued a license as defined in G.S. 90-1.1.

(5) Respondent means the person licensed or approved by the Board who is named in the Notice of Charges and Allegations.

Authority G.S. 90-5.1(a)(3); 90-14.2; 150B-38(h);150B-40(c)(4).

21 NCAC 32N .0107 INVESTIGATIONS AND COMPLAINTS

(a) At the time of first oral or written communication from the Board or staff or agent of the Board to a licensee regarding a complaint or investigation, the Board shall provide the notices set forth in G.S. 90-14(i), except as provided in Paragraph (e) of this Rule.

(b) A licensee shall submit a written response to a complaint received by the Board within 45 days from the date of a written request by Board staff. The Board shall grant up to an additional 30 days for the response where the licensee demonstrates good cause for the extension of time. The response shall contain accurate and complete information. Where licensee fails to respond in the time and manner provided herein, the Board may treat that as a failure to respond to a Board inquiry in a reasonable time and manner as required by G.S. 90-14(a)(14).

(c) The licensee's written response to a complaint submitted to the Board in accordance with Paragraph (b) of this Rule shall be provided to the complainant upon written request as permitted in G.S. 90-16(e1), except that the response shall not be provided where the Board in its discretion determines that the complainant has misused the Board's complaint process or that the release of the response would be harmful to the physical or mental health of the complainant who was a patient of the responding licensee.

(d) A licensee shall submit to an interview within 30 days from the date of an oral or written request from Board staff. The Board in its discretion may grant up to an additional 15 days for

the interview where the licensee demonstrates good cause for the extension of time. The responses to the questions and requests for information, including documents, during the interview shall be complete and accurate. Where respondent fails to respond in the time and manner provided herein, the Board may treat that as a failure to respond to a Board inquiry in a reasonable time and manner as required by G.S. 90-14(a)(14).

(e) Where the Board finds that the public health, safety, or welfare requires emergency action within the meaning of G.S. 150B-3(c), a licensee shall provide the requested information or documents in response to any oral or written request from the Board or its staff regarding the matter affecting the license or approval granted by the Board. If documents requested by the Board are not in the immediate possession and control of respondent, then respondent shall provide the documents as soon as practicable. The responses to the questions and requests for information, including documents, shall be complete and accurate. Where the licensee fails to respond in the time and manner provided herein, the Board may treat that as a failure to respond to a Board inquiry in a reasonable time and manner as required by G.S. 90-14(a)(14).

(f) The licensee who is the subject of a Board inquiry may retain and consult with legal counsel of his or her choosing in responding to the inquiries as set out in G.S. 90-14(i).

*Authority G.S. 90-5.1(a)(3); 90-14(a)(14); 90-14(i); 90-16(e1).*

**21 NCAC 32N .0108 INVESTIGATIVE INTERVIEWS BY BOARD MEMBERS**

(a) In addition to formal hearings pursuant to G.S. 90-14 and G.S. 90-14.2, the Board may ask a licensee to attend a non-public interview with members of the Board and staff to discuss a pending complaint or investigation. The invitation letter shall describe the matters of dispute or concern and shall enclose the notices required by G.S. 90-14(i), if not previously issued. No individual shall be placed under oath to give testimony. Statements made or information provided by a licensee during this interview may, however, be used against such licensee in any subsequent formal hearing.

(b) As a result of the interview, the Board may ask that the licensee take actions as referred to in G.S. 90-14(k), may offer the licensee the opportunity to enter into a consent order or other public agreement that will be a matter of public record, may institute a formal public hearing concerning the licensee, or may take other action as the Board deems appropriate in each case.

(c) Unless ordered by the Board pursuant to G.S. 90-8, attendance at such an interview is not required. A licensee may retain legal counsel and have such counsel present during such interview.

(d) If ordered to appear for an interview, requests for continuances from interviews shall be filed with the President as soon as practicable and shall be granted only upon good cause shown.

*Authority G.S. 90-5.1(a)(3); 90-8;90-14(a)(14).*

**21 NCAC 32N .0109 PRE-CHARGE CONFERENCE**

(a) Prior to issuing public Notice of Charges and Allegations against a licensee, the Board shall inform the licensee in writing

of the right to request a pre-charge conference as set forth in G.S. 90-14(j). The written notice regarding the pre-charge conference shall be sent by certified mail, return receipt requested to the last mailing address registered with the Board.

(b) A request for a pre-charge conference must be:

- (1) in writing via delivery of a letter or by facsimile or electronic mail;
- (2) addressed to the coordinator identified in the written notice provided as set forth in Paragraph (a) of this Rule; and
- (3) received by the Board no later than 30 days from the date appearing on the written notice provided as set forth in Paragraph (a) of this Rule.

(c) Upon receipt of a request for a pre-charge conference, the coordinator shall schedule the conference to occur within 45 days and serve notice of the date and time of the conference on the licensee or on counsel for licensee, if the Board is aware licensee is represented by counsel.

(d) The pre-charge conference shall be conducted as provided in G.S. 90-14(j). The pre-charge conference will be conducted by telephone conference unless the interests of justice require otherwise or both parties agree to conduct the conference in person. No continuances of the pre-charge conference shall be allowed except when granted by the Board for good cause shown.

(e) The licensee may provide to the Board written documents not previously submitted by delivering those documents in electronic form to the coordinator identified in the written notice up to five days prior to the pre-charge conference.

(f) The Board shall provide information to the licensee during the pre-charge conference regarding the possibility of settlement of the pending matter prior to the issuance of a public notice of charges and allegations.

*Authority G.S. 90-5.1(a)(3); 90-14(j).*

**21 NCAC 32N .0110 INITIATION OF DISCIPLINARY HEARINGS**

(a) The Board shall issue a Notice of Charges and Allegations only upon completion of an investigation, a finding by the Board or a committee of the Board that there exists a factual and legal basis for an action pursuant to any subsection of G.S. 90-14(a), and a pre-charge conference, if one was requested by the licensee.

(b) Disciplinary proceedings shall be initiated and conducted pursuant to G.S. 90-14 through G.S. 90-14.7 and G.S. 150B-38 through G.S. 150B-42.

(c) A pre-hearing conference shall be held not less than seven days before the hearing date unless waived by the Board President or designated presiding officer upon written request by either party. The purpose of the conference will be to simplify the issues to be determined, obtain stipulations in regards to testimony or exhibits, obtain stipulations of agreement on undisputed facts or the application of particular laws, consider the proposed witnesses for each party, identify and exchange documentary evidence intended to be introduced at the hearing, and consider such other matters that may be necessary or

advisable for the efficient and expeditious conduct of the hearing.

(d) The pre-hearing conference shall be conducted in the offices of the Medical Board, unless another site is designated by mutual agreement of all parties; however, when a face-to-face conference is impractical, the Board President or designated presiding officer may order the pre-hearing conference be conducted by telephone conference.

(e) The pre-hearing conference shall be an informal proceeding and shall be conducted by the Board President or designated presiding officer.

(f) All agreements, stipulations, amendments, or other matters resulting from the pre-hearing conference shall be in writing, signed by the presiding officer, respondent or respondent's counsel and Board counsel, and introduced into the record at the beginning of the disciplinary hearing.

(g) Motions for a continuance of a hearing shall be granted upon a showing of good cause. In determining whether to grant such motions, the Board shall consider the Guidelines for Resolving Scheduling Conflicts adopted by the State-Federal Judicial Council of North Carolina. Motions for a continuance must be in writing and received in the office of the Medical Board no less than 14 calendar days before the hearing date. A motion for a continuance filed less than 14 calendar days from the date of the hearing shall be denied unless the reason for the motion could not have been ascertained earlier. Motions for continuance shall be ruled on by the President of the Board or designated presiding officer.

(h) The Respondent may challenge on the basis of personal bias or other reason for disqualification the fitness and competency of any Board member to hear and weigh evidence concerning the Respondent. Challenges must be in writing accompanied by affidavit setting forth with specificity the grounds for such challenge and must be filed with the President of the Board or designated presiding officer at least 14 days before the hearing except for good cause shown. Nothing contained in this Rule shall prevent a Respondent appearing before the Board at a formal hearing from making inquiry of Board members as to their knowledge of and personal bias concerning that person's case and making a motion based upon the responses to those inquiries that a Board member recuse himself or herself of be removed by the Board President or presiding officer.

(i) In any formal proceeding pursuant to G.S. 90-14.1 and G.S. 90-14.2, discovery may be obtained as provided in G.S. 90-8 and 150B-39 by either the Board or the Respondent. Any discovery request by a Respondent to the Board shall be filed with the Executive Director of the Board. Nothing herein is intended to prohibit a Respondent or counsel for Respondent from issuing subpoenas to the extent that such subpoenas are otherwise permitted by law or rule. The Medical Board may issue subpoenas for the Board or a Respondent in preparation for or in the conduct of a contested case as follows:

- (1) Subpoenas may be issued for the appearance of witnesses or the production of documents or information, either at the hearing or for the purposes of discovery;
- (2) Requests by a Respondent for subpoenas shall be made in writing to the Executive Director and shall include the following:

(A) the full name and home or business address of all persons to be subpoenaed; and

(B) the identification, with specificity, of any documents or information being sought;

(3) Where Respondent makes a request for subpoenas and complies with the requirements in Subparagraph (2) of this Paragraph, the Board shall provide subpoenas promptly;

(4) Subpoenas shall include the date, time, and place of the hearing and the name and address of the party requesting the subpoena. In the case of subpoenas for the purpose of discovery, the subpoena shall include the date, time, and place for responding to the subpoena; and

(5) Subpoenas shall be served as provided by the Rules of Civil Procedure, G.S. 1A-1. The cost of service, fees, and expenses of any witnesses or documents subpoenaed shall be paid by the party requesting the witnesses.

(j) All motions related to a contested case shall be in writing and submitted to the Medical Board at least 14 calendar days before the hearing. Pre-hearing motions shall be heard at the pre-hearing conference described in Paragraph (c) of this Rule. Motions filed fewer than 14 days before the hearing shall be considered untimely and shall not be considered unless the reason for the motion could not have been ascertained earlier. In such case, the motion shall be considered at the hearing prior to the commencement of testimony. The Board President or designated presiding officer shall hear the motions and any response from the non-moving party and rule on such motions. If the pre-hearing motions are heard by an Administrative Law Judge from Office of Administrative Hearings the provisions of G.S. 150B-40(e) shall govern the proceedings.

*Authority G.S. 90-5.1(a)(3); 90-8; 90-14.1; 90-14.2; 90-14.3; 150B-38; 150B-39(c).*

**21 NCAC 32N .0111 CONDUCTING DISCIPLINARY HEARINGS**

(a) Disciplinary hearings conducted before a majority of Board members shall be held at the Board's office or, by mutual consent, in another location where a majority of the Board has convened for the purpose of conducting business. For proceedings conducted by an administrative law judge, the venue shall be determined in accordance with G.S. 150B-38(e). All hearings conducted by the Medical Board are open to the public; however, portions are closed to protect the identity of patients pursuant to G.S. 90-16(b).

(b) All hearings by the Medical Board shall be conducted by a quorum of the Medical Board, except as provided in Subparagraph (1) and (2) of this Paragraph. The Medical Board President or his or her designee shall preside at the hearing. The Medical Board shall retain independent legal counsel to provide advice to the Board as set forth in G.S. 90-14.2. The quorum of the Medical Board shall hear all evidence, make findings of fact and conclusions of law, and issue an order reflecting the decision

of the majority of the quorum of the Board. The final form of the order shall be determined by the presiding officer, who shall sign the order. When a majority of the members of the Medical Board is unable or elects not to hear a contested case:

(1) The Medical Board may request the designation of an administrative law judge from the Office of Administrative Hearings to preside at the hearing so long as the Board has not alleged the licensee failed to meet an applicable standard of medical care. The provisions of G.S. 150B, Article 3A shall govern a contested case in which an administrative law judge is designated as the Hearing Officer; or

(2) The Medical Board President may designate in writing three or more hearing officers to conduct hearings as a hearing committee to take evidence. The provisions of G.S. 90-14.5(a) through (d) shall govern a contested case in which a hearing committee is designated.

(c) If any party or attorney of a party or any other person in or near the hearing room engages in conduct which obstructs the proceedings or would constitute contempt if done in the General Court of Justice, the Board may apply to the applicable superior court for an order to show cause why the person(s) should not be held in contempt of the Board and its processes.

(d) During a hearing, if it appears in the interest of justice that further testimony should be received and sufficient time does not remain to conclude the testimony, the Medical Board may continue the hearing to a future date to allow for the additional testimony to be taken by deposition or to be presented orally. In such situations and to such extent as possible, the seated members of the Medical Board shall receive the additional testimony. If new members of the Board or a different independent counsel must participate, a copy of the transcript of the hearing shall be provided to them prior to the receipt of the additional testimony.

(e) All parties have the right to present evidence, rebuttal testimony, and argument with respect to the issues of law, and to cross-examine witnesses. The North Carolina Rules of Evidence in G.S. 8C apply to contested case proceedings, except as provided otherwise in this Rule, G.S. 90-14.6 and G.S. 150B-41.

Authority G.S. 90-5.1(a)(3); 90-14.2; 90-14.5; 90-14.6; 90-14.7; 90-16(b); 150B-38(e)(h); 150B-40; 150B-41; 150B-42.

**21 NCAC 32N .0112 POST HEARING MOTIONS**

(a) Following a disciplinary hearing either party may request a new hearing or to reopen the hearing for good cause as provided in G.S. 90-14.7. For the purposes of this Rule, good cause is defined as any of the grounds set out in Rule 59 of the North Carolina Rules of Civil Procedure and complying with the following requirements:

(1) Following hearings conducted by a quorum of the Board, a motion for a new hearing or to reopen the hearing to take new evidence shall be served, in writing, on the presiding officer of the disciplinary hearing no later than 20

days after service of the final order upon the respondent. Supporting affidavits, if any, and a memorandum setting forth the basis of the motion together with supporting authorities, shall be filed with the motion. The opposing party has 20 days from service of the motion to file a written response, any reply affidavits, and a memorandum with supporting authorities. A quorum of the Board shall rule on the motion based on the parties' written submissions and oral arguments, if the Board permitted any; and

(2) Following hearings conducted by a hearing panel pursuant to G.S. 90-14-5, a motion for a new hearing or to reopen the hearing to take new evidence shall be served, in writing, on the presiding officer of the hearing panel no later than 20 days after service of the recommended decision upon the respondent or respondent's counsel. Supporting affidavits, if any, and a memorandum setting forth the basis of the motion together with supporting authorities, shall be filed with the motion. The opposing party has 20 days from service of the motion to file a written response, any reply affidavits, and a memorandum with supporting authorities. The hearing panel shall rule on the motion based on the parties' written submission and oral arguments, if the Board permitted any.

(b) Either party may file a motion for relief from the final order of the Board based on any of the grounds set out in Rule 60 of the North Carolina Rules of Civil Procedure. Relief from the final order of the Board shall not be permitted later than one year after the effective date of the final order from which relief is sought. Motions pursuant to this section will be heard and decided in the same manner as motions submitted pursuant to Subparagraph (a)(1) of this Rule.

(c) The filing of a motion under Subparagraph (a)(1) or Paragraph (b) of this Rule does not automatically stay or otherwise affect the effective date of the final order.

Authority G.S. 90-5.1(a)(3); 90-14.7.

**21 NCAC 32N .0113 CORRECTION OF CLERICAL MISTAKES**

Clerical mistakes in orders or other parts of the record from a formal hearing and errors therein arising from oversight or omission may be corrected by the Board President or designated presiding officer at any time on his or her own initiative or on the motion of any party and after such notice, if any, as the Board President or designated presiding officer orders. After the filing by a respondent of an appeal to the Superior Court of the Board's imposition of public disciplinary action as set forth in G.S. 90-14.8, such mistakes may be so corrected before the record of the case is filed by the Board with the clerk of the Superior Court as required by G.S. 90-14.8.

Authority G.S. 90-5.1(a)(3); 150B-40.

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

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

**TITLE 10A – DEPARTMENT OF HEALTH AND HUMAN SERVICES**

for upcoming budget cycle, lab existing vacancies likely cannot be filled.

**Rule-making Agency:** Commission for Public Health

**Rule Citation:** 10A NCAC 41A .0205

**Effective Date:** August 1, 2011

**Date Approved by the Rules Review Commission:** June 16, 2011

**Reason for Action:** A recent change in federal or state budgetary policy. Effective date of change: OSMB Memorandum: FY 2010-11 Budget Management, December 17, 2010.

Sputum specimens for acid-fast bacilli smears and mycobacterial culture are an important method of both assessing the infectiousness of persons with pulmonary tuberculosis and of monitoring the effectiveness of treatment. The current rule required three consecutive sputum specimens for acid-fast bacilli to declare an individual "noninfectious" and discontinue airborne precautions. As a result, health departments routinely collect three sputum specimens every two weeks for acid-fast smear and mycobacterial culture, which are usually sent for testing to the North Carolina State Laboratory of Public Health (SLPH).

Centers for Disease Control and Prevention guidelines recommend collecting specimens at least monthly until two consecutive sputum specimens are acid-fast smear negative to discontinue respiratory isolation. The current NC guidelines are therefore excessive for local health department staff, patients, and the SLPH.

The rule change will reduce the requirement to declare an individual "noninfectious" from three consecutive sputum specimens to two consecutive sputum specimens. This change will permit a more timely release of patients from respiratory isolation with fewer burdens on the patient and local health department staff.

The rule change has been deemed medically and programmatically appropriate by the North Carolina Tuberculosis Medical Director (Dr. Jason Stout) as well as by program staff at the Centers for Disease Control and Prevention.

In constrained budgetary environment, the current NC guidelines present an excessive burden for local health department and the State Laboratory for Public Health staff that cannot be medically justified. Staffing shortages from attrition at the SLPH create potential backlog for TB sputum testing; given budget restrictions for current fiscal year and projected

**CHAPTER 41 – HEALTH: EPIDEMIOLOGY**

**SUBCHAPTER 41A – COMMUNICABLE DISEASE CONTROL**

**SECTION .0200 - CONTROL MEASURES FOR COMMUNICABLE DISEASES**

**10A NCAC 41A .0205 CONTROL MEASURES – TUBERCULOSIS**

(a) The local health director shall investigate all cases of tuberculosis disease and their contacts in accordance with the provisions of the Control of Communicable Diseases Manual which is hereby incorporated by reference including subsequent amendments and editions. Copies of this publication may be purchased from the American Public Health Association, Publication Sales Department, Post Office Box 753, Waldorf, MD 20604 for a cost of twenty-two dollars (\$22.00) each plus five dollars (\$5.00) shipping and handling. A copy is available for inspection in the Division of Public Health, 1931 Mail Service Center, Raleigh, North Carolina 27699-1931.

(b) The following persons shall be skin tested for tuberculosis and given appropriate clinical, microbiologic and x-ray examination in accordance with the "Diagnostic Standards and Classification of Tuberculosis in Adults and Children," published by the American Thoracic Society. The recommendations contained in this reference shall be the required control measures for evaluation, testing, and diagnosis for tuberculosis patients, contacts and suspects, except as otherwise provided in this Rule and are incorporated by reference including subsequent amendments and editions:

- (1) Household and other high priority contacts of active cases of pulmonary and laryngeal tuberculosis. For purposes of this Rule, a high priority contact is defined in accordance with Centers for Disease Control and Prevention guidelines which are incorporated by reference in Rule .0201 of this Section. If the contact's initial skin test is negative (0-4mm), and the case is confirmed by culture, a repeat skin test shall be performed 8 to 10 weeks after the exposure has ended;
- (2) Persons reasonably suspected of having tuberculosis disease;
- (3) Inmates in the custody of, and staff with direct inmate contact in, the Department of Corrections upon incarceration or employment, and annually thereafter;



- (4) Patients and staff in long term care facilities upon admission or employment. The two-step skin test method shall be used if the individual has not had a documented tuberculin skin test within the preceding 12 months;
- (5) Staff in adult day care centers providing care for persons with HIV infection or AIDS upon employment. The two-step skin test method shall be used if the individual has not had a documented tuberculin skin test within the preceding 12 months; and
- (6) Persons with HIV infection or AIDS.

A copy of "Diagnostic Standards and Classification of Tuberculosis in Adults and Children" is available by contacting the Division of Public Health, 1931 Mail Service Center, Raleigh, North Carolina 27699-1931 or by accessing the Centers for Disease Control and Prevention website at [http://www.cdc.gov/nchstp/tb/pubs/mmwrhtml/Maj\\_guide/cdc\\_atguidelines.htm](http://www.cdc.gov/nchstp/tb/pubs/mmwrhtml/Maj_guide/cdc_atguidelines.htm).

(c) Treatment and follow-up for tuberculosis infection or disease shall be in accordance with "Treatment of Tuberculosis," published by the American Thoracic Society. The recommendations contained in this reference shall be the required control measures for testing, treatment, and follow-up for tuberculosis patients, contacts and suspects, except as otherwise provided in this Rule and are incorporated by reference including subsequent amendments and editions. Copies of this publication are available by contacting the Division of Public Health, 1931 Mail Service Center, Raleigh, North Carolina 27699-1931 or by accessing the Centers for Disease Control and Prevention website at [http://www.cdc.gov/nchstp/tb/pubs/mmwrhtml/Maj\\_guide/cdc\\_atguidelines.htm](http://www.cdc.gov/nchstp/tb/pubs/mmwrhtml/Maj_guide/cdc_atguidelines.htm).

(d) The attending physician or designee shall instruct all patients treated for tuberculosis regarding the potential side

effects of the medications prescribed and prescribed medications, including instructions to promptly notify the physician or designee if side effects occur.

(e) Persons with active tuberculosis disease shall complete a standard multi-drug regimen, unless otherwise approved by the State Tuberculosis Medical Director or designee, and shall be managed using Directly Observed Therapy (DOT), which is the actual observation of medication ingestion by a health care worker (HCW).

(f) Persons with suspected or known active pulmonary or laryngeal tuberculosis who have sputum smears positive for acid fast bacilli are considered infectious and shall be managed using airborne precautions, including respiratory isolation, or isolation in their home, with no new persons exposed. These individuals are considered noninfectious and use of airborne precautions, including respiratory isolation or isolation in their home, may be discontinued when:

- (1) They have ~~three~~ two consecutive sputum smears collected at least eight hours apart which are negative; and
- (2) They have been compliant on tuberculosis medications to which the organism is judged to be susceptible and there is evidence of clinical response to tuberculosis treatment.

(g) Persons with suspected or known active pulmonary or laryngeal tuberculosis who are initially sputum smear negative do not require respiratory isolation once they have been started on tuberculosis treatment.

*History Note: Authority G.S. 130A-135; 130A-144; Eff. March 1, 1992;*

*Amended Eff. April 1, 2006, April 1, 2003; August 1, 1998; October 1, 1994;*

*Temporary Amendment Eff. August 1, 2011.*

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**RULES REVIEW COMMISSION**

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*This Section contains information for the meeting of the Rules Review Commission on Thursday April 21, 2011 9:00 a.m. at 1711 New Hope Church Road, RRC Commission Room, Raleigh, NC. Anyone wishing to submit written comment on any rule before the Commission should submit those comments to the RRC staff, the agency, and the individual Commissioners. Specific instructions and addresses may be obtained from the Rules Review Commission at 919-431-3000. Anyone wishing to address the Commission should notify the RRC staff and the agency no later than 5:00 p.m. of the 2<sup>nd</sup> business day before the meeting. Please refer to RRC rules codified in 26 NCAC 05.*

**RULES REVIEW COMMISSION MEMBERS**

**Appointed by Senate**

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

**Appointed by House**

Jennie J. Hayman - Chairman  
Daniel F. McLawhorn  
Curtis Venable  
Ann Reed  
George Lucier

**COMMISSION COUNSEL**

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

**RULES REVIEW COMMISSION MEETING DATES**

July 21, 2011                      August 18, 2011  
September 15, 2011              October 20, 2011

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**RULES REVIEW COMMISSION**

**June 16, 2011**

**MINUTES**

The Rules Review Commission met on Thursday, June 16, 2011, in the Commission Room at 1711 New Hope Church Road, Raleigh, North Carolina. Commissioners present were: Jerry Crisp, Jim Funderburk, Jeff Gray, Jennie Hayman, George Lucier, Dan McLawhorn, Ann Reed, Curtis Venable and Ralph Walker.

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

The following people were among those attending the meeting:

Donnie S. Sides	Office of Emergency Services
Margaret Currin	(Private Citizen)
Barry Gupton	NC Department of Insurance/NC Building Code Council
Wilson Hayman	Poyner Spruill LLP
Tom West	Poyner Spruill LLP
Vance Kinlaw	Board of Chiropractic Examiners
Lisa Deubler	Irrigation Contractors' Licensing Board
Ronald E. Sneed	Irrigation Contractors' Licensing Board
Barry Bloch	Department of Justice
Richard Armstrong	Health Network Services
Nadine Pfeiffer	DHHS/Division of Health Service Regulation
Mandy Poole	DHHS/Division of Health Service Regulation
Gene DePorter	DHHS/Division of Health Service Regulation
Jennifer Chrisohon	Department of Labor
Natalie Caviness	Department of Labor
Norman Young	Department of Justice/Wildlife Resources Commission
Wade Tyndall	Department of Justice
Erin Gould	Department of Labor
Karen Waddell	Department of Insurance
Julie Ventaloro	Division of Water Quality

Reed Fountain	Att'y on behalf of Board of Examiners for Electrical Contractors
Micki Lilly	Social Work Certification and Licensing Board
Amanda Reeder	Division of Mental Health/DD/SAS
Robbie Brooks	Board of Examiners for Electrical Contractors
Erin Glendening	DHHS/Division of Health Service Regulation
Michael Bryne	Attorney for Health Source Chiropractic Inc
Bob Martin	Division of Public Health
Bob Peter	Irrigation Contractors' Licensing Board
Elizabeth Turgeon	OAH Extern
Nahale Kalfas	Speech and Language Pathologists and Audiologists
John Randall	Attorney for Speech and Language Pathologists and Audiologists
Christian Waters	Wildlife Resources Commission
Eric David	Board of Pharmacy
Jack M. Given Jr	Department of Labor
Wanda Nicholson	Marriage and Family Therapy Licensure Board
Chris Hoke	Department of Health and Human Services
Nick Fountain	Young Moore

The meeting was called to order at 9:59 a.m. with Ms. Hayman presiding. She reminded the Commission members that they have a duty to avoid conflicts of interest and the appearances of conflicts as required by NCGS 138A-15(e).

#### **APPROVAL OF MINUTES**

Chairman Hayman asked for any discussion, comments, or corrections concerning the minutes of the May 19, 2011 meeting. There were none and the minutes were approved as distributed.

#### **FOLLOW-UP MATTERS**

21 NCAC 52 .0206 – Board of Podiatry Examiners. The Commission approved the rewritten rule submitted by the agency.

#### **LOG OF FILINGS**

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

#### **Medical Care Commission**

All rules were approved unanimously.

#### **Commission for Mental Health**

All rules were approved unanimously.

#### **Department of Insurance**

All rules were approved unanimously.

#### **Private Protective Services Board**

Prior to the review of the rules from the Private Protective Services Board, Commissioner Gray recused himself and did not participate in any discussion or vote concerning these rules because Charles McDarris, an attorney with his law firm, Bailey and Dixon, LLP, represents the Board as its counsel. Also, he has a separate contract to teach for the Board.

All rules were approved unanimously.

#### **Department of Labor**

All rules were approved unanimously with the following exception:

13 NCAC 13 .0211 – The Commission objected to this rule based on ambiguity. In (b) it is unclear when an external inspection must be done. As the rule was written before the proposed amendment an internal inspection was to be performed at the time of installation and then every year afterwards. In the period between three and nine months after the internal inspection the inspector was to perform an external inspection as well. Now it is not clear at the least whether the external inspection is a one-time inspection at the time of installation or whether it is to be done every year as well. The language of the rule seems to require only one external inspection, which can be performed at any time, of the boiler. In that same paragraph the inspector is given the authority to suspend or revoke the certificate of operation if the inspector determines (during the external inspection while the high pressure boiler is operating) that “an

unsafe condition exists that is likely to result in serious personal injury or property damage.” Counsel would hope that if such a situation existed – “unsafe condition exists ... likely to result in serious ... injury or ... damage” – that there would not be much discretion involved and that the inspector would be required to suspend or revoke the certificate. If there is discretion, then it is unclear what standards the inspector is to use to determine whether to take action.

**Wildlife Resources Commission**

All rules were approved unanimously.

**Board of Chiropractic Examiners**

Prior to the review of the rules from the Board of Chiropractic Examiners, Commissioner Hayman recused herself and did not participate in any discussion or vote concerning these rules because her husband, Wilson Hayman, appeared before the Commission.

Commissioner Reed recused herself and did not participate in any discussion or vote concerning these rules because her husband's law firm is appearing on behalf of a party who objects to these rules.

All rules were approved unanimously with following exception:

21 NCAC 10 .0211 – The Commission voted in favor of Commissioner Venable’s motion to object to the rule based on staff’s recommendation and adding to that an objection to paragraph (b) were Commissioners Crisp, Lucier and Venable. Commissioner Funderburk voted in favor of the motion and to break the tie created by the negative votes of Commissioners Gray, McLawhorn, and Walker.

The Commission objected to this rule based on lack of statutory authority. There is no authority cited for the provision in (b) requiring that the contract be in writing and for possibly not being clear enough that there is no requirement that the contract be submitted to the board for prior approval. It is also not clear under what circumstances the board would seek to review the contract. There is also no authority for the provisions in (d)(1) and (2) which appear to control or restrict how a licensee may choose to divide the proceeds he receives as a result of exercising his professional control over his practice. The Commission also expressed concern about the provisions in (d)(4), (5) and (6) prohibiting “indirect” control or requirements in that any control over business management aspects of the practice – no matter how remote or "indirect" – could be perceived as exercising control over the practice of chiropractic.

Vance Kinlaw represented the Board and spoke in favor of rule 21 NCAC 10 .0211.

Wilson Hayman representing Healthsource Network Services and Michael Byrne representing Healthsource Chiropractic Inc spoke in opposition to rule 21 NCAC 10 .0211.

**Board of Examiners for Electrical Contractors**

All rules were approved unanimously with the following exception:

21 NCAC 18B .1103 – The Commission objected to this rule based on lack of statutory authority. In (b), there is no authority cited for the Board to set occupational requirements for instructors.

The Commission granted the Board’s Request for Waiver of Rule 26 NCAC 05 .0108 and approved the re-written rule.

**Irrigation Contractors' Licensing Board**

All rules were approved unanimously with the following exceptions:

21 NCAC 23 .0102 – The Commission objected to this rule based on lack of statutory authority and ambiguity. In Paragraphs (d) and (e), it is not clear what corporate entities the rule is referring to, and there is no authority cited to place any requirements on corporate entities. Subparagraphs (f)(3), (4) and (5) make no sense as written. Only an individual can meet the statutory requirements for licensure. It is not clear how an individual can be administratively or legally dissolved, or have a corporate form. In the final sentence in Paragraph (f), there is no authority cited for the Board to license corporate entities.

No motion was made to grant the Board's request for Waiver of Rule 26 NCAC 05 .0108 for Rule .0102.

21 NCAC 23 .0105 was withdrawn by the agency.

21 NCAC 23 .0401 – The Commission objected to this rule based on lack of statutory authority. Paragraph (e) sets requirements for an "irrigation system designer." The Board has cited no authority for it to regulate a system designer who is not licensed as an irrigation contractor. An irrigation contractor is defined in G.S. 89G-1(3) as "[a]ny person who, constructs, installs, expands, services, or repairs

irrigation systems." This definition does not include "design" and it does not appear that anything in the statute limits the design of irrigation systems to irrigation contractors. A license is only required for irrigation construction or contracting, which is defined as providing services as an irrigation contractor. The Commission is not questioning the Board's authority to regulate its licensees when they design a system in conjunction with their work as an irrigation contractor, but it knows of no other authority to regulate others who may design a system.

21 NCAC 23 .0404 – The Commission objected to this rule based on ambiguity and lack of necessity. Paragraph (c) is unclear as written and apparently redundant. The two sentences appear to be requiring the same thing and this was not clarified by a requested technical change.

21 NCAC 23 .0406 – The Commission objected to this rule based on ambiguity. In Subparagraph (n)(4), it is not clear if the word "Avoid" is meant to be an absolute prohibition or something less.

#### **Marriage and Family Therapy Licensure Board**

All rules were approved unanimously with following exceptions:

21 NCAC 31 .0201 – The Commission objected to Rule .0201 based on lack of statutory authority, ambiguity and lack of necessity. In Item (3), it is not clear when additional documentation will be required. In Item (4), there is no authority cited for the Board to require American Association of Marriage and Family Therapy approved supervisors endorsement as a condition of licensure. That is beyond what G.S. 90-270.54 requires. In Item (5), there is a requirement that an applicant obtain the endorsement of three licensed or certified mental health professionals as evidence of good moral character. "Good moral character" is a requirement for licensure by the Board, but there is no reason to believe that the endorsement of a mental health professional is superior to the endorsement of anyone else in determining good moral character. This would also present a hardship on persons with very good moral character who do not have numerous personal relationships with mental health professionals. This requirement does not appear to be reasonably necessary to implement the statute.

21 NCAC 31 .0501 – The Commission objected to Rule .0501 based on lack of statutory authority and ambiguity. There is no authority cited for Paragraph (b). An applicant with a master's degree in marriage and family therapy meets the educational requirements imposed by the statute. Only applicants with a related degree are subject to additional training requirements. It is also not clear what is meant by "prior version of this Rule."

21 NCAC 31 .0801 – The Commission objected to Rule .0801 based on lack of necessity. In Subparagraph (a)(3), there is a requirement that an applicant obtain the endorsement of three licensed or certified mental health professionals as evidence of good moral character. "Good moral character" is a requirement for licensure by the Board, but there is no reason to believe that the endorsement of a mental health professional is superior to the endorsement of anyone else in determining good moral character. This would also present a hardship on persons with very good moral character who do not have numerous personal relationships with mental health professionals. This requirement does not appear to be reasonably necessary to implement the statute.

#### **Board of Pharmacy**

21 NCAC 46 .2901 was approved unanimously.

#### **Social Work Certification and Licensure Board**

All rules were approved unanimously.

#### **Board of Examiners for Speech and Language Pathologists and Audiologists**

Prior to the review of the rule from the Board of Examiners for Speech and Language Pathologists and Audiologists, Commissioner McLawhorn recused himself and did not participate in any discussion or vote concerning this rule because he has a family member who is licensed in the profession.

21 NCAC 64 .0307 – The Commission objected to this rule based on lack of statutory authority and ambiguity. In line six the meaning of "lascivious conduct" is unclear in the context of this rule and what actions are forbidden is unclear. The board has cited no authority, and counsel is not aware of any authority, to deny licensure based on some sort of qualification relating to sexual activity. G.S. 90-295 and 90-298, the specific statutes setting out the qualifications for licensure refer to qualifications that address only an applicant's education and experience. There is another statute, G.S. 90-296, that requires passing an examination. (That statute even refers to "an applicant ... who has satisfied the academic requirements of G.S. 90-295" without referring to any other qualifications.) There is also no reference in G.S. 90-301, Grounds for suspension or revocation; 90-301A, Unethical acts and practices; or 90-302, Prohibited acts and practices, to any prohibition against "lascivious conduct" or requirement to have good moral character.

The Rules Review Commission has consistently taken the position that where the legislature has set out the qualifications for licensure and has not given the agency any further discretion to add to those qualifications or establish new or different qualifications, then the agency cannot do so by rulemaking. It is possible that the board could incorporate a more carefully crafted requirement to refrain from lascivious conduct as part of its code of ethics. Then, under 90-301(3) it would have the authority to suspend or revoke (but not necessarily deny) licensure to someone who violated that code. G.S. 90-301 lists the grounds for suspending or revoking a license. One of those grounds (4) is the “[v]iolation of any lawful order, rule or regulation rendered or adopted by the Board.” The board is entitled to set many qualifications (in other words, “order, rule or regulation”) outside the statutes to remain a licensed individual. It is not entitled to expand those qualifications in order to obtain licensure.

**Building Code Council**

All rules were approved unanimously with the following exceptions:

2012 NC Fire Code Appendices 101.2.1, R311.2, Table R403.1, Figure R403.3(1), R408.1.1, R408.2, R802.3, R807.1 received ten letters of objections but a bill previously enacted and signed into law made them effective January 1, 2012.

Amendments to 2011 NEC received ten letters of objection after the meeting and will be subject to a delayed effective date.

**TEMPORARY RULES**

10A NCAC 41A .0205 was approved unanimously.

**COMMISSION PROCEDURES AND OTHER BUSINESS**

Commissioner Funderburk made a motion to reconsider the Chiropractic Board Rule 21 NCAC 10 .0211. Commissioners Gray, Walker and Funderburk voted in favor of the motion. Commissioners Crisp, Lucier and Venable voted against it and the motion failed. Attorney Vance Kinlaw was in the room for at least a part of the brief motion by Commissioner Funderburk.

The meeting adjourned at 12:46 p.m.

The next scheduled meeting of the Commission is Thursday, July 21 at 1:30 p.m.

Respectfully Submitted,

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Julie Edwards  
Editorial Assistant

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**LIST OF APPROVED PERMANENT RULES  
June 16, 2011 Meeting**

**MEDICAL CARE COMMISSION**

<u>Medical Ambulance/Evacuation Bus: Vehicle and Equipment R...</u>	10A NCAC	13P	.0217
<u>Pediatric Specialty Care Ground Ambulance: Vehicle a...</u>	10A NCAC	13P	.0218
<u>Staffing for Medical Ambulance/Evacuation Bus Vehicles</u>	10A NCAC	13P	.0219
<u>Staffing for Pediatric Specialty Care Ground Ambulances</u>	10A NCAC	13P	.0220

**MENTAL HEALTH, COMMISSION FOR**

<u>Schedule III</u>	10A NCAC	26F	.0104
<u>Schedule IV</u>	10A NCAC	26F	.0105

**INSURANCE, DEPARTMENT OF**

<u>Applicability</u>	11 NCAC	16	.0101
<u>Loss Reserves</u>	11 NCAC	16	.0102
<u>Professional Liability Insurance</u>	11 NCAC	16	.0104

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**RULES REVIEW COMMISSION**

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<u>Minimum Incurred Loss Ratio; Alternate Maximum Rate</u>	11	NCAC	16	.0501
<u>General Submission Requirements</u>	11	NCAC	16	.0503
 <b>PRIVATE PROTECTIVE SERVICES BOARD</b>				
<u>Application for Licenses and Trainee Permits</u>	12	NCAC	07D	.0201
<u>Application for Unarmed Security Guard Registration</u>	12	NCAC	07D	.0701
<u>Experience Requirements for Courier License</u>	12	NCAC	07D	.1201
 <b>LABOR, DEPARTMENT OF</b>				
<u>Definitions</u>	13	NCAC	13	.0101
<u>Incorporated - Standards</u>	13	NCAC	13	.0103
<u>Inspector Qualifications</u>	13	NCAC	13	.0202
<u>North Carolina Commission</u>	13	NCAC	13	.0203
<u>Conflict of Interest</u>	13	NCAC	13	.0204
<u>Insurance Companies to Notify Chief Inspector</u>	13	NCAC	13	.0208
<u>Installers to Notify Chief Inspectors</u>	13	NCAC	13	.0209
<u>Preparation for Inspection</u>	13	NCAC	13	.0212
<u>Extended Pressure Equipment Operating</u>	13	NCAC	13	.0214
<u>Inspection Documentation</u>	13	NCAC	13	.0301
<u>Design and Construction Standards</u>	13	NCAC	13	.0401
<u>Controls and Safety Devices</u>	13	NCAC	13	.0404
<u>High Pressure or Temperature Limit Control</u>	13	NCAC	13	.0406
<u>Gauge Glasses and Water Columns</u>	13	NCAC	13	.0408
<u>Automatic Low-Water Fuel Cutoff Controls and Water-Feedin...</u>	13	NCAC	13	.0409
<u>Temperature Gauges/Thermometers/Temperature Sensors</u>	13	NCAC	13	.0410
<u>Valves, Drains and Bottom Blowoffs</u>	13	NCAC	13	.0411
<u>Expansion Tanks</u>	13	NCAC	13	.0412
 <b>WILDLIFE RESOURCES COMMISSION</b>				
<u>Open Seasons: Creel and Size Limits</u>	15A	NCAC	10C	.0305
<u>Manner of Taking Non-game Fishes: Purchase and Sale</u>	15A	NCAC	10C	.0401
<u>Town of Emerald Isle</u>	15A	NCAC	10F	.0376
 <b>CHIROPRACTIC EXAMINERS, BOARD OF</b>				
<u>Escrow Account</u>	21	NCAC	10	.0105
<u>Renewal of License</u>	21	NCAC	10	.0205
<u>Medical College Transfer Credits</u>	21	NCAC	10	.0212
 <b>ELECTRICAL CONTRACTORS, BOARD OF EXAMINERS FOR</b>				
<u>Reference to State Building and Elevator Codes</u>	21	NCAC	18B	.0102
<u>Organization</u>	21	NCAC	18B	.0103
<u>Joint Resolution and Agreements</u>	21	NCAC	18B	.0106
<u>Examinations</u>	21	NCAC	18B	.0204
<u>Minimum Passing Grade</u>	21	NCAC	18B	.0205
<u>Regular Examinations</u>	21	NCAC	18B	.0206

<u>Application for Regular Examinations</u>	21	NCAC	18B	.0207
<u>Specially Arranged Examinations</u>	21	NCAC	18B	.0208
<u>Fees</u>	21	NCAC	18B	.0209
<u>Applications Duly Filed</u>	21	NCAC	18B	.0210
<u>Waiting Period Between Examinations</u>	21	NCAC	18B	.0211
<u>License Name Requirements</u>	21	NCAC	18B	.0402
<u>Licenses Expiring and Individuals Qualified/July 1, 1970</u>	21	NCAC	18B	.0601
<u>Qualified Individuals Listed Prior to July 1, 1970</u>	21	NCAC	18B	.0602
<u>Scope of SP-SFD License</u>	21	NCAC	18B	.0803
<u>Scope of SP-FA/LV License</u>	21	NCAC	18B	.0804
<u>Malpractice Further Defined</u>	21	NCAC	18B	.0909
<u>Minimum Requirements for Course Sponsor Approval</u>	21	NCAC	18B	.1102
<u>Minimum Requirements for Course Approval</u>	21	NCAC	18B	.1103

**IRRIGATION CONTRACTORS' LICENSING BOARD**

<u>Direct Supervision</u>	21	NCAC	23	.0101
<u>Licensing</u>	21	NCAC	23	.0103
<u>Continuing Education</u>	21	NCAC	23	.0104
<u>Notice of Hearing: Answer</u>	21	NCAC	23	.0201
<u>Right to Hearing</u>	21	NCAC	23	.0202
<u>Location of Hearing</u>	21	NCAC	23	.0203
<u>Intervention; Discovery</u>	21	NCAC	23	.0204
<u>Subpoenas</u>	21	NCAC	23	.0205
<u>Conduct of Hearing</u>	21	NCAC	23	.0206
<u>Decision of Board</u>	21	NCAC	23	.0207
<u>Irrigation Record Drawing</u>	21	NCAC	23	.0301
<u>Piping</u>	21	NCAC	23	.0402
<u>Water Source</u>	21	NCAC	23	.0403
<u>Drip/Microirrigation</u>	21	NCAC	23	.0405
<u>Irrigation System Disclosure Checklist</u>	21	NCAC	23	.0407
<u>General Requirements</u>	21	NCAC	23	.0501
<u>Site Considerations</u>	21	NCAC	23	.0502
<u>Water Supply</u>	21	NCAC	23	.0503
<u>System Layout</u>	21	NCAC	23	.0504
<u>Trenching and Piping</u>	21	NCAC	23	.0505
<u>Electrical</u>	21	NCAC	23	.0506
<u>Grounding</u>	21	NCAC	23	.0507
<u>Sprinklers</u>	21	NCAC	23	.0508
<u>Controller</u>	21	NCAC	23	.0509
<u>Initial System Start Up</u>	21	NCAC	23	.0510
<u>Owner's Manual</u>	21	NCAC	23	.0511
<u>Purpose</u>	21	NCAC	23	.0601
<u>Basic System Maintenance Practices</u>	21	NCAC	23	.0602
<u>Scheduling</u>	21	NCAC	23	.0603
<u>Fee Schedule</u>	21	NCAC	23	.0701



**MARRIAGE AND FAMILY THERAPY LICENSURE BOARD**

<u>Review Procedure</u>	21	NCAC	31	.0202
<u>Written Examination</u>	21	NCAC	31	.0301
<u>Reporting of Scores</u>	21	NCAC	31	.0302
<u>First Reexamination</u>	21	NCAC	31	.0303
<u>Licensure Renewal Form</u>	21	NCAC	31	.0401
<u>Ongoing Supervision</u>	21	NCAC	31	.0502
<u>Equivalency</u>	21	NCAC	31	.0503
<u>Alternative to Clinical Practicum</u>	21	NCAC	31	.0504
<u>Direct Client Contact</u>	21	NCAC	31	.0506
<u>Ethical Principles</u>	21	NCAC	31	.0609
<u>Requirements for Continuing Education</u>	21	NCAC	31	.0701
<u>Licensed Marriage and Family Therapy Associate</u>	21	NCAC	31	.0802
<u>Reciprocal License</u>	21	NCAC	31	.0901
<u>Fees</u>	21	NCAC	31	.1001
<u>Fund Suspension</u>	21	NCAC	31	.1002

**PHARMACY, BOARD OF**

<u>Return of Outdated Drugs</u>	21	NCAC	46	.2901
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**PODIATRY EXAMINERS, BOARD OF**

<u>Licensing</u>	21	NCAC	52	.0206
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**SOCIAL WORK CERTIFICATION AND LICENSURE BOARD**

<u>Definitions</u>	21	NCAC	63	.0102
<u>General</u>	21	NCAC	63	.0106
<u>Renewal of Certification</u>	21	NCAC	63	.0406
<u>Reporting of Disciplinary Actions</u>	21	NCAC	63	.0609

**BUILDING CODE COUNCIL**

<u>2009 NC Building Code - Fire Door and Fire Shutter Fire P...</u>	Table 715.4
<u>2012 NC Building Code - Fire Door and Fire Shutter Protec...</u>	Table 715.4
<u>2011 NC Electrical Code</u>	Amendments to 2011 NEC
<u>2012 NC Fire Code - Appendices</u>	101.2.1
<u>2012 NC Mechanical Code - Minimum Ventilation Rates</u>	Table 403.3
<u>2012 NC Mechanical Code - Zone Outdoor Airflow</u>	403.3.1.3
<u>2012 NC Mechanical Code - Outdoor Air Intake Flow Rate</u>	403.3.2.3.4
<u>2012 NC Plumbing Code - Rainwater Collection and Distribu...</u>	Appendix C-1
<u>2012 NC Residential Code - Egress Door</u>	R311.2
<u>2009 NC Residential Code - Smoke Alarm Location</u>	R313.2
<u>2012 NC Residential Code - Smoke Alarm Location</u>	R314.3
<u>2012 NC Residential Code - Minimum Width of Footings</u>	Table R403.1
<u>2012 NC Residential Code - Concrete Masonry Foundation De...</u>	Figure R 403.3(1)
<u>2012 NC Residential Code - Foundation Vent Sizing</u>	R408.1.1

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***RULES REVIEW COMMISSION***

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<u>2012 NC Residential Code - Ground Vapor Retarder</u>	R408.2
<u>2012 NC Residential Code - Framing Details</u>	R802.3
<u>2012 NC Residential Code - Attic Access</u>	R807.1
<u>2012 NC Residential Code - Attic Hatches and Doors</u>	Appendix N1102.2.3

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**LIST OF APPROVED TEMPORARY RULES**  
**June 16, 2011 Meeting**

**PUBLIC HEALTH, COMMISSION FOR**  
Control Measures Tuberculosis

10A NCAC 41A .0205

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**CONTESTED CASE DECISIONS**

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*This Section contains the full text of some of the more significant Administrative Law Judge decisions along with an index to all recent contested cases decisions which are filed under North Carolina's Administrative Procedure Act. Copies of the decisions listed in the index and not published are available upon request for a minimal charge by contacting the Office of Administrative Hearings, (919) 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	Randall May
Selina Brooks	A. B. Elkins II
Melissa Owens Lassiter	Joe Webster
Don Overby	

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<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>DATE</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
<b><u>ALCOHOLIC BEVERAGE CONTROL COMMISSION</u></b>			
ABC Commission v. Universal Entertainment, LLC T/A Zoo City Saloon	11 ABC 2294	07/05/11	
<b><u>DEPARTMENT OF CRIME CONTROL AND PUBLIC SAFETY</u></b>			
Dianne Moody Costello v. Victim and Justice Services	11 CPS 05780	06/20/11	
<b><u>DEPARTMENT OF HEALTH AND HUMAN SERVICES</u></b>			
Scott M. Jensen, DMD v. DHHS, Division of Medical Assistance	09 DHR 3252	06/21/11	
Patricia Anne Edwards v. DHHS, Division of Child Development	10 DHR 0292	06/06/11	
Marchell Gunter, The Home of Marchell F Gunter v. DHHS	10 DHR 0557	06/03/11	
Theracare Home Health and Staffing, LLC v. DHHS, Division of Medical Assistance Program Integrity	10 DHR 1455	06/01/11	
Alternative Life Programs, Inc. Marchell F Gunter v. DHHS	10 DHR 3583	06/03/11	
Carolyn Rucker v. DHHS, Division of Medical Assistance	10 DHR 3717	05/19/11	
Angela Mackey v. DHHS, Division of Health Service Regulation	10 DHR 5499	06/01/11	
Cynthia Dawn Sloope v. DHHS	10 DHR 5500	06/07/11	
Alternative Life Programs, Inc. Marchell F Gunter	10 DHR 6204	06/03/11	
Cherie L Russell v. DHHS, Division of Health Services Regulation	10 DHR 6240	05/17/11	
Grover L. Hunt v. DHHS, Division of Health Service Regulation, Health Care Personnel Registry Section	10 DHR 6710	05/25/11	
Raymond Taylor Mabe Jr. v. OAH, Debbie Odette/Glana Surles	10 DHR 8094	05/26/11	
Shanta M. Collins v. DHHS, Division of Health Service Regulation	10 DHR 8444	06/22/11	
James L. Graham v. DHHS, Division of Health Service Regulation, Health Care Personnel Registry Section	11 DHR 0303	06/28/11	
Angela Clark v. DHHS	11 DHR 1565	06/03/11	
Maithily H Patel v. Nutrition Service Branch, DHHS	11 DHR 02144	06/30/11	
April G. Cooper v. Edgecombe County, Dept. of Social Services (DHHS) Food Stamps	11 DHR 2146	06/15/11	
Patricia Anne Edwards v. DHHS, Division of Child Development	11 DHR 2149	06/06/11	
Demetrius L. Brooks v. DHHS, Division of Health Service Regulation	11 DHR 2441	06/30/11	
Cyonna Hallums v. DHHS, Healthcare Registry	11 DHR 2858	06/30/11	
Angela L. Jordan v. DHHS, Division of Health Service Regulation	11 DHR 2920	06/30/11	
Creative Hands Occupational Therapy v. Susan Olmschenk v. Office of Administrative Hearings	11 DHR 2924	06/10/11	
Singleton Developmental Center Inc, dba In The Beginning Child Care #3 v. Division of Child Development, DHHS	11 DHR 2990	05/27/11	
Singleton Developmental Center Inc, dba In The Beginning Child Care #3 v. Division of Child Development, DHHS	11 DHR 2993	05/27/11	
Singleton Developmental Center Inc, dba In The Beginning Child Care #3 v. Division of Child Development, DHHS	11 DHR 2994	05/27/11	
Singleton Developmental Center Inc, dba In The Beginning Child Care #3 v. Division of Child Development, DHHS	11 DHR 2995	05/27/11	

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**CONTESTED CASE DECISIONS**

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Wonne Mills v. Department of Social Services/Fraud Department, Office of Administrative Hearings	11 DHR 03389	06/27/11
Nellie v. Mitchell, Little Lamb's Daycare v. DHHS, Division of Child Development	11 DHR 3391	06/13/11
Beau A. Davis v. DHHS	11 DHR 03691	06/20/11
Yolanda McKinnon v. DHHS, Division of Child Development	11 DHR 4117	06/09/11
Bertha's Place Inc, Wayne Louis Garris v. Mecklenburg County LME	11 DHR 04186	06/17/11
Nicole McGee v. Health Care Personnel Registry	11 DHR 04475	06/17/11
Angelicia Linney v. Alexander County DSS	11 DHR 4965	06/21/11

**DEPARTMENT OF JUSTICE**

Aaron R Taylor v. Company Police Program	10 DOJ 5356	05/27/11
Dustin Clark v. Department of Justice, Company Police Program	10 DOJ 5877	05/24/11
Travis Mark Caskey v. Sheriffs' Education and Training Standards Commission	10 DOJ 6966	06/02/11
Robert Scott MacFayden v. Sheriffs' Education and Training Standards Commission	10 DOJ 7773	06/01/11

**DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES**

Jeff Snavely/Triad Siteworks Inc v. NCDENR	11 EHR 2475	06/06/11
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**OFFICE OF STATE PERSONNEL**

Christopher Sanders v. DHHS	10 OSP 5943	06/23/11
Melissa A McLean v. Ms. Gerri Robinson, MSW Social Services Director, Durham County, Dept. of Social Services	11 OSP 1379	06/03/11
Jessie M Chambers v. Brown Creek Correctional Institution	11 OSP 03747	06/23/11
Vickie D. Randleman v. NCSU	11 OSP 3838	06/09/11
Mary K. Severt v. Iredell Dept. of Social Services	11 OSP 4757	06/27/11

**OFFICE OF SECRETARY OF STATE**

Husayn Ali Bey v. Department of Secretary of State	10 SOS 09195	06/28/11
Christopher R. Eakin v. Department of Secretary of State	11 SOS 0139	06/08/11