

NORTH CAROLINA REGISTER

VOLUME 26 • ISSUE 21 • Pages 1765 - 1841

May 1, 2012

I. PROPOSED RULES

Environment and Natural Resources, Department of

Environmental Management Commission 1765 – 1776

Public Health, Commission for 1776 – 1777

II. APPROVED RULES..... 1778 – 1796

Health and Human Services, Department of

Health Service Regulation, Division of

Public Health, Commission for

Occupational Licensing Boards and Commissions

Cosmetic Art Examiners, Board of

Locksmith Licensing Board

III. RULES REVIEW COMMISSION 1797 – 1799

IV. CONTESTED CASE DECISIONS

Index to ALJ Decisions 1800 – 1806

Text of ALJ Decisions

11 OSP 03751 1807 – 1813

11 OSP 04591 1814 – 1841

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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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Raleigh, North Carolina 27609 (919) 431-3104 FAX

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

Fiscal Notes & Economic Analysis and Governor's Review

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

NC Association of County Commissioners
215 North Dawson Street (919) 715-2893
Raleigh, North Carolina 27603
contact: 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 2012 – December 2012

FILING DEADLINES			NOTICE OF TEXT		PERMANENT RULE			TEMPORARY RULES
Volume & issue number	Issue date	Last day for filing	Earliest date for public hearing	End of required comment period	Deadline to submit to RRC for review at next meeting	Earliest Eff. Date of Permanent Rule	Delayed Eff. Date of Permanent Rule 31st legislative day of the session beginning:	270 th day from publication in the Register
26:13	01/03/12	12/08/11	01/18/12	03/05/12	03/20/12	05/01/12	05/16/12	09/29/12
26:14	01/17/12	12/21/11	02/01/12	03/19/12	03/20/12	05/01/12	05/16/12	10/13/12
26:15	02/01/12	01/10/12	02/16/12	04/02/12	04/20/12	06/01/12	01/30/13	10/28/12
26:16	02/15/12	01/25/12	03/01/12	04/16/12	04/20/12	06/01/12	01/30/13	11/11/12
26:17	03/01/12	02/09/12	03/16/12	04/30/12	05/21/12	07/01/12	01/30/13	11/26/12
26:18	03/15/12	02/23/12	03/30/12	05/14/12	05/21/12	07/01/12	01/30/13	12/10/12
26:19	04/02/12	03/12/12	04/17/12	06/01/12	06/20/12	08/01/12	01/30/13	12/28/12
26:20	04/16/12	03/23/12	05/01/12	06/15/12	06/20/12	08/01/12	01/30/13	01/11/13
26:21	05/01/12	04/10/12	05/16/12	07/02/12	07/20/12	09/01/12	01/30/13	01/26/13
26:22	05/15/12	04/24/12	05/30/12	07/16/12	07/20/12	09/01/12	01/30/13	02/09/13
26:23	06/01/12	05/10/12	06/16/12	07/31/12	08/20/12	10/01/12	01/30/13	02/26/13
26:24	06/15/12	05/24/12	06/30/12	08/14/12	08/20/12	10/01/12	01/30/13	03/12/13
27:01	07/02/12	06/11/12	07/17/12	08/31/12	09/20/12	11/01/12	01/30/13	03/29/13
27:02	07/16/12	06/22/12	07/31/12	09/14/12	09/20/12	11/01/12	01/30/13	04/12/13
27:03	08/01/12	07/11/12	08/16/12	10/01/12	10/22/12	12/01/12	01/30/13	04/28/13
27:04	08/15/12	07/25/12	08/30/12	10/15/12	10/22/12	12/01/12	01/30/13	05/12/13
27:05	09/04/12	08/13/12	09/19/12	11/05/12	11/20/12	01/01/13	01/30/13	06/01/13
27:06	09/17/12	08/24/12	10/02/12	11/16/12	11/20/12	01/01/13	01/30/13	06/14/13
27:07	10/01/12	09/10/12	10/16/12	11/30/12	12/20/12	02/01/13	05/2014	06/28/13
27:08	10/15/12	09/24/12	10/30/12	12/14/12	12/20/12	02/01/13	05/2014	07/12/13
27:09	11/01/12	10/11/12	11/16/12	12/31/12	01/22/13	03/01/13	05/2014	07/29/13
27:10	11/15/12	10/24/12	11/30/12	01/14/13	01/22/13	03/01/13	05/2014	08/12/13
27:11	12/03/12	11/07/12	12/18/12	02/01/13	02/20/13	04/01/13	05/2014	08/30/13
27:12	12/17/12	11/26/12	01/01/13	02/15/13	02/20/13	04/01/13	05/2014	09/13/13

EXPLANATION OF THE PUBLICATION SCHEDULE

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

GENERAL

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

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

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

FILING DEADLINES

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

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

NOTICE OF TEXT

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

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

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

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

Note from the Codifier: 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 15A – DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

Notice is hereby given in accordance with G.S. 150B-21.2 that the Environmental Management Commission intends to amend the rule cited as 15A NCAC 02B .0313.

Link to agency website pursuant to G.S. 150B-19.1(c):
<http://portal.ncdenr.org/web/wq/ps/csu/reclass>

Proposed Effective Date: January 1, 2013

Public Hearing:

Date: June 5, 2012

Time: 7:00 p.m.

Location: Martin Community College-Building 1 (Room 14),
 1161 Kehukee Park Road, Williamston, NC 27892

Reason for Proposed Action: A portion of the Roanoke River in Bertie and Martin Counties (Roanoke River Basin) is proposed to be reclassified from Class C to Class WS-IV Critical Area (CA) and WS-IV (Protected Area or PA). Martin County Regional Water and Sewer Authority requested this reclassification. The reclassification is needed to construct a public water supply intake. This new water supply source will allow Martin County and the Town of Williamston to meet requirements of the Central Coastal Plain Capacity Use Area (CCPCUA) rule and meet water demands through 2030.

Division of Water Resources staff have no objections to the proposal. A Finding of No Significant Impact (FNSI) has been issued for this project, and the waters to be reclassified meet water supply water quality standards according to 2011 DWQ studies.

The proposed CA would extend along the river from the new intake, which is to be located nearly 0.3 mile upstream of US17/US13, to a point roughly 0.5 miles upstream of that intake, and includes nearly 313 acres. There is a portion of one named tributary to the Roanoke River (Skewakee Gut) in the proposed CA that is to be reclassified to WS-IV CA. The proposed PA would extend along the river from approximately 0.5 miles upstream of the intake to nearly 1 mile downstream of Coniott Creek (Town Swamp), and includes almost 27,206 acres. A portion of two named tributaries to the Roanoke River (Skewakee Gut and Conoho Creek) and two entire named tributaries to the Roanoke River (Beaverdam Creek and Mill Branch) exist in the proposed PA; these waters are to be reclassified to WS-IV (PA).

If reclassified, wastewater discharge and new development restrictions will apply throughout the proposed watershed. Other requirements, which apply only in the proposed CA, are

additional treatment for new industrial process wastewater discharges as well as no new landfills and land application sites. There is currently one permitted mine within the proposed area; this facility is located in the proposed PA and would not be impacted by the proposed reclassification based on its permit. There are no additional permitted wastewater discharges located in the entire proposed watershed besides the mine. In addition, there are not any known planned land application sites or landfills in the proposed CA, or known planned wastewater discharges or developments in the entire proposed area.

Martin County, Bertie County, and the Town of Williamston are the local governments with jurisdiction in the proposed area. These local governments would need to, and have agreed to, modify their water supply watershed protection ordinances within the required 270 days after the reclassification effective date. A fiscal analysis for this proposal has been approved by the Office of State Budget and Management, and the fiscal analysis' quantifiable results showed a one-time cost of approximately \$5,500, \$5,000, \$3,500, and \$2,420 to Bertie County, Martin County, the Town of Williamston, and the state, respectively.

Procedure by which a person can object to the agency on a proposed rule: The public hearing and comment period are to be held in accordance with the federal Water Pollution Control Act (the Clean Water Act) which requires States, at least every three years, to review and revise water quality standards to protect aquatic life and human health. The process is called the Triennial Review and includes an assessment and revision of the designated uses of waters (classifications) and the water quality criteria (standards), which are based on the designated uses. More specifically, the public hearing and comment period are to address the potential assignment of a WS-IV classification to a portion of the Roanoke River watershed for the purpose of protecting the proposed designated use as a public water supply. This proposal will result in changing the water quality standards for waters within the above-mentioned Critical Area and Protected Area.

You may attend the public hearing and provide verbal comments, and/or submit written comments, data or other information by July 2nd, 2012. The comments, data and information provided during the comment period should specifically address the proposed reclassification of the Roanoke River. The Hearing Officer may limit the length of time that you may speak at the public hearing, if necessary, so that all those who wish to speak may have an opportunity to do so.

All persons interested and potentially affected by the proposal are encouraged to read this entire notice and make comments on the proposed reclassification. The EMC may not adopt a rule that differs substantially from the text of the proposed rule

published in this notice unless the EMC publishes the text of the proposed different rule and accepts comments on the new text [General Statute 150B 21.2 (g)]. Written comments on the proposed reclassification of the Roanoke River may be submitted to Elizabeth Kountis of the Water Quality Planning Section at the postal address, e-mail address, or fax number listed in this notice.

Comments may be submitted to: Elizabeth Kountis, DENR/DWQ Planning Section, 1617 Mail Service Center, Raleigh, NC 27699-1617, phone (919)807-6418, fax (919)807-6497, email elizabeth.kountis@ncdenr.gov.

Comment period ends: July 2, 2012

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 (check all that apply).

- ☒ State funds affected
- ☐ Environmental permitting of DOT affected
- ☐ Analysis submitted to Board of Transportation
- ☒ Local funds affected
- ☐ Date submitted to OSBM: April 2, 2012
- ☐ Substantial economic impact (≥\$500,000)
- ☒ Approved by OSBM
- ☐ No fiscal note required

CHAPTER 02 - ENVIRONMENTAL MANAGEMENT

SUBCHAPTER 02B - SURFACE WATER AND WETLAND STANDARDS

SECTION .0300 - ASSIGNMENT OF STREAM CLASSIFICATIONS

Note: Text shown in italics has been approved by the RRC and is pending Legislative Review.

15A NCAC 02B .0313 ROANOKE RIVER BASIN

(a) *Effective February 1, 1976, the adopted classifications assigned to the waters within the Roanoke River Basin are set forth in the*~~The Roanoke River Basin Schedule of Classifications and Water Quality Standards~~*Standards, which may be inspected at the following places:*

- (1) the Internet at <http://h2o.enr.state.nc.us/csu/>; and
- (2) the North Carolina Department of Environment and Natural Resources:
 - (A) Raleigh Regional Office
3800 Barrett Drive
Raleigh, North Carolina
 - (B) Washington Regional Office
943 Washington Square Mall
Washington, North Carolina
 - (C) Winston-Salem Regional Office
585 Waughtown Street
Winston-Salem, North Carolina
 - (D) Division of Water Quality
Regional Office
512 North Salisbury Street
Raleigh, North Carolina.

(b) Unnamed Streams. Such streams entering Virginia are classified "C", except that all backwaters of John H. Kerr Reservoir and the North Carolina portion of streams tributary thereto not otherwise named or described shall carry the classification "B," and all backwaters of Lake Gaston and the North Carolina portion of streams tributary thereto not otherwise named or described shall carry the classification "C and B".

(c) The Roanoke River Basin Schedule of Classification and Water Quality Standards was amended effective:

- (1) May 18, 1977;
- (2) July 9, 1978;
- (3) July 18, 1979;
- (4) July 13, 1980;
- (5) March 1, 1983;
- (6) August 1, 1985;
- (7) February 1, ~~1986~~, 1986;
- ~~(8) July 1, 1991; (9) August 3, 1992;~~
- ~~(10) August 1, 1998;~~
- ~~(11) April 1, 1999;~~
- ~~(12) April 1, 2001~~
- ~~(13) November 1, 2007-2007;~~
- ~~(14) September 1, 2011.~~

(d) The Schedule of Classifications and Water Quality Standards for the Roanoke River Basin was amended effective July 1, 1991 with the reclassification of Hyco Lake (Index No. 22-58) from Class C to Class B.

(e) The Schedule of Classifications and Water Quality Standards for the Roanoke River Basin was amended effective August 3, 1992 with the reclassification of all water supply waters (waters with a primary classification of WS-I, WS-II or WS-III). These waters were reclassified to WS-I, WS-II, WS-III, WS-IV or WS-V as defined in the revised water supply protection rules, (15A NCAC 2B .0100, .0200 and .0300) which became effective on August 3, 1992. In some cases, streams with primary classifications other than WS were reclassified to a WS classification due to their proximity and linkage to water supply waters. In other cases, waters were reclassified from a WS classification to an alternate appropriate primary classification after being identified as downstream of a water supply intake or identified as not being used for water supply purposes.

(f) The Schedule of Classifications and Water Quality Standards for the Roanoke River Basin was amended effective August 1, 1998 with the reclassification of Cascade Creek (Camp Creek) [Index No. 22-12] and its tributaries from its source to the backwaters at the swimming lake from Class B to Class B ORW, and reclassification of Indian Creek [index No. 22-13] and its tributaries from its source to Window Falls from Class C to Class C ORW.

(g) The Schedule of Classifications and Water Quality Standards for the Roanoke River Basin was amended effective August 1, 1998 with the reclassification of Dan River and Mayo River WS-IV Protected Areas. The Protected Areas were reduced in size.

(h) The Schedule of Classifications and Water Quality Standards for the Roanoke River Basin was amended effective April 1, 1999 as follows:

- (1) Hyco River, including Hyco Lake below elevation 410 [Index No. 22-58-(0.5)] was reclassified from Class B to ~~Class~~ Class WS-V B.
- (2) Mayo Creek (Maho Creek) (Mayo Reservoir) [Index No. 22-58-15] was reclassified from its source to the dam of Mayo Reservoir from Class C to Class WS-V.

(i) The Schedule of Classifications and Water Quality Standards for the Roanoke River Basin was amended effective April 1, 2001 as follows:

- (1) Fullers Creek from source to a point 0.8 mile upstream of Yanceyville water supply dam [Index No. 22-56-4-(1)] was reclassified from Class WS-II to Class WS-III.
- (2) Fullers Creek from a point 0.8 mile upstream of Yanceyville water supply dam to Yanceyville water supply dam [Index No. 22-56-4-(2)] was reclassified from Class WS-II CA to Class WS-III CA.

(j) The Schedule of Classifications and Water Quality Standards for the Roanoke River Basin was amended effective November 1, 2007 with the reclassification of Hanging Rock Hillside Seepage Bog near Cascade Creek [Index No. 22-12-(2)] to Class WL UWL as defined in 15A NCAC 02B .0101. The Division of Water Quality maintains a Geographic Information Systems data layer of the UWL.

(k) The Schedule of Classifications and Water Quality Standards for the Roanoke River Basin was amended effective September 1, 2014 [pending legislative approval] as follows:

- (1) a portion of the Dan River [Index No. 22-(39)] (including tributaries) from the City of Roxboro's intake, located approximately 0.7 mile upstream of NC-62, NC Highway 62, to a point approximately 0.5 mile upstream of the City of Roxboro's intake from Class C to Class WS-IV CA.
- (2) a portion of the Dan River [Index No. 22-(39)] (including tributaries) from a point approximately 0.5 mile upstream of the City of Roxboro's intake to the North Carolina-Virginia state line from Class C to Class WS-IV.

(l) The Schedule of Classifications and Water Quality Standards for the Roanoke River Basin is amended effective January 1, 2013 as follows:

- (1) a portion of the Roanoke River [Index No. 23-(26)] (including tributaries) from the Martin County Regional Water And Sewer Authority's intake, located approximately 0.3 mile upstream of US 13/US 17, to a point approximately 0.5 mile upstream of the Martin County Regional Water And Sewer Authority's intake from Class C to Class WS-IV CA.
- (2) a portion of the Roanoke River [Index No. 23-(26)] (including tributaries) from a point approximately 0.5 mile upstream of the Martin County Regional Water And Sewer Authority's intake to a point approximately 1 mile downstream of Coniott Creek (Town Swamp) from Class C to Class WS-IV.

Authority G.S. 143-214.1; 143-215.1; 143-215.3(a)(1).

Notice is hereby given in accordance with G.S. 150B-21.2 that the Environmental Management Commission intends to amend the rule cited as 15A NCAC 02I .0501.

Link to agency website pursuant to G.S. 150B-19.1(c): <http://portal.ncdenr.org/web/wq/rulemakingpetitionrevisions>

Proposed Effective Date: *November 1, 2012*

Instructions on How to Demand a Public Hearing: *(must be requested in writing within 15 days of notice): Any person may request a public hearing on the proposed rule by submitting a request in writing no later than May 16, 2012 to Sandra Moore, Division of Water Quality, Planning Section, 1617 Mail Service Center, Raleigh, NC 27699-1617 or Sandra.moore@ncdenr.gov.*

Reason for Proposed Action: *The purpose of revising these rules is to reduce the administrative cost associated with the submittal of the rulemaking petition to request the adoption, amendment, or repeal of a rule of the Environmental Management Commission. The proposed change would require an electronic or digital submittal of a rulemaking petition, which is already standard practice, and would remove the requirement to submit twenty paper copies of the petition when the whole petition exceeds ten pages in length.*

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 July 2, 2012 to Sandra Moore of the Water Quality Planning Section at 1617 Mail Service Center, Raleigh, NC 27699-1617, phone (919)807-6417, fax (919)807-6497, Sandra.moore@ncdenr.gov.*

Comments may be submitted to: *Sandra Moore, DENR/DWQ Planning Section at 1617 Mail Service Center, Raleigh, NC*

27699-1617, phone (919)807-6417, fax (919)807-6497,
Sandra.moore@ncdenr.gov.

Comment period ends: July 2, 2012

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 (check all that apply).

- ☐ State funds affected
- ☐ Environmental permitting of DOT affected
- ☐ Analysis submitted to Board of Transportation
- ☐ Local funds affected
- ☐ Date submitted to OSBM:
- ☐ Substantial economic impact (≥\$500,000)
- ☒ Approved by OSBM
- ☐ No fiscal note required

CHAPTER 02 - ENVIRONMENTAL MANAGEMENT

SUBCHAPTER 02I - HEARINGS

SECTION .0500 - PETITIONS FOR RULEMAKING

15A NCAC 02I .0501 FORM AND CONTENTS OF PETITION

(a) Any person wishing to request the adoption, amendment, or repeal of a rule of the Environmental Management Commission (hereinafter referred to as the Commission) shall make his request in a petition addressed to the Director of the appropriate division of the Department of Environment and Natural Resources, and a copy in electronic or digital form should also be sent to the Recording Clerk of the Commission:

Director
Division of Air Quality
1641 Mail Service Center
Raleigh, North Carolina 27699-1641
Director
Division of Water Quality
1617 Mail Service Center
Raleigh, North Carolina 27699-1617
Director
Division of Water Resources
1611 Mail Service Center
Raleigh, North Carolina 27699-1611

(b) The petition shall contain the following information:

- (1) the text of the proposed rule(s) conforming to the Codifier of Rules' requirements for publication of proposed rules in the North Carolina Register;
- (2) the statutory authority for the agency to promulgate the rule(s);
- (3) a statement of the reasons for adoption of the proposed rule(s);
- (4) a statement of the effect on existing rules or orders;
- (5) copies of any documents and data supporting the proposed rule(s);
- (6) a statement of the effect of the proposed rule(s) on existing practices in the area involved, including cost factors for persons affected by the proposed rule(s);
- (7) a statement explaining the computation of the cost factors;
- (8) a description, including the names and addresses, if known, of those most likely to be affected by the proposed rule(s); and
- (9) the name(s) and address(es) of the petitioner(s).

~~(c) When petitions and supporting documents and data exceed 10 pages in length, 20 copies of the whole petition and any attachments shall be submitted.~~

~~(d)(c)~~ Petitions failing to contain the required information shall be returned by the Director on behalf of the Chairman.

Authority G.S. 143B-282; 150B-20.

Notice is hereby given in accordance with G.S. 150B-21.2 that the Environmental Management Commission intends to amend the rules cited as 15A NCAC 02L .0113, .0202.

Link to agency website pursuant to G.S. 150B-19.1(c):
<http://portal.ncdenr.org/web/wq/groundwaterrulesrevisions>

Proposed Effective Date: November 1, 2012

Public Hearing:

Date: May 23, 2012

Time: 6:30 p.m., Speaker registration begins at 6:00 p.m.

Location: Archdale Building (Ground Floor Hearing Room), 512 N. Salisbury Street, Raleigh, NC

Reason for Proposed Action: The purpose of revising these rules is to ensure that groundwater standards are established using the most recent U.S. EPA health effects information. The EMC approved a rulemaking petition submitted by Rhodia, Inc. to amend the 1,1-dichloroethylene groundwater standard from 7 ug/L to 350 ug/L based on the most recent U.S. EPA health effects published in the Integrated Risk Information System at <http://www.epa.gov/IRIS/> (Option 1). A change in the criteria used to establish a standard is proposed to allow the EMC to establish a standard less stringent than the federal maximum

contaminant level (MCL) when the MCL is not established using the most recent U.S. EPA IRIS health effects information (Option 2). A change in the variance procedure is proposed to allow the EMC to consider a request for a statewide variance from the groundwater rules and to make editorial corrections (Option 3). In addition, the EMC seeks other proposals that allow flexibility in implementation of 15A NCAC 2L .0202(d) while maintaining or achieving appropriate water quality and public health standards, recognizing that any such proposal, if acted upon, might constitute a substantial change from the proposed rule amendments described in detail in this public notice, and might require an additional rule-making procedure.

Procedure by which a person can object to the agency on a proposed rule: You may attend the public hearing and provide verbal comments that specifically address the proposed groundwater rules and fiscal note. The Hearing Officer may limit the length of time that you may speak at the public hearing, if necessary, so that all those who wish to speak may have an opportunity to do so. In addition, written comments addressing the proposed groundwater rules will be accepted until July 2, 2012. All persons interested and potentially affected by the proposed rules are encouraged to read this entire notice and make comments on the proposed rules. The EMC may not adopt a rule that differs substantially from the text of the proposed rule published in this notice unless the EMC publishes the text of the proposed different rule and accepts comments on the new text [General Statute 150B 21.2 (g)]. Written comments on the proposed groundwater rules and fiscal note may be submitted to Sandra Moore of the Water Quality Planning Section at the 1617 Mail Service Center, Raleigh, NC 27699-1617, phone (919)807-6417, fax (919)807-6497, e-mail sandra.moore@ncdenr.gov.

Comments may be submitted to: Sandra Moore, Water Quality Planning Section at 1617 Mail Service Center, Raleigh, NC 27699-1617, phone (919)807-6417, fax (919)807-6497, e-mail sandra.moore@ncdenr.gov.

Comment period ends: July 2, 2012

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 (check all that apply).

- ☒ State funds affected
- ☐ Environmental permitting of DOT affected
- ☐ Analysis submitted to Board of Transportation
- ☐ Local funds affected
- ☐ Date submitted to OSBM:
- ☐ Substantial economic impact (≥\$500,000)
- ☒ Approved by OSBM
- ☐ No fiscal note required

CHAPTER 02 - ENVIRONMENTAL MANAGEMENT

SUBCHAPTER 02L - GROUNDWATER CLASSIFICATION AND STANDARDS

SECTION .0100 - GENERAL CONSIDERATIONS

15A NCAC 02L .0202 GROUNDWATER QUALITY STANDARDS (OPTION 1)

(a) The groundwater quality standards for the protection of the groundwaters of the state are those specified in this Rule. They are the maximum allowable concentrations resulting from any discharge of contaminants to the land or waters of the state, which may be tolerated without creating a threat to human health or which would otherwise render the groundwater unsuitable for its intended best usage.

(b) The groundwater quality standards for contaminants specified in Paragraphs (g) and (h) of this Rule are as listed, except that:

- (1) Where the standard for a substance is less than the practical quantitation limit, the detection of that substance at or above the practical quantitation limit constitutes a violation of the standard.
- (2) Where two or more substances exist in combination, the Director shall consider the effects of chemical interactions as determined by the Division of Public Health and may establish maximum concentrations at values less than those established in accordance with Paragraphs (c), (g), or (h) of this Rule. In the absence of information to the contrary, in accordance with Paragraph (d) of this Rule, the carcinogenic risks associated with carcinogens present shall be considered additive and the toxic effects associated with non-carcinogens present shall also be considered additive.
- (3) Where naturally occurring substances exceed the established standard, the standard shall be the naturally occurring concentration as determined by the Director.

(c) Except for tracers used in concentrations which have been determined by the Division of Public Health to be protective of human health, and the use of which has been permitted by the Division, substances which are not naturally occurring and for which no standard is specified shall not be permitted in concentrations at or above the practical quantitation limit in Class GA or Class GSA groundwaters. Any person may petition the Director to establish an interim maximum allowable concentration for a substance for which a standard has not been

established under this Rule. The petitioner shall submit relevant toxicological and epidemiological data, study results, and calculations necessary to establish a standard in accordance with Paragraph (d) of this Rule. Within three months after the establishment of an interim maximum allowable concentration for a substance by the Director, the Director shall initiate action to consider adoption of a standard for that substance.

(d) Groundwater quality standards for substances in Class GA and Class GSA groundwaters are established as the least of:

- (1) Systemic threshold concentration calculated as follows: $[\text{Reference Dose (mg/kg/day)} \times 70 \text{ kg (adult body weight)} \times \text{Relative Source Contribution (.10 for inorganics; .20 for organics)}] / [2 \text{ liters/day (avg. water consumption)}]$;
- (2) Concentration which corresponds to an incremental lifetime cancer risk of 1×10^{-6} ;
- (3) Taste threshold limit value;
- (4) Odor threshold limit value;
- (5) Maximum contaminant level; or
- (6) National secondary drinking water standard.

(e) The following references, in order of preference, shall be used in establishing concentrations of substances which correspond to levels described in Paragraph (d) of this Rule.

- (1) Integrated Risk Information System (U.S. EPA).
- (2) Health Advisories (U.S. EPA Office of Drinking Water).
- (3) Other health risk assessment data published by U.S. EPA.
- (4) Other relevant, published health risk assessment data, and scientifically valid peer-reviewed published toxicological data.

(f) Groundwater quality standards specified in Paragraphs (g) and (h) of this Rule and interim maximum allowable concentrations established pursuant to Paragraph (c) of this Rule shall be reviewed on a triennial basis. Appropriate modifications to established standards shall be made in accordance with the procedure prescribed in Paragraph (d) of this Rule where modifications are considered appropriate based on data published subsequent to the previous review.

(g) Class GA Standards. Where not otherwise indicated, the standard refers to the total concentration in micrograms per liter of any constituent in a dissolved, colloidal or particulate form which is mobile in groundwater. This does not apply to sediment or other particulate matter which is preserved in a groundwater sample as a result of well construction or sampling procedures. The Class GA standards are:

- (1) Acenaphthene: 80;
- (2) Acenaphthylene: 200;
- (3) Acetone: 6 mg/L;
- (4) Acrylamide: 0.008;
- (5) Anthracene: 2 mg/L;
- (6) Arsenic: 10;
- (7) Atrazine and chlorotriazine metabolites: 3;
- (8) Barium: 700;
- (9) Benzene: 1;
- (10) Benzo(a)anthracene (benz(a)anthracene): 0.05;

- (11) Benzo(b)fluoranthene: 0.05;
- (12) Benzo(k)fluoranthene: 0.5;
- (13) Benzoic acid: 30 mg/L;
- (14) Benzo(g,h,i)perylene: 200;
- (15) Benzo(a)pyrene: 0.005;
- (16) Bis(chloroethyl)ether: 0.03;
- (17) Bis(2-ethylhexyl) phthalate (di(2-ethylhexyl) phthalate): 3;
- (18) Boron: 700;
- (19) Bromodichloromethane: 0.6;
- (20) Bromoform (tribromomethane): 4;
- (21) n-Butylbenzene: 70;
- (22) sec-Butylbenzene: 70;
- (23) tert-Butylbenzene: 70;
- (24) Butylbenzyl phthalate: 1 mg/L;
- (25) Cadmium: 2;
- (26) Caprolactam: 4 mg/L;
- (27) Carbofuran: 40;
- (28) Carbon disulfide: 700;
- (29) Carbon tetrachloride: 0.3;
- (30) Chlordane: 0.1;
- (31) Chloride: 250 mg/L;
- (32) Chlorobenzene: 50;
- (33) Chloroethane: 3,000;
- (34) Chloroform (trichloromethane): 70;
- (35) Chloromethane (methyl chloride): 3;
- (36) 2-Chlorophenol: 0.4;
- (37) 2-Chlorotoluene (o-chlorotoluene): 100;
- (38) Chromium: 10;
- (39) Chrysene: 5;
- (40) Coliform organisms (total): 1 per 100 milliliters;
- (41) Color: 15 color units;
- (42) Copper: 1 mg/L;
- (43) Cyanide (free cyanide): 70;
- (44) 2, 4-D (2,4-dichlorophenoxy acetic acid): 70;
- (45) DDD: 0.1;
- (46) DDT: 0.1;
- (47) Dibenz(a,h)anthracene: 0.005;
- (48) Dibromochloromethane: 0.4;
- (49) 1,2-Dibromo-3-chloropropane: 0.04;
- (50) Dibutyl (or di-n-butyl) phthalate: 700;
- (51) 1,2-Dichlorobenzene (orthodichlorobenzene): 20;
- (52) 1,3-Dichlorobenzene (metadichlorobenzene): 200;
- (53) 1,4-Dichlorobenzene (paradichlorobenzene): 6;
- (54) Dichlorodifluoromethane (Freon-12; Halon): 1 mg/L;
- (55) 1,1-Dichloroethane: 6;
- (56) 1,2-Dichloroethane (ethylene dichloride): 0.4;
- (57) 1,2-Dichloroethene (cis): 70;
- (58) 1,2-Dichloroethene (trans): 100;
- (59) 1,1-Dichloroethylene (vinylidene chloride): 7350;
- (60) 1,2-Dichloropropane: 0.6;
- (61) 1,3-Dichloropropene (cis and trans isomers): 0.4;

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| <p>(62) Dieldrin: 0.002;</p> <p>(63) Diethylphthalate: 6 mg/L;</p> <p>(64) 2,4-Dimethylphenol (m-xylene): 100;</p> <p>(65) Di-n-octyl phthalate: 100;</p> <p>(66) 1,4-Dioxane (p-dioxane): 3;</p> <p>(67) Dioxin (2,3,7,8-TCDD): 0.0002 ng/L;</p> <p>(68) 1,1-Diphenyl (1,1-biphenyl): 400;</p> <p>(69) Dissolved solids (total): 500 mg/L;</p> <p>(70) Disulfoton: 0.3;</p> <p>(71) Diundecyl phthalate (Santicizer 711): 100;</p> <p>(72) Endosulfan: 40;</p> <p>(73) Endrin, total: (includes endrin, endrin aldehyde and endrin ketone): 2;</p> <p>(74) Epichlorohydrin: 4;</p> <p>(75) Ethyl acetate: 3 mg/L;</p> <p>(76) Ethylbenzene: 600;</p> <p>(77) Ethylene dibromide (1,2-dibromoethane): 0.02;</p> <p>(78) Ethylene glycol: 10 mg/L;</p> <p>(79) Fluoranthene: 300;</p> <p>(80) Fluorene: 300;</p> <p>(81) Fluoride: 2 mg/L;</p> <p>(82) Foaming agents: 500;</p> <p>(83) Formaldehyde: 600;</p> <p>(84) Gross alpha (adjusted) particle activity (excluding radium-226 and uranium): 15 pCi/L;</p> <p>(85) Heptachlor: 0.008;</p> <p>(86) Heptachlor epoxide: 0.004;</p> <p>(87) Heptane: 400;</p> <p>(88) Hexachlorobenzene (perchlorobenzene): 0.02;</p> <p>(89) Hexachlorobutadiene: 0.4;</p> <p>(90) Hexachlorocyclohexane isomers (technical grade): 0.02;</p> <p>(91) n-Hexane: 400;</p> <p>(92) Indeno(1,2,3-cd)pyrene: 0.05;</p> <p>(93) Iron: 300;</p> <p>(94) Isophorone: 40;</p> <p>(95) Isopropylbenzene: 70;</p> <p>(96) Isopropyl ether: 70;</p> <p>(97) Lead: 15;</p> <p>(98) Lindane (gamma hexachlorocyclohexane): 0.03;</p> <p>(99) Manganese: 50;</p> <p>(100) Mercury: 1;</p> <p>(101) Methanol: 4 mg/L;</p> <p>(102) Methoxychlor: 40;</p> <p>(103) Methylene chloride (dichloromethane): 5;</p> <p>(104) Methyl ethyl ketone (2-butanone): 4 mg/L;</p> <p>(105) 2-Methylnaphthalene: 30;</p> <p>(106) 3-Methylphenol (m-cresol): 400;</p> <p>(107) 4-Methylphenol (p-cresol): 40;</p> <p>(108) Methyl tert-butyl ether (MTBE): 20;</p> <p>(109) Naphthalene: 6;</p> <p>(110) Nickel: 100;</p> <p>(111) Nitrate: (as N) 10 mg/L;</p> <p>(112) Nitrite: (as N) 1 mg/L;</p> <p>(113) N-nitrosodimethylamine: 0.0007;</p> <p>(114) Oxamyl: 200;</p> | <p>(115) Pentachlorophenol: 0.3;</p> <p>(116) Petroleum aliphatic carbon fraction class (C5 - C8): 400;</p> <p>(117) Petroleum aliphatic carbon fraction class (C9 - C18): 700;</p> <p>(118) Petroleum aliphatic carbon fraction class (C19 - C36): 10 mg/L;</p> <p>(119) Petroleum aromatics carbon fraction class (C9 - C22): 200;</p> <p>(120) pH: 6.5 - 8.5;</p> <p>(121) Phenanthrene: 200;</p> <p>(122) Phenol: 30;</p> <p>(123) Phorate: 1;</p> <p>(124) n-Propylbenzene: 70;</p> <p>(125) Pyrene: 200;</p> <p>(126) Selenium: 20;</p> <p>(127) Silver: 20;</p> <p>(128) Simazine: 4;</p> <p>(129) Styrene: 70;</p> <p>(130) Sulfate: 250 mg/L;</p> <p>(131) 1,1,2,2-Tetrachloroethane: 0.2;</p> <p>(132) Tetrachloroethylene (perchloroethylene; PCE): 0.7;</p> <p>(133) 2,3,4,6-Tetrachlorophenol: 200;</p> <p>(134) Toluene: 600;</p> <p>(135) Toxaphene: 0.03;</p> <p>(136) 2, 4, 5,-TP (Silvex): 50;</p> <p>(137) 1,2,4-Trichlorobenzene: 70;</p> <p>(138) 1,1,1-Trichloroethane: 200;</p> <p>(139) Trichloroethylene (TCE): 3;</p> <p>(140) Trichlorofluoromethane: 2 mg/L;</p> <p>(141) 1,2,3-Trichloropropane: 0.005;</p> <p>(142) 1,2,4-Trimethylbenzene: 400;</p> <p>(143) 1,3,5-Trimethylbenzene: 400;</p> <p>(144) 1,1,2-Trichloro-1,2,2-trifluoroethane (CFC-113): 200 mg/L;</p> <p>(145) Vinyl chloride: 0.03;</p> <p>(146) Xylenes (o-, m-, and p-): 500; and</p> <p>(147) Zinc: 1 mg/L.</p> <p>(h) Class GSA Standards. The standards for this class are the same as those for Class GA except as follows:</p> <p>(1) chloride: allowable increase not to exceed 100 percent of the natural quality concentration; and</p> <p>(2) total dissolved solids: 1000 mg/l.</p> <p>(i) Class GC Waters.</p> <p>(1) The concentrations of substances which, at the time of classification, exceed the standards applicable to Class GA or GSA groundwaters shall not be caused to increase, nor shall the concentrations of other substances be caused to exceed the GA or GSA standards as a result of further disposal of contaminants to or beneath the surface of the land within the boundary of the area classified GC.</p> <p>(2) The concentrations of substances which, at the time of classification, exceed the standards applicable to GA or GSA groundwaters shall not be caused to migrate as a result of</p> |
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activities within the boundary of the GC classification, so as to violate the groundwater or surface water quality standards in adjoining waters of a different class.

- (3) Concentrations of specific substances, which exceed the established standard at the time of classification, are listed in Section .0300 of this Subchapter.

Authority G.S. 143-214.1; 143B-282(a)(2).

15A NCAC 02L .0202 GROUNDWATER QUALITY STANDARDS (OPTION 2)

(a) The groundwater quality standards for the protection of the groundwaters of the state are those specified in this Rule. They are the maximum allowable concentrations resulting from any discharge of contaminants to the land or waters of the state, which may be tolerated without creating a threat to human health or which would otherwise render the groundwater unsuitable for its intended best usage.

(b) The groundwater quality standards for contaminants specified in Paragraphs (g) and (h) of this Rule are as listed, except that:

- (1) Where the standard for a substance is less than the practical quantitation limit, the detection of that substance at or above the practical quantitation limit constitutes a violation of the standard.
- (2) Where two or more substances exist in combination, the Director shall consider the effects of chemical interactions as determined by the Division of Public Health and may establish maximum concentrations at values less than those established in accordance with Paragraphs (c), (g), or (h) of this Rule. In the absence of information to the contrary, in accordance with Paragraph (d) of this Rule, the carcinogenic risks associated with carcinogens present shall be considered additive and the toxic effects associated with non-carcinogens present shall also be considered additive.
- (3) Where naturally occurring substances exceed the established standard, the standard shall be the naturally occurring concentration as determined by the Director.

(c) Except for tracers used in concentrations which have been determined by the Division of Public Health to be protective of human health, and the use of which has been permitted by the Division, substances which are not naturally occurring and for which no standard is specified shall not be permitted in concentrations at or above the practical quantitation limit in Class GA or Class GSA groundwaters. Any person may petition the Director to establish an interim maximum allowable concentration for a substance for which a standard has not been established under this Rule. The petitioner shall submit relevant toxicological and epidemiological data, study results, and calculations necessary to establish a standard in accordance with Paragraph (d) of this Rule. Within three months after the establishment of an interim maximum allowable concentration

for a substance by the Director, the Director shall initiate action to consider adoption of a standard for that substance.

(d) Except as provided in Paragraph (f) of this Rule, groundwater ~~Groundwater~~ quality standards for substances in Class GA and Class GSA groundwaters are established as the least of:

- (1) Systemic threshold concentration calculated as follows: [Reference Dose (mg/kg/day) x 70 kg (adult body weight) x Relative Source Contribution (.10 for inorganics; .20 for organics)] / [2 liters/day (avg. water consumption)];
- (2) Concentration which corresponds to an incremental lifetime cancer risk of 1×10^{-6} ;
- (3) Taste threshold limit value;
- (4) Odor threshold limit value;
- (5) Maximum contaminant level; or
- (6) National secondary drinking water standard.

(e) The following references, in order of preference, shall be used in establishing concentrations of substances which correspond to levels described in Paragraph (d) of this Rule.

- (1) Integrated Risk Information System (U.S. EPA).
- (2) Health Advisories (U.S. EPA Office of Drinking Water).
- (3) Other health risk assessment data published by U.S. EPA.
- (4) Other relevant, published health risk assessment data, and scientifically valid peer-reviewed published toxicological data.

(f) The Commission may establish groundwater standards less stringent than existing maximum contaminant levels or national secondary drinking water standards if it finds, after public notice and opportunity for hearing, that

- (1) more recent data published in any of the EPA health references listed in Paragraph (e) of this Rule results in a standard which is protective of public health, taste threshold, or odor threshold.
- (2) such a standard will not endanger the public health and safety, including health and environmental effects from exposure to groundwater contaminants, and
- (3) compliance with a standard based on the maximum contaminant level or national secondary drinking water standard would produce serious hardship without equal or greater public benefit.

(g) Groundwater quality standards specified in Paragraphs ~~(g)~~~~(h)~~ and ~~(h)~~~~(i)~~ of this Rule and interim maximum allowable concentrations established pursuant to Paragraph (c) of this Rule shall be reviewed on a triennial basis. Appropriate modifications to established standards shall be made in accordance with the procedure prescribed in Paragraph (d) of this Rule where modifications are considered appropriate based on data published subsequent to the previous review.

(h) Class GA Standards. Where not otherwise indicated, the standard refers to the total concentration in micrograms per liter of any constituent in a dissolved, colloidal or particulate form

which is mobile in groundwater. This does not apply to sediment or other particulate matter which is preserved in a groundwater sample as a result of well construction or sampling procedures. The Class GA standards are:

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| (1) Acenaphthene: 80; | (52) 1,3-Dichlorobenzene (metadichlorobenzene): 200; |
| (2) Acenaphthylene: 200; | (53) 1,4-Dichlorobenzene (paradichlorobenzene): 6; |
| (3) Acetone: 6 mg/L; | (54) Dichlorodifluoromethane (Freon-12; Halon): 1 mg/L; |
| (4) Acrylamide: 0.008; | (55) 1,1-Dichloroethane: 6; |
| (5) Anthracene: 2 mg/L; | (56) 1,2-Dichloroethane (ethylene dichloride): 0.4; |
| (6) Arsenic: 10; | (57) 1,2-Dichloroethene (cis): 70; |
| (7) Atrazine and chlorotriazine metabolites: 3; | (58) 1,2-Dichloroethene (trans): 100; |
| (8) Barium: 700; | (59) 1,1-Dichloroethylene (vinylidene chloride): 7; |
| (9) Benzene: 1; | (60) 1,2-Dichloropropane: 0.6; |
| (10) Benzo(a)anthracene (benz(a)anthracene): 0.05; | (61) 1,3-Dichloropropene (cis and trans isomers): 0.4; |
| (11) Benzo(b)fluoranthene: 0.05; | (62) Dieldrin: 0.002; |
| (12) Benzo(k)fluoranthene: 0.5; | (63) Diethylphthalate: 6 mg/L; |
| (13) Benzoic acid: 30 mg/L; | (64) 2,4-Dimethylphenol (m-xyleneol): 100; |
| (14) Benzo(g,h,i)perylene: 200; | (65) Di-n-octyl phthalate: 100; |
| (15) Benzo(a)pyrene: 0.005; | (66) 1,4-Dioxane (p-dioxane): 3; |
| (16) Bis(chloroethyl)ether: 0.03; | (67) Dioxin (2,3,7,8-TCDD): 0.0002 ng/L; |
| (17) Bis(2-ethylhexyl) phthalate (di(2-ethylhexyl) phthalate): 3; | (68) 1,1-Diphenyl (1,1-biphenyl): 400; |
| (18) Boron: 700; | (69) Dissolved solids (total): 500 mg/L; |
| (19) Bromodichloromethane: 0.6; | (70) Disulfoton: 0.3; |
| (20) Bromoform (tribromomethane): 4; | (71) Diundecyl phthalate (Santicizer 711): 100; |
| (21) n-Butylbenzene: 70; | (72) Endosulfan: 40; |
| (22) sec-Butylbenzene: 70; | (73) Endrin, total: (includes endrin, endrin aldehyde and endrin ketone): 2; |
| (23) tert-Butylbenzene: 70; | (74) Epichlorohydrin: 4; |
| (24) Butylbenzyl phthalate: 1 mg/L; | (75) Ethyl acetate: 3 mg/L; |
| (25) Cadmium: 2; | (76) Ethylbenzene: 600; |
| (26) Caprolactam: 4 mg/L; | (77) Ethylene dibromide (1,2-dibromoethane): 0.02; |
| (27) Carbofuran: 40; | (78) Ethylene glycol: 10 mg/L; |
| (28) Carbon disulfide: 700; | (79) Fluoranthene: 300; |
| (29) Carbon tetrachloride: 0.3; | (80) Fluorene: 300; |
| (30) Chlordane: 0.1; | (81) Fluoride: 2 mg/L; |
| (31) Chloride: 250 mg/L; | (82) Foaming agents: 500; |
| (32) Chlorobenzene: 50; | (83) Formaldehyde: 600; |
| (33) Chloroethane: 3,000; | (84) Gross alpha (adjusted) particle activity (excluding radium-226 and uranium): 15 pCi/L; |
| (34) Chloroform (trichloromethane): 70; | (85) Heptachlor: 0.008; |
| (35) Chloromethane (methyl chloride): 3; | (86) Heptachlor epoxide: 0.004; |
| (36) 2-Chlorophenol: 0.4; | (87) Heptane: 400; |
| (37) 2-Chlorotoluene (o-chlorotoluene): 100; | (88) Hexachlorobenzene (perchlorobenzene): 0.02; |
| (38) Chromium: 10; | (89) Hexachlorobutadiene: 0.4; |
| (39) Chrysene: 5; | (90) Hexachlorocyclohexane isomers (technical grade): 0.02; |
| (40) Coliform organisms (total): 1 per 100 milliliters; | (91) n-Hexane: 400; |
| (41) Color: 15 color units; | (92) Indeno(1,2,3-cd)pyrene: 0.05; |
| (42) Copper: 1 mg/L; | (93) Iron: 300; |
| (43) Cyanide (free cyanide): 70; | (94) Isophorone: 40; |
| (44) 2, 4-D (2,4-dichlorophenoxy acetic acid): 70; | (95) Isopropylbenzene: 70; |
| (45) DDD: 0.1; | (96) Isopropyl ether: 70; |
| (46) DDT: 0.1; | (97) Lead: 15; |
| (47) Dibenz(a,h)anthracene: 0.005; | (98) Lindane (gamma hexachlorocyclohexane): 0.03; |
| (48) Dibromochloromethane: 0.4; | (99) Manganese: 50; |
| (49) 1,2-Dibromo-3-chloropropane: 0.04; | (100) Mercury: 1; |
| (50) Dibutyl (or di-n-butyl) phthalate: 700; | |
| (51) 1,2-Dichlorobenzene (orthodichlorobenzene): 20; | |

- (101) Methanol: 4 mg/L;
- (102) Methoxychlor: 40;
- (103) Methylene chloride (dichloromethane): 5;
- (104) Methyl ethyl ketone (2-butanone): 4 mg/L;
- (105) 2-Methylnaphthalene: 30;
- (106) 3-Methylphenol (m-cresol): 400;
- (107) 4-Methylphenol (p-cresol): 40;
- (108) Methyl tert-butyl ether (MTBE): 20;
- (109) Naphthalene: 6;
- (110) Nickel: 100;
- (111) Nitrate: (as N) 10 mg/L;
- (112) Nitrite: (as N) 1 mg/L;
- (113) N-nitrosodimethylamine: 0.0007;
- (114) Oxamyl: 200;
- (115) Pentachlorophenol: 0.3;
- (116) Petroleum aliphatic carbon fraction class (C5 - C8): 400;
- (117) Petroleum aliphatic carbon fraction class (C9 - C18): 700;
- (118) Petroleum aliphatic carbon fraction class (C19 - C36): 10 mg/L;
- (119) Petroleum aromatics carbon fraction class (C9 - C22): 200;
- (120) pH: 6.5 - 8.5;
- (121) Phenanthrene: 200;
- (122) Phenol: 30;
- (123) Phorate: 1;
- (124) n-Propylbenzene: 70;
- (125) Pyrene: 200;
- (126) Selenium: 20;
- (127) Silver: 20;
- (128) Simazine: 4;
- (129) Styrene: 70;
- (130) Sulfate: 250 mg/L;
- (131) 1,1,2,2-Tetrachloroethane: 0.2;
- (132) Tetrachloroethylene (perchloroethylene; PCE): 0.7;
- (133) 2,3,4,6-Tetrachlorophenol: 200;
- (134) Toluene: 600;
- (135) Toxaphene: 0.03;
- (136) 2, 4, 5,-TP (Silvex): 50;
- (137) 1,2,4-Trichlorobenzene: 70;
- (138) 1,1,1-Trichloroethane: 200;
- (139) Trichloroethylene (TCE): 3;
- (140) Trichlorofluoromethane: 2 mg/L;
- (141) 1,2,3-Trichloropropane: 0.005;
- (142) 1,2,4-Trimethylbenzene: 400;
- (143) 1,3,5-Trimethylbenzene: 400;
- (144) 1,1,2-Trichloro-1,2,2-trifluoroethane (CFC-113): 200 mg/L;
- (145) Vinyl chloride: 0.03;
- (146) Xylenes (o-, m-, and p-): 500; and
- (147) Zinc: 1 mg/L.

~~(h)~~(i) Class GC Waters.

- (1) The concentrations of substances which, at the time of classification, exceed the standards applicable to Class GA or GSA groundwaters shall not be caused to increase, nor shall the concentrations of other substances be caused to exceed the GA or GSA standards as a result of further disposal of contaminants to or beneath the surface of the land within the boundary of the area classified GC.
- (2) The concentrations of substances which, at the time of classification, exceed the standards applicable to GA or GSA groundwaters shall not be caused to migrate as a result of activities within the boundary of the GC classification, so as to violate the groundwater or surface water quality standards in adjoining waters of a different class.
- (3) Concentrations of specific substances, which exceed the established standard at the time of classification, are listed in Section .0300 of this Subchapter.

Authority G.S. 143-214.1; 143B-282(a)(2).

15A NCAC 02L .0113 VARIANCE (OPTION 3)

(a) The Commission, on its own initiative or pursuant to a request under G.S. 143-215.3(e), may grant variances to the rules of this Subchapter.

(b) Requests for variances are filed by letter from the applicant to the Environmental Management Commission. The application shall be mailed to the chairman of the Commission in care of the Director, Division of ~~Environmental Management, Post Office Box 29535, Raleigh, N.C. 27626-0535.~~ Water Quality, 1617 Mail Service Center, Raleigh, N.C. 27699-1617.

(c) ~~For site-specific variances, the~~ The application shall contain the following information:

- (1) Applications filed by counties or municipalities must include a resolution of the County Board of Commissioners or the governing board of the municipality requesting the variance.
- (2) A description of the past, existing or proposed activities or operations that have or would result in a discharge of contaminants to the groundwaters.
- (3) Description of the proposed area for which a variance is requested. A detailed location map, showing the orientation of the facility, potential for groundwater contaminant migration, as well as the area covered by the variance request, with reference to at least two geographic references (numbered roads, named streams/rivers, etc.) must be included.
- (4) Supporting information to establish that the variance will not endanger the public health and safety, including health and environmental effects from exposure to groundwater contaminants. (Location of wells and other

~~(h)~~(i) Class GSA Standards. The standards for this class are the same as those for Class GA except as follows:

- (1) chloride: allowable increase not to exceed 100 percent of the natural quality concentration; and
- (2) total dissolved solids: 1000 mg/l.

water supply sources including details of well construction within 1/2 mile of site must be shown on a map).

- (5) Supporting information to establish that requirements of this Rule cannot be achieved by providing the best available technology economically reasonable. This information must identify specific technology considered, and the costs of implementing the technology and the impact of the costs on the applicant.
- (6) Supporting information to establish that compliance would produce serious financial hardship on the applicant.
- (7) Supporting information that compliance would produce serious financial hardship without equal or greater public benefit.
- (8) A copy of any Special Order that was issued in connection with contaminants in the proposed area and supporting information that applicant has complied with the Special Order.
- (9) A list of the names and addresses of any property owners within the proposed area of the variance as well as any property owners adjacent to the site covered by the variance.

(d) For state-wide variances to groundwater standards established in Rule .0202 of this Subchapter, the application shall contain the following information:

- (1) Supporting information to establish that the variance will not endanger the public health and safety, including health and environmental effects from exposure to groundwater at the proposed constituent levels. This should include information obtained from the following references.
 - (A) Integrated risk Information System (U.S. EPA).
 - (B) Health Advisories (U.S. EPA Office of Drinking Waters).
 - (D) Other health risk assessment data published by U.S. EPA.
 - (E) Other relevant, published health and ecological risk assessment data, and scientifically valid peer-reviewed published toxicological data.
- (2) A list of all known potentially affected sites, to include permitted sites and incident sites. For each site listed, a map for each site with the location of wells and other water supply sources within 1/2 mile of the affected site must be provided.
- (3) A list of increased costs for treatment for any of the wells or water supply sources listed in Paragraph (2) of this Rule due to the proposed variance to Rule .0202 of this Subchapter.

~~(d)~~(e) Upon receipt of the application, the Director will review it for completeness and request additional information if necessary. When the application is complete, the Director shall give public notice of the application and schedule the matter for

a public hearing in accordance with G.S. 143-215.4(b) and the procedures set out in Paragraph ~~(e)~~(f) of this Rule.

~~(e)~~(f) Notice of Public Hearing:

- (1) Notice of public hearing on any variance application shall be circulated in the geographical areas of the proposed variance by the Director at least 30 days prior to the date of the hearing:
 - (A) by publishing the notice one time in a newspaper having general circulation in said county;
 - (B) by mailing to the North Carolina Department of Environment, Health, and Natural Resources, Division of Environmental Health and appropriate local health agency;
 - (C) by mailing to any other federal, state or local agency upon request;
 - (D) by mailing to the local governmental unit or units having jurisdiction over the geographic area covered by the variance;
 - (E) by mailing to any property owner within the proposed area of the variance, as well as any property owners adjacent to the site covered by the variance; and
 - (F) by mailing to any person or group upon request.
- (2) The contents of public notice of any hearing shall include at least the following:
 - (A) name, address, and phone number of agency holding the public hearing;
 - (B) name and address of each applicant whose application will be considered at the meeting;
 - (C) brief summary of the variance request;
 - (D) geographic description of a proposed area for which a variance is requested;
 - (E) brief description of activities or operations which have or will result in the discharge of contaminants to the groundwaters described in the variance application;
 - (F) a brief reference to the public notice issued for each variance application;
 - (G) information regarding the time and location for the hearing;
 - (H) the purpose of the hearing;
 - (I) address and phone number of premises at which interested persons may obtain further information, request a copy of each application, and inspect and copy forms and related documents; and
 - (J) a brief description of the nature of the hearing including the rules and

procedures to be followed. The notice shall also state that additional information is on file with the Director and may be inspected at any time during normal working hours. Copies of the information on file will be made available upon request and payment of cost or reproduction.

~~(f)~~(g) All comments received within 30 days following the date of the public hearing shall be made part of the application file and shall be considered by the Commission prior to taking final action on the application.

~~(g)~~(h) In determining whether to grant a variance, the Commission shall consider whether the applicant has complied with any Special Order, or Special Order by Consent issued under G.S. 143-215.2.

~~(h)~~(i) ~~If the Commission's final decision is unacceptable, the applicant may file. The applicant may appeal the Commission's final decision by filing~~ a petition for a contested case in accordance with Chapter 150B of the General Statutes. If the petition is not filed within 60 days, the Commission's decision on the variance shall be final and binding.

~~(i) A variance shall not operate as a defense to an action at law based upon a public or private nuisance theory or any other cause of action.~~

Authority G.S. 143-215.3(a)(1); 143-215.3(a)(3); 143-215.3(a)(4); 143-215.3(e); 143-215.4.

Notice is hereby given in accordance with G.S. 150B-21.2 that the Commission for Public Health intends to amend the rule 15A NCAC 18A .2528.

Link to agency website pursuant to G.S. 150B-19.1(c):
<http://cph.publichealth.nc.gov/>

Proposed Effective Date: *October 1, 2012*

Public Hearing:

Date: *May 21, 2012*

Time: *2:00 p.m.*

Location: *Cardinal Room, 5605 Six Forks Road, Raleigh, NC*

Reason for Proposed Action: *During the recent legislative session, the NC General Assembly ratified Session Law 2011-39, Senate Bill 368 on April 12, 2011, "An Act to Modify the Applicability of Certain Fencing Requirements to Public Swimming Pools...", which authorized the Commission for Public Health to adopt conforming rules by January 1, 2012. The Commission adopted the rule amendment through temporary procedures to meet the statutory effective date. This proposed amendment is necessary to make permanent the temporary amendment to the Pool Fences rule, which expires on September 10, 2012.*

Procedure by which a person can object to the agency on a proposed rule: *Objections may be submitted in writing to Chris*

G. Hoke, JD, the Rule-Making Coordinator, during the public comment period. Additionally, objections may be made verbally and/or in writing at the public hearing for this rule.

Comments may be submitted to: *Chris Hoke, 1931 Mail Service Center, Raleigh, NC 27699-1931, phone (919)707-5006, email chris.hoke@dhhs.nc.gov*

Comment period ends: *July 2, 2012*

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 (check all that apply).

- ☐ State funds affected
- ☐ Environmental permitting of DOT affected
- ☒ Analysis submitted to Board of Transportation
- ☒ Local funds affected
- ☒ Date submitted to OSBM: February 1, 2012
- ☒ Substantial economic impact (≥\$500,000)
- ☒ Approved by OSBM
- ☐ No fiscal note required

CHAPTER 18 - ENVIRONMENTAL HEALTH

SUBCHAPTER 18A – SANITATION

SECTION .2500 - PUBLIC SWIMMING POOLS

15A NCAC 18A .2528 FENCES

(a) Public Swimming pools shall be completely enclosed by a fence, wall, building, or other enclosure, or any combination thereof, which encloses the swimming pool area such that all of the following conditions are met:

- (1) The top of the barrier shall be at least 48 inches above grade measured on the side of the barrier that faces away from the swimming pool. The maximum vertical clearance between grade and the bottom of the barrier shall be two inches measured on the side of the barrier that faces away from the swimming pool;
- (2) Openings in the barrier shall not allow passage of a four-inch-diameter sphere and shall provide no external handholds or footholds.

- Solid barriers that do not have openings shall not contain indentations or protrusions except for normal construction tolerances and tooled masonry joints;
- (3) Where the barrier is composed of horizontal and vertical members and the distance between the tops of the horizontal members is 45 inches or more, spacing between the vertical members shall not exceed four inches. Where there are decorative cutouts within the vertical members, spacing within the cutouts shall not exceed 1.75 inches in width;
 - (4) Where the barrier is composed of horizontal and vertical members and the distance between the tops of the horizontal members is less than 45 inches, the horizontal members shall be located on the swimming pool side of the fence. Spacing between the vertical members shall not exceed 1.75 inches in width. Where there are decorative cutouts within the vertical members, spacing within the cutouts shall not exceed 1.75 inches in width;
 - (5) Maximum mesh size for chain link fences shall be a 2.25 inch square unless the fence is provided with slats fastened at the top or the bottom that reduce the openings to no more than 1.75 inches;
 - (6) Where the barrier is composed of diagonal members, the maximum opening formed by the diagonal members shall be no more than 1.75 inches;
 - (7) Access gates shall comply with the dimensional requirements for fences and shall be equipped to accommodate a locking device. Effective April 1, 2011, pedestrian access gates shall open outward away from the pool and shall be self-closing and have a self-latching device except where a gate attendant and lifeguard are on duty. Gates other than pedestrian access gates shall have a self-latching device. Where the release mechanism of the self-latching device is located less than 54 inches from the bottom of the gate, the release mechanism shall require the use of a key, combination or card reader to open or shall be located on the pool side of the gate at least three inches below the top of the gate, and the gate and barrier shall have no openings greater than 0.5 inch within 18 inches of the release mechanism; and
 - (8) Ground level doors and windows opening from occupied buildings to inside the pool enclosure shall be self-closing or child protected by means of a barrier or audible alarm.
- (b) Public swimming pool fences constructed prior to May 1, 2010 may vary from the provisions of Paragraph (a) of this Rule as follows:
- (1) the maximum vertical clearance between grade and the bottom of the barrier may exceed two inches, but shall not exceed four inches;
 - (2) where the barrier is composed of vertical and horizontal members and the space between vertical members exceeds 1.75 inches, the distance between the tops of the bottom horizontal member and the next higher horizontal member may be less than 45 inches, but shall not be less than 30 inches;
 - (3) gates other than pedestrian access gates are not required to have self-latching devices if the gates are kept locked; and
 - (4) gates may swing towards a pool where natural topography, landscape position or emergency egress requirements prevent gates from swinging away from the pool.
- (c) Public swimming pools permitted prior to April 1, 2010 with existing fences that do not comply with the dimensional requirements of Paragraphs (a)(1) through (a)(6) and (b)(1) through (b)(2) of this Rule shall not be denied an operation permit solely due to the preexisting non-compliance. Operation permits shall be denied to an owner or operator that fails to comply with these provisions when:
- (1) at least 50 percent of the fence has been damaged or destroyed; or
 - (2) the owner or operator elects to replace the fence.

Authority G.S. 130A-282.

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

Rules approved by the Rules Review Commission at its meeting on March 15, 2012.

**REGISTER CITATION TO THE
NOTICE OF TEXT**

HHS - HEALTH SERVICE REGULATION, DIVISION OF

<u>Applicability of Rules Related to the 1999 State Medical ...</u>	10A NCAC 14B .0101	26:12 NCR
<u>Certificate of Need Review</u>	10A NCAC 14B .0102	26:12 NCR
<u>Certificate of Need Review Schedule</u>	10A NCAC 14B .0103	26:12 NCR
<u>Multi-County Groupings</u>	10A NCAC 14B .0104	26:12 NCR
<u>Service Areas and Planning Areas</u>	10A NCAC 14B .0105	26:12 NCR
<u>Reallocations and Adjustments</u>	10A NCAC 14B .0106	26:12 NCR
<u>Acute Care Bed Need Determination (Review Category A)</u>	10A NCAC 14B .0107	26:12 NCR
<u>Rehabilitation Bed Need Determination (Review Category E)</u>	10A NCAC 14B .0108	26:12 NCR
<u>Ambulatory Surgical Facilities Need Determination (Review...</u>	10A NCAC 14B .0109	26:12 NCR
<u>Open Heart Surgery Services Need Determinations (Review</u>	10A NCAC 14B .0110	26:12 NCR
<u>Heart-Lung Bypass Machines Need Determination (Review</u>	10A NCAC 14B .0111	26:12 NCR
<u>Fixed Cardiac Catheterization Equipment and Fixed Cardiac...</u>	10A NCAC 14B .0112	26:12 NCR
<u>Mobile Cardiac Catheterization Equipment and Mobile Cardi...</u>	10A NCAC 14B .0113	26:12 NCR
<u>Burn Intensive Care Services Need Determination (Review ...</u>	10A NCAC 14B .0114	26:12 NCR
<u>Positron Emission Tomography Scanners Need Determination</u>	10A NCAC 14B .0115	26:12 NCR
<u>Bone Marrow Transplantation Services Need Determination ...</u>	10A NCAC 14B .0116	26:12 NCR
<u>Solid Organ Transplantation Services Need Determination ...</u>	10A NCAC 14B .0117	26:12 NCR
<u>Gamma Knife Need Determination (Review Category H)</u>	10A NCAC 14B .0118	26:12 NCR
<u>Lithotripter Need Determination (Review Category H)</u>	10A NCAC 14B .0119	26:12 NCR
<u>Radiation Oncology Treatment Centers Need Determination...</u>	10A NCAC 14B .0120	26:12 NCR
<u>Magnetic Resonance Imaging Scanners Need Determination</u>	10A NCAC 14B .0121	26:12 NCR
<u>Nursing Care Bed Need Determination (Review Category B)</u>	10A NCAC 14B .0122	26:12 NCR
<u>Home Health Agency Office Need Determination (Review...</u>	10A NCAC 14B .0123	26:12 NCR
<u>Dialysis Station Need Determination</u>	10A NCAC 14B .0124	26:12 NCR
<u>Hospice need Determination (Review Category F)</u>	10A NCAC 14B .0125	26:12 NCR
<u>Hospice Inpatient Facility Bed Need Determination (Review...</u>	10A NCAC 14B .0126	26:12 NCR
<u>Psychiatric Bed Need Determination (Review Category C)</u>	10A NCAC 14B .0127	26:12 NCR
<u>Chemical Dependency (Substance Abuse) Treatment Bed...</u>	10A NCAC 14B .0128	26:12 NCR
<u>Intermediate Care Beds for the Mentally Retarded Need Det...</u>	10A NCAC 14B .0129	26:12 NCR
<u>Policies for General Acute Care Hospitals</u>	10A NCAC 14B .0130	26:12 NCR
<u>Policies for Inpatient Rehabilitation Services</u>	10A NCAC 14B .0131	26:12 NCR
<u>Policy for Ambulatory Surgical Facilities</u>	10A NCAC 14B .0132	26:12 NCR
<u>Policy for Provision of Hospital-Based Long-Term Nursing ...</u>	10A NCAC 14B .0133	26:12 NCR
<u>Policy for Nursing Care Beds in Continuing Care Facilities</u>	10A NCAC 14B .0134	26:12 NCR
<u>Policy for Determination of Need for Additional Nursing B...</u>	10A NCAC 14B .0135	26:12 NCR
<u>Policy for Relocation of Certain Nursing Facility Beds</u>	10A NCAC 14B .0136	26:12 NCR
<u>Policy for Home Health Services</u>	10A NCAC 14B .0137	26:12 NCR

APPROVED RULES

<u>Policy for End-Stage Renal Disease Dialysis Services</u>	10A NCAC 14B .0138	26:12 NCR
<u>Policies for Psychiatric Inpatient Facilities</u>	10A NCAC 14B .0139	26:12 NCR
<u>Policy for Chemical Dependency Treatment Facilities</u>	10A NCAC 14B .0140	26:12 NCR
<u>Policies for Intermediate Care Facilities for Mentally Re...</u>	10A NCAC 14B .0141	26:12 NCR
<u>Applicability of Rules Related to the 2000 State Medical ...</u>	10A NCAC 14B .0150	26:12 NCR
<u>Certificate of Need Review Schedule</u>	10A NCAC 14B .0152	26:12 NCR
<u>Multi-County Groupings</u>	10A NCAC 14B .0153	26:12 NCR
<u>Service Areas and Planning Areas</u>	10A NCAC 14B .0154	26:12 NCR
<u>Reallocations and Adjustments</u>	10A NCAC 14B .0155	26:12 NCR
<u>Acute Care Bed Need Determination (Review Category E)</u>	10A NCAC 14B .0156	26:12 NCR
<u>Rehabilitation Bed Need Determination (Review Category E)</u>	10A NCAC 14B .0157	26:12 NCR
<u>Ambulatory Surgical Facilities Need Determination (Review...</u>	10A NCAC 14B .0158	26:12 NCR
<u>Open Heart Surgery Services Need Determinations (Review...</u>	10A NCAC 14B .0159	26:12 NCR
<u>Heart-Lung Bypass Machines Need Determination (Review...</u>	10A NCAC 14B .0160	26:12 NCR
<u>Fixed Cardiac Catheterization Equipment and Fixed Cardiac...</u>	10A NCAC 14B .0161	26:12 NCR
<u>Burn Intensive Care Services Need Determination (Review...</u>	10A NCAC 14B .0163	26:12 NCR
<u>Positron Emission Tomography Scanners Need Determinat...</u>	10A NCAC 14B .0164	26:12 NCR
<u>Bone Marrow Transplantation Services Need Determination...</u>	10A NCAC 14B .0165	26:12 NCR
<u>Solid Organ Transplantation Services Need Determination...</u>	10A NCAC 14B .0166	26:12 NCR
<u>Gamma Knife Need Determination (Review Category H)</u>	10A NCAC 14B .0167	26:12 NCR
<u>Lithotripter Need Determination (Review Category H)</u>	10A NCAC 14B .0168	26:12 NCR
<u>Radiation Oncology Treatment Centers Need Determination...</u>	10A NCAC 14B .0169	26:12 NCR
<u>Magnetic Resonance Imaging Scanners Need Determination...</u>	10A NCAC 14B .0170	26:12 NCR
<u>Magnetic Resonance Imaging Scanners Need Determination...</u>	10A NCAC 14B .0171	26:12 NCR
<u>Nursing Care Bed Need Determination (Review Category B)</u>	10A NCAC 14B .0172	26:12 NCR
<u>Demonstration Project for Continuing Care of Adults with ...</u>	10A NCAC 14B .0173	26:12 NCR
<u>Home Health Agency Office Need Determination (Review...</u>	10A NCAC 14B .0174	26:12 NCR
<u>Dialysis Station Need Determination Methodology</u>	10A NCAC 14B .0175	26:12 NCR
<u>Dialysis Station Adjusted Need Determination (Review Cate...</u>	10A NCAC 14B .0176	26:12 NCR
<u>Hospice Need Determination (Review Category F)</u>	10A NCAC 14B .0177	26:12 NCR
<u>Hospice Inpatient Facility Bed Need Determination (Review...</u>	10A NCAC 14B .0178	26:12 NCR
<u>Psychiatric Bed Need Determination (Review Category C)</u>	10A NCAC 14B .0179	26:12 NCR
<u>Chemical Dependency (Substance Abuse) Treatment Bed...</u>	10A NCAC 14B .0180	26:12 NCR
<u>Intermediate Care Beds for the Mentally Retarded Need Det...</u>	10A NCAC 14B .0181	26:12 NCR
<u>Policies for General Acute Care Hospitals</u>	10A NCAC 14B .0182	26:12 NCR
<u>Policies for Inpatient Rehabilitation Services</u>	10A NCAC 14B .0183	26:12 NCR
<u>Policy for Ambulatory Surgical Facilities</u>	10A NCAC 14B .0184	26:12 NCR
<u>Policy for Provision of Hospital-Based Long-Term Nursing ...</u>	10A NCAC 14B .0185	26:12 NCR
<u>Policy for Plan Exemption for Continuing Care Retirement ...</u>	10A NCAC 14B .0186	26:12 NCR
<u>Policy for Determination of Need for Additional Nursing B...</u>	10A NCAC 14B .0187	26:12 NCR
<u>Policy for Relocation of Certain Nursing Facility Beds</u>	10A NCAC 14B .0188	26:12 NCR
<u>Policies for Home Health Services</u>	10A NCAC 14B .0189	26:12 NCR
<u>Policy for Relocation of Dialysis Stations</u>	10A NCAC 14B .0190	26:12 NCR
<u>Policies for Psychiatric Inpatient Facilities</u>	10A NCAC 14B .0191	26:12 NCR
<u>Policy for Chemical Dependency Treatment Facilities</u>	10A NCAC 14B .0192	26:12 NCR
<u>Policies for Intermediate Care Facilities for Mentally Re...</u>	10A NCAC 14B .0193	26:12 NCR

APPROVED RULES

<u>Equipment Need Determinations for 1996 SMFP (Review...</u>	10A NCAC	14B .0194	26:12 NCR
<u>Open Heart Surgery Services Need Determinations for 1996 ...</u>	10A NCAC	14B .0195	26:12 NCR
<u>Applicability of Rules Related to the 2001 State medical ...</u>	10A NCAC	14B .0201	26:12 NCR
<u>Certificate of Need Review Schedule</u>	10A NCAC	14B .0202	26:12 NCR
<u>Multi-County Groupings</u>	10A NCAC	14B .0203	26:12 NCR
<u>Service Areas and Planning Areas</u>	10A NCAC	14B .0204	26:12 NCR
<u>Reallocations and Adjustments</u>	10A NCAC	14B .0205	26:12 NCR
<u>Acute Care Bed Need Determination (Review Category A)</u>	10A NCAC	14B .0206	26:12 NCR
<u>Rehabilitation Bed Need Determination (Review Category E)</u>	10A NCAC	14B .0207	26:12 NCR
<u>Open Heart Surgery Services Need Determinations (Review...</u>	10A NCAC	14B .0209	26:12 NCR
<u>Heart-Lung Bypass Machines Need Determination (Review...</u>	10A NCAC	14B .0210	26:12 NCR
<u>Fixed Cardiac Catheterization Equipment and Fixed Cardiac...</u>	10A NCAC	14B .0211	26:12 NCR
<u>Shared Fixed Cardiac Catheterization Equipment Need Deter...</u>	10A NCAC	14B .0212	26:12 NCR
<u>Burn Intensive Care Services Need Determination (Review C...</u>	10A NCAC	14B .0213	26:12 NCR
<u>Positron Emission Tomography Scanners Need Determinati...</u>	10A NCAC	14B .0214	26:12 NCR
<u>Bone Marrow Transplantation Services Need Determination...</u>	10A NCAC	14B .0215	26:12 NCR
<u>Solid Organ Transplantation Services need Determination ...</u>	10A NCAC	14B .0216	26:12 NCR
<u>Gamma Knife Unit Need Determination (Review Category H)</u>	10A NCAC	14B .0217	26:12 NCR
<u>Lithotripter Need Determination (Review Category H)</u>	10A NCAC	14B .0218	26:12 NCR
<u>Radiation Oncology Treatment Centers Need Determination (...)</u>	10A NCAC	14B .0219	26:12 NCR
<u>Magnetic Resonance Imaging Scanners Need Determination</u>	10A NCAC	14B .0220	26:12 NCR
<u>Magnetic Resonance Imaging Scanners Need Determination...</u>	10A NCAC	14B .0221	26:12 NCR
<u>Nursing Care Bed need Determination (Review Category B)</u>	10A NCAC	14B .0222	26:12 NCR
<u>Medicare-Certified Home Health Agency Office Need...</u>	10A NCAC	14B .0223	26:12 NCR
<u>Dialysis Need Determination Methodology for Reviews Begin...</u>	10A NCAC	14B .0224	26:12 NCR
<u>Dialysis Station Need Determination Methodology for Revie...</u>	10A NCAC	14B .0225	26:12 NCR
<u>Hospice Care Need Determination (Review Category F)</u>	10A NCAC	14B .0226	26:12 NCR
<u>Hospice Inpatient Facility Bed Need Determination (Review...</u>	10A NCAC	14B .0227	26:12 NCR
<u>Psychiatric Bed Need Determination (Review Category C)</u>	10A NCAC	14B .0228	26:12 NCR
<u>Chemical Dependency (Substance Abuse) Treatment Bed...</u>	10A NCAC	14B .0229	26:12 NCR
<u>Chemical Dependency (Substance Abuse) Adult Detox-Only...</u>	10A NCAC	14B .0230	26:12 NCR
<u>Intermediate Care Beds for the Mentally Retarded Need Dee...</u>	10A NCAC	14B .0231	26:12 NCR
<u>Policies for General Acute Care Hospitals</u>	10A NCAC	14B .0232	26:12 NCR
<u>Policies for Cardiac Catheterization Equipment and Services</u>	10A NCAC	14B .0233	26:12 NCR
<u>Policies for Transplantation Services</u>	10A NCAC	14B .0234	26:12 NCR
<u>Policy for MRI Scanners</u>	10A NCAC	14B .0235	26:12 NCR
<u>Policy for Provision of Hospital-Based Long-Term Care Nur...</u>	10A NCAC	14B .0236	26:12 NCR
<u>Policy for Plan Exemption for Continuing Care Retirement ...</u>	10A NCAC	14B .0237	26:12 NCR
<u>Policy for Determination of Need for Additional Nursing B...</u>	10A NCAC	14B .0238	26:12 NCR
<u>Policy for Relocation of Certain Nursing Facility Beds</u>	10A NCAC	14B .0239	26:12 NCR
<u>Policy for Transfer of Beds from State Psychiatric Hospit...</u>	10A NCAC	14B .0240	26:12 NCR
<u>Policies for Relocation of Nursing Facility Beds</u>	10A NCAC	14B .0241	26:12 NCR
<u>Policies for Medicare-Certified Home Health Services</u>	10A NCAC	14B .0242	26:12 NCR
<u>Policy for Relocation of Dialysis Stations</u>	10A NCAC	14B .0243	26:12 NCR
<u>Policies for Psychiatric Inpatient Facilities</u>	10A NCAC	14B .0244	26:12 NCR
<u>Policy for Chemical Dependency Treatment Facilities</u>	10A NCAC	14B .0245	26:12 NCR

APPROVED RULES

<u>Policies for Intermediate Care Facilities for Mentally Re...</u>	10A NCAC 14B .0246	26:12 NCR
<u>Applicability of Rules Related to the 2002 State Medical ...</u>	10A NCAC 14B .0251	26:12 NCR
<u>Certificate of Need Review Schedule</u>	10A NCAC 14B .0252	26:12 NCR
<u>Multi-County Groupings</u>	10A NCAC 14B .0253	26:12 NCR
<u>Service Areas and Planning Areas</u>	10A NCAC 14B .0254	26:12 NCR
<u>Reallocations and Adjustments</u>	10A NCAC 14B .0255	26:12 NCR
<u>Acute Care Bed Need Determination (Review Category A)</u>	10A NCAC 14B .0256	26:12 NCR
<u>Inpatient Rehabilitation Bed Need Determination (Review C...</u>	10A NCAC 14B .0257	26:12 NCR
<u>Operating Room Need Determinations (Review Category E)</u>	10A NCAC 14B .0258	26:12 NCR
<u>Open Heart Surgery Services Need Determination (Review...</u>	10A NCAC 14B .0259	26:12 NCR
<u>Heart-Lung Bypass Machines Need Determination (Review...</u>	10A NCAC 14B .0260	26:12 NCR
<u>Fixed Cardiac Catheterization/Angioplasty Equipment Need ...</u>	10A NCAC 14B .0261	26:12 NCR
<u>Shared Fixed Cardiac Catheterization/Angioplasty Equipmen...</u>	10A NCAC 14B .0262	26:12 NCR
<u>Burn Intensive Care Services Need Determination (Review C...</u>	10A NCAC 14B .0263	26:12 NCR
<u>Bone Marrow Transplantation Services Need Determination ..</u>	10A NCAC 14B .0264	26:12 NCR
<u>Solid Organ Transplantation Services Need Determination ...</u>	10A NCAC 14B .0265	26:12 NCR
<u>Gamma Knife Need Determination (Review Category H)</u>	10A NCAC 14B .0266	26:12 NCR
<u>Lithotripter Need Determination (Review Category H)</u>	10A NCAC 14B .0267	26:12 NCR
<u>Radiation Oncology Treatment Centers Need Determination ...</u>	10A NCAC 14B .0268	26:12 NCR
<u>Positron Emission Tomography Scanners Need Determinati ...</u>	10A NCAC 14B .0269	26:12 NCR
<u>Fixed Magnetic Resonance Imaging Scanners Need...</u>	10A NCAC 14B .0270	26:12 NCR
<u>Magnetic Resonance Imaging Scanners Need Determinatio...</u>	10A NCAC 14B .0271	26:12 NCR
<u>Fixed Magnetic Resonance Imaging Scanners Need...</u>	10A NCAC 14B .0272	26:12 NCR
<u>Nursing Care Bed Need Determination (Review Category B)</u>	10A NCAC 14B .0273	26:12 NCR
<u>Adult Care Home Bed Need Determination (Review Category</u>	10A NCAC 14B .0274	26:12 NCR
<u>Medicare-Certified Home Health Agency Office Need...</u>	10A NCAC 14B .0275	26:12 NCR
<u>Dialysis Station Need Determination Methodology for Revie...</u>	10A NCAC 14B .0276	26:12 NCR
<u>Dialysis Station Need Determination Methodology for Revie...</u>	10A NCAC 14B .0277	26:12 NCR
<u>Hospice Home Care Need Determination (Review Category F)</u>	10A NCAC 14B .0278	26:12 NCR
<u>Single County Hospice Inpatient Bed Need Determination (R...</u>	10A NCAC 14B .0279	26:12 NCR
<u>Contiguous County Hospice Inpatient Bed Need Determination</u>	10A NCAC 14B .0280	26:12 NCR
<u>Psychiatric Bed Need Determination (Review Category C)</u>	10A NCAC 14B .0281	26:12 NCR
<u>Chemical Dependency (Substance Abuse) Treatment Bed...</u>	10A NCAC 14B .0282	26:12 NCR
<u>Chemical Dependency (Substance Abuse) Adult Detox-Only...</u>	10A NCAC 14B .0283	26:12 NCR
<u>Intermediate Care Beds for the Mentally Retarded Need Det...</u>	10A NCAC 14B .0284	26:12 NCR
<u>Policies for General Acute Care Hospitals</u>	10A NCAC 14B .0285	26:12 NCR
<u>Policies for Nursing Care Facilities</u>	10A NCAC 14B .0289	26:12 NCR
<u>Policies for Medicare-Certified Home Health Services</u>	10A NCAC 14B .0291	26:12 NCR
<u>Policy for Relocation of Dialysis Stations</u>	10A NCAC 14B .0292	26:12 NCR
<u>Policies for Psychiatric Inpatient Facilities</u>	10A NCAC 14B .0293	26:12 NCR
<u>Policy for Chemical Dependency Treatment Facilities</u>	10A NCAC 14B .0294	26:12 NCR
<u>Policies for Intermediate Care Facilities for Mentally Re...</u>	10A NCAC 14B .0295	26:12 NCR

PUBLIC HEALTH, COMMISSION FOR

<u>Control Measures - Hepatitis C</u>	10A NCAC 41A .0214*	26:11 NCR
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COSMETIC ART EXAMINERS, BOARD OF

<u>Control of Hearings</u>	21	NCAC	14B .0307*	26:11 NCR
<u>Waivers</u>	21	NCAC	14B .0607*	26:11 NCR
<u>Application for Shop License</u>	21	NCAC	14H .0201*	26:11 NCR
<u>Newly Established Shops</u>	21	NCAC	14H .0203*	26:11 NCR
<u>Dimensions of Cosmetic Art Shops</u>	21	NCAC	14H .0204	26:11 NCR
<u>Water Supply</u>	21	NCAC	14H .0301	26: 11 NCR
<u>Ventilation and Light</u>	21	NCAC	14H .0302*	26:11 NCR
<u>Bathroom Facilities</u>	21	NCAC	14H .0303*	26:11 NCR
<u>Equipment</u>	21	NCAC	14H .0304	26:11 NCR
<u>Licensees and Students</u>	21	NCAC	14H .0401*	26:11 NCR
<u>Cosmetic Art Shops and Schools</u>	21	NCAC	14H .0402*	26:11 NCR
<u>Disinfections Procedures</u>	21	NCAC	14H .0403*	26:11 NCR
<u>First Aid</u>	21	NCAC	14H .0404	26:11 NCR
<u>Inspection of Cosmetic Art Shops</u>	21	NCAC	14H .0501*	26:11 NCR
<u>Failure to Permit Inspection</u>	21	NCAC	14H .0502*	26:11 NCR
<u>Sanitary Ratings and Posting of Ratings</u>	21	NCAC	14H .0503*	26:11 NCR
<u>Systems of Grading Beauty Establishments</u>	21	NCAC	14H .0504*	26:11 NCR
<u>Rule Compliance and Enforcement Measures</u>	21	NCAC	14H .0505*	26:11 NCR
<u>Continuing Education</u>	21	NCAC	14R .0105*	26:11 NCR

LOCKSMITH LICENSING BOARD

<u>Exemption from Examination</u>	21	NCAC	29 .0405	26:12 NCR
<u>Protection of the Public Interest</u>	21	NCAC	29 .0503*	26:12 NCR
<u>Requirements</u>	21	NCAC	29 .0802*	26:12 NCR

TITLE 10A – DEPARTMENT OF HEALTH AND HUMAN SERVICES

10A NCAC 14B .0101 APPLICABILITY OF RULES RELATED TO THE 1999 STATE MEDICAL FACILITIES PLAN

10A NCAC 14B .0102 CERTIFICATE OF NEED REVIEW CATEGORIES

10A NCAC 14B .0103 CERTIFICATE OF NEED REVIEW SCHEDULE

10A NCAC 14B .0104 MULTI-COUNTY GROUPINGS

10A NCAC 14B .0105 SERVICE AREAS AND PLANNING AREAS

10A NCAC 14B .0106 REALLOCATIONS AND ADJUSTMENTS

10A NCAC 14B .0107 ACUTE CARE BED NEED DETERMINATION (REVIEW CATEGORY A)

10A NCAC 14B .0108 REHABILITATION BED NEED DETERMINATION (REVIEW CATEGORY E)

10A NCAC 14B .0109 AMBULATORY SURGICAL FACILITIES NEED DETERMINATION (REVIEW CATEGORY E)

10A NCAC 14B .0110 OPEN HEART SURGERY SERVICES NEED DETERMINATIONS (REVIEW CATEGORY H)

10A NCAC 14B .0111 HEART-LUNG BYPASS

MACHINES NEED DETERMINATION (REVIEW CATEGORY H)

10A NCAC 14B .0112 FIXED CARDIAC CATHETERIZATION EQUIPMENT AND FIXED CARDIAC ANGIOPLASTY EQUIPMENT NEED DETERMINATION (REVIEW CATEGORY J)

10A NCAC 14B .0113 MOBILE CARDIAC CATHETERIZATION EQUIPMENT AND MOBILE CARDIAC ANGIOPLASTY EQUIPMENT NEED DETERMINATION (REVIEW CATEGORY J)

10A NCAC 14B .0114 BURN INTENSIVE CARE SERVICES NEED DETERMINATION (REVIEW CATEGORY H)

10A NCAC 14B .0115 POSITRON EMISSION TOMOGRAPHY SCANNERS NEED DETERMINATION (REVIEW CATEGORY H)

10A NCAC 14B .0116 BONE MARROW TRANSPLANTATION SERVICES NEED DETERMINATION (REVIEW CATEGORY H)

10A NCAC 14B .0117 SOLID ORGAN TRANSPLANTATION SERVICES NEED DETERMINATION (REVIEW CATEGORY H)

10A NCAC 14B .0118 GAMMA KNIFE NEED DETERMINATION (REVIEW CATEGORY H)

10A NCAC 14B .0119 LITHOTRIPTER NEED

DETERMINATION (REVIEW CATEGORY H)
10A NCAC 14B .0120 RADIATION ONCOLOGY TREATMENT CENTERS NEED DETERMINATION (REVIEW CATEGORY H)
10A NCAC 14B .0121 MAGNETIC RESONANCE IMAGING SCANNERS NEED DETERMINATION (REVIEW CATEGORY H)
10A NCAC 14B .0122 NURSING CARE BED NEED DETERMINATION (REVIEW CATEGORY B)
10A NCAC 14B .0123 HOME HEALTH AGENCY OFFICE NEED DETERMINATION (REVIEW CATEGORY F)
10A NCAC 14B .0124 DIALYSIS STATION NEED DETERMINATION
10A NCAC 14B .0125 HOSPICE NEED DETERMINATION (REVIEW CATEGORY F)
10A NCAC 14B .0126 HOSPICE INPATIENT FACILITY BED NEED
DETERMINATION (REVIEW CATEGORY F)
10A NCAC 14B .0127 PSYCHIATRIC BED NEED DETERMINATION (REVIEW CATEGORY C)
10A NCAC 14B .0128 CHEMICAL DEPENDENCY (SUBSTANCE ABUSE) TREATMENT BED NEED DETERMINATION (REVIEW CATEGORY C)
10A NCAC 14B .0129 INTERMEDIATE CARE BEDS FOR THE MENTALLY RETARDED NEED DETERMINATION (REVIEW CATEGORY C)
10A NCAC 14B .0130 POLICIES FOR GENERAL ACUTE CARE HOSPITALS
10A NCAC 14B .0131 POLICIES FOR INPATIENT REHABILITATION SERVICES
10A NCAC 14B .0132 POLICY FOR AMBULATORY SURGICAL FACILITIES
10A NCAC 14B .0133 POLICY FOR PROVISION OF HOSPITAL-BASED LONG-TERM NURSING CARE
10A NCAC 14B .0134 POLICY FOR NURSING CARE BEDS IN CONTINUING CARE FACILITIES
10A NCAC 14B .0135 POLICY FOR DETERMINATION OF NEED FOR ADDITIONAL NURSING BEDS IN SINGLE PROVIDER COUNTIES
10A NCAC 14B .0136 POLICY FOR RELOCATION OF CERTAIN NURSING FACILITY BEDS
10A NCAC 14B .0137 POLICY FOR HOME HEALTH SERVICES
10A NCAC 14B .0138 POLICY FOR END-STAGE RENAL DISEASE DIALYSIS SERVICES
10A NCAC 14B .0139 POLICIES FOR PSYCHIATRIC INPATIENT FACILITIES
10A NCAC 14B .0140 POLICY FOR CHEMICAL DEPENDENCY TREATMENT FACILITIES
10A NCAC 14B .0141 POLICIES FOR INTERMEDIATE CARE FACILITIES FOR MENTALLY RETARDED

*History Note: Authority G.S. 131E-176(25); 131E-177(1); 131E-183(b);
 Temporary Adoption Eff. January 1, 1999;
 Temporary Amendment Eff. July 22, 1999;
 Temporary Expired on October 12, 1999;*

*Eff. August 1, 2000;
 Repealed Eff. April 1, 2012.*

10A NCAC 14B .0150 APPLICABILITY OF RULES RELATED TO THE 2000 STATE MEDICAL FACILITIES PLAN

*History Note: Authority G.S. 131E-176(25); 131E-177(1); 131E-183(b);
 Temporary Adoption Eff. January 1, 2000;
 Eff. April 1, 2001;
 Repealed Eff. April 1, 2012.*

10A NCAC 14B .0152 CERTIFICATE OF NEED REVIEW SCHEDULE
10A NCAC 14B .0153 MULTI-COUNTY GROUPINGS
10A NCAC 14B .0154 SERVICE AREAS AND PLANNING AREAS
10A NCAC 14B .0155 REALLOCATIONS AND ADJUSTMENTS
10A NCAC 14B .0156 ACUTE CARE BED NEED DETERMINATION (REVIEW CATEGORY A)
10A NCAC 14B .0157 REHABILITATION BED NEED DETERMINATION (REVIEW CATEGORY E)
10A NCAC 14B .0158 AMBULATORY SURGICAL FACILITIES NEED DETERMINATION (REVIEW CATEGORY E)
10A NCAC 14B .0159 OPEN HEART SURGERY SERVICES NEED DETERMINATIONS (REVIEW CATEGORY H)
10A NCAC 14B .0160 HEART-LUNG BYPASS MACHINES NEED DETERMINATION (REVIEW CATEGORY H)
10A NCAC 14B .0161 FIXED CARDIAC CATHETERIZATION EQUIPMENT AND FIXED CARDIAC ANGIOPLASTY EQUIPMENT NEED DETERMINATION (REVIEW CATEGORY J)

*History Note: Authority G.S. 131E-176(25); 131E-177(1); 131E-177(I); 131E-183(b); 131E-183(1);
 Temporary Adoption Eff. January 1, 2000;
 Temporary Amendment Eff. August 17, 2000;
 Eff. April 1, 2001;
 Repealed Eff. April 1, 2012.*

10A NCAC 14B .0163 BURN INTENSIVE CARE SERVICES NEED DETERMINATION (REVIEW CATEGORY H)
10A NCAC 14B .0164 POSITRON EMISSION TOMOGRAPHY SCANNERS NEED DETERMINATION (REVIEW CATEGORY H)
10A NCAC 14B .0165 BONE MARROW TRANSPLANTATION SERVICES NEED DETERMINATION (REVIEW CATEGORY H)
10A NCAC 14B .0166 SOLID ORGAN TRANSPLANTATION SERVICES NEED DETERMINATION (REVIEW CATEGORY H)
10A NCAC 14B .0167 GAMMA KNIFE NEED DETERMINATION (REVIEW CATEGORY H)

10A NCAC 14B .0168 LITHOTRIPTER NEED DETERMINATION (REVIEW CATEGORY H)
10A NCAC 14B .0169 RADIATION ONCOLOGY TREATMENT CENTERS NEED DETERMINATION (REVIEW CATEGORY H)
10A NCAC 14B .0170 MAGNETIC RESONANCE IMAGING SCANNERS NEED DETERMINATION (REVIEW CATEGORY H)
10A NCAC 14B .0171 MAGNETIC RESONANCE IMAGING SCANNERS NEED DETERMINATION FOR PLANNING RADIATION ONCOLOGY TREATMENTS (REVIEW CATEGORY H)
10A NCAC 14B .0172 NURSING CARE BED NEED DETERMINATION (REVIEW CATEGORY B)
10A NCAC 14B .0173 DEMONSTRATION PROJECT FOR CONTINUING CARE OF ADULTS WITH DEVELOPMENTAL DISABILITIES AND THEIR AGING CAREGIVERS (REVIEW CATEGORY J)
10A NCAC 14B .0174 HOME HEALTH AGENCY OFFICE NEED DETERMINATION (REVIEW CATEGORY F)
10A NCAC 14B .0175 DIALYSIS STATION NEED DETERMINATION METHODOLOGY
10A NCAC 14B .0176 DIALYSIS STATION ADJUSTED NEED DETERMINATION (REVIEW CATEGORY G)
10A NCAC 14B .0177 HOSPICE NEED DETERMINATION (REVIEW CATEGORY F)
10A NCAC 14B .0178 HOSPICE INPATIENT FACILITY BED NEED DETERMINATION (REVIEW CATEGORY F)
10A NCAC 14B .0179 PSYCHIATRIC BED NEED DETERMINATION (REVIEW CATEGORY C)
10A NCAC 14B .0180 CHEMICAL DEPENDENCY (SUBSTANCE ABUSE) TREATMENT BED NEED DETERMINATION (REVIEW CATEGORY C)
10A NCAC 14B .0181 INTERMEDIATE CARE BEDS FOR THE MENTALLY RETARDED NEED DETERMINATION (REVIEW CATEGORY C)
10A NCAC 14B .0182 POLICIES FOR GENERAL ACUTE CARE HOSPITALS
10A NCAC 14B .0183 POLICIES FOR INPATIENT REHABILITATION SERVICES
10A NCAC 14B .0184 POLICY FOR AMBULATORY SURGICAL FACILITIES
10A NCAC 14B .0185 POLICY FOR PROVISION OF HOSPITAL-BASED LONG-TERM NURSING CARE
10A NCAC 14B .0186 POLICY FOR PLAN EXEMPTION FOR CONTINUING CARE RETIREMENT COMMUNITIES
10A NCAC 14B .0187 POLICY FOR DETERMINATION OF NEED FOR ADDITIONAL NURSING BEDS IN SINGLE PROVIDER COUNTIES
10A NCAC 14B .0188 POLICY FOR RELOCATION OF CERTAIN NURSING FACILITY BEDS
10A NCAC 14B .0189 POLICIES FOR HOME HEALTH SERVICES
10A NCAC 14B .0190 POLICY FOR RELOCATION OF DIALYSIS STATIONS
10A NCAC 14B .0191 POLICIES FOR PSYCHIATRIC

INPATIENT FACILITIES

10A NCAC 14B .0192 POLICY FOR CHEMICAL DEPENDENCY TREATMENT FACILITIES
10A NCAC 14B .0193 POLICIES FOR INTERMEDIATE CARE FACILITIES FOR MENTALLY RETARDED

History Note: Authority G.S. 131E-176(25); 131E-177(1); 131E-183(b);
Temporary Adoption Eff. January 1, 2000;
Temporary Amendment Eff. August 17, 2000;
Eff. April 1, 2001;
Repealed Eff. April 1, 2012.

10A NCAC 14B .0194 EQUIPMENT NEED DETERMINATIONS FOR 1996 SMFP (REVIEW CATEGORY H)
10A NCAC 14B .0195 OPEN HEART SURGERY SERVICES NEED DETERMINATIONS FOR 1996 SMFP (REVIEW CATEGORY H)

History Note: Authority G.S. 131E-176(25); 131E-177(1); 131E-183(b);
Eff. August 1, 1998;
Repealed Eff. April 1, 2012.

10A NCAC 14B .0201 APPLICABILITY OF RULES RELATED TO THE 2001 STATE MEDICAL FACILITIES PLAN
10A NCAC 14B .0202 CERTIFICATE OF NEED REVIEW SCHEDULE
10A NCAC 14B .0203 MULTI-COUNTY GROUPINGS
10A NCAC 14B .0204 SERVICE AREAS AND PLANNING AREAS
10A NCAC 14B .0205 REALLOCATIONS AND ADJUSTMENTS
10A NCAC 14B .0206 ACUTE CARE BED NEED DETERMINATION (REVIEW CATEGORY A)
10A NCAC 14B .0207 REHABILITATION BED NEED DETERMINATION (REVIEW CATEGORY E)

History Note: Authority G.S. 131E-176(25); 131E-177(1); 131E-183(b); 131E-183(1);
Temporary Adoption Eff. January 1, 2001;
Temporary Amendment Eff. May 1, 2001;
Eff. August 1, 2002;
Repealed Eff. April 1, 2012.

10A NCAC 14B .0209 OPEN HEART SURGERY SERVICES NEED DETERMINATIONS (REVIEW CATEGORY H)
10A NCAC 14B .0210 HEART-LUNG BYPASS MACHINES NEED DETERMINATION (REVIEW CATEGORY H)
10A NCAC 14B .0211 FIXED CARDIAC CATHETERIZATION EQUIPMENT AND FIXED CARDIAC ANGIOPLASTY EQUIPMENT NEED DETERMINATIONS (REVIEW CATEGORY H)
10A NCAC 14B .0212 SHARED FIXED CARDIAC

CATHETERIZATION EQUIPMENT NEED DETERMINATION (REVIEW CATEGORY H)
10A NCAC 14B .0213 BURN INTENSIVE CARE SERVICES NEED DETERMINATION (REVIEW CATEGORY H)
10A NCAC 14B .0214 POSITRON EMISSION TOMOGRAPHY SCANNERS NEED DETERMINATION (REVIEW CATEGORY H)
10A NCAC 14B .0215 BONE MARROW TRANSPLANTATION SERVICES NEED DETERMINATION (REVIEW CATEGORY H)
10A NCAC 14B .0216 SOLID ORGAN TRANSPLANTATION SERVICES NEED DETERMINATION (REVIEW CATEGORY H)
10A NCAC 14B .0217 GAMMA KNIFE UNIT NEED DETERMINATION (REVIEW CATEGORY H)
10A NCAC 14B .0218 LITHOTRIPTER NEED DETERMINATION (REVIEW CATEGORY H)
10A NCAC 14B .0219 RADIATION ONCOLOGY TREATMENT CENTERS NEED DETERMINATION (REVIEW CATEGORY H)
10A NCAC 14B .0220 MAGNETIC RESONANCE IMAGING SCANNERS NEED DETERMINATION BASED ON FIXED MRI SCANNER UTILIZATION (REVIEW CATEGORY H)
10A NCAC 14B .0221 MAGNETIC RESONANCE IMAGING SCANNERS NEED DETERMINATION BASED ON MOBILE MRI SCANNER UTILIZATION (REVIEW CATEGORY H)
10A NCAC 14B .0222 NURSING CARE BED NEED DETERMINATION (REVIEW CATEGORY B)
10A NCAC 14B .0223 MEDICARE-CERTIFIED HOME HEALTH AGENCY OFFICE NEED DETERMINATION (REVIEW CATEGORY F)
10A NCAC 14B .0224 DIALYSIS NEED DETERMINATION METHODOLOGY FOR REVIEWS BEGINNING JANUARY 1, 2001
10A NCAC 14B .0225 DIALYSIS STATION NEED DETERMINATION METHODOLOGY FOR REVIEWS BEGINNING SEPTEMBER 1, 2001
10A NCAC 14B .0226 HOSPICE CARE NEED DETERMINATION (REVIEW CATEGORY F)
10A NCAC 14B .0227 HOSPICE INPATIENT FACILITY BED NEED DETERMINATION (REVIEW CATEGORY F)
10A NCAC 14B .0228 PSYCHIATRIC BED NEED DETERMINATION (REVIEW CATEGORY C)
10A NCAC 14B .0229 CHEMICAL DEPENDENCY (SUBSTANCE ABUSE) TREATMENT BED NEED DETERMINATION (REVIEW CATEGORY C)
10A NCAC 14B .0230 CHEMICAL DEPENDENCY (SUBSTANCE ABUSE) ADULT DETOX-ONLY BED NEED DETERMINATION (REVIEW CATEGORY C)
10A NCAC 14B .0231 INTERMEDIATE CARE BEDS FOR THE MENTALLY RETARDED NEED DETERMINATION (REVIEW CATEGORY C)
10A NCAC 14B .0232 POLICIES FOR GENERAL ACUTE CARE HOSPITALS
10A NCAC 14B .0233 POLICIES FOR CARDIAC

CATHETERIZATION EQUIPMENT AND SERVICES
10A NCAC 14B .0234 POLICIES FOR TRANSPLANTATION SERVICES
10A NCAC 14B .0235 POLICY FOR MRI SCANNERS
10A NCAC 14B .0236 POLICY FOR PROVISION OF HOSPITAL-BASED LONG-TERM CARE NURSING CARE
10A NCAC 14B .0237 POLICY FOR PLAN EXEMPTION FOR CONTINUING CARE RETIREMENT COMMUNITIES
10A NCAC 14B .0238 POLICY FOR DETERMINATION OF NEED FOR ADDITIONAL NURSING BEDS IN SINGLE PROVIDER COUNTIES
10A NCAC 14B .0239 POLICY FOR RELOCATION OF CERTAIN NURSING FACILITY BEDS
10A NCAC 14B .0240 POLICY FOR TRANSFER OF BEDS FROM STATE PSYCHIATRIC HOSPITAL NURSING FACILITIES TO COMMUNITY FACILITIES
10A NCAC 14B .0241 POLICIES FOR RELOCATION OF NURSING FACILITY BEDS
10A NCAC 14B .0242 POLICIES FOR MEDICARE-CERTIFIED HOME HEALTH SERVICES
10A NCAC 14B .0243 POLICY FOR RELOCATION OF DIALYSIS STATIONS
10A NCAC 14B .0244 POLICIES FOR PSYCHIATRIC INPATIENT FACILITIES
10A NCAC 14B .0245 POLICY FOR CHEMICAL DEPENDENCY TREATMENT FACILITIES
10A NCAC 14B .0246 POLICIES FOR INTERMEDIATE CARE FACILITIES FOR MENTALLY RETARDED

*History Note: Authority G.S. 131E-176(25); 131E-177(1); 131E-183(b);
 Temporary Adoption Eff. January 1, 2001;
 Eff. August 1, 2002;
 Repealed Eff. April 1, 2012.*

10A NCAC 14B .0251 APPLICABILITY OF RULES RELATED TO THE 2002 STATE MEDICAL FACILITIES PLAN
10A NCAC 14B .0252 CERTIFICATE OF NEED REVIEW SCHEDULE
10A NCAC 14B .0253 MULTI-COUNTY GROUPINGS
10A NCAC 14B .0254 SERVICE AREAS AND PLANNING AREAS
10A NCAC 14B .0255 REALLOCATIONS AND ADJUSTMENTS
10A NCAC 14B .0256 ACUTE CARE BED NEED DETERMINATION (REVIEW CATEGORY A)
10A NCAC 14B .0257 INPATIENT REHABILITATION BED NEED DETERMINATION (REVIEW CATEGORY E)
10A NCAC 14B .0258 OPERATING ROOM NEED DETERMINATIONS (REVIEW CATEGORY E)
10A NCAC 14B .0259 OPEN HEART SURGERY SERVICES NEED DETERMINATION (REVIEW CATEGORY H)

10A NCAC 14B .0260 HEART-LUNG BYPASS MACHINES NEED DETERMINATIONS (REVIEW CATEGORY H)
 10A NCAC 14B .0261 FIXED CARDIAC CATHETERIZATION/ANGIOPLASTY EQUIPMENT NEED DETERMINATIONS (REVIEW CATEGORY H)
 10A NCAC 14B .0262 SHARED FIXED CARDIAC CATHETERIZATION/ANGIOPLASTY EQUIPMENT NEED DETERMINATION (REVIEW CATEGORY H)
 10A NCAC 14B .0263 BURN INTENSIVE CARE SERVICES NEED DETERMINATION (REVIEW CATEGORY H)
 10A NCAC 14B .0264 BONE MARROW TRANSPLANTATION SERVICES NEED DETERMINATION (REVIEW CATEGORY H)
 10A NCAC 14B .0265 SOLID ORGAN TRANSPLANTATION SERVICES NEED DETERMINATION (REVIEW CATEGORY H)
 10A NCAC 14B .0266 GAMMA KNIFE NEED DETERMINATION (REVIEW CATEGORY H)
 10A NCAC 14B .0267 LITHOTRIPTER NEED DETERMINATION (REVIEW CATEGORY H)
 10A NCAC 14B .0268 RADIATION ONCOLOGY TREATMENT CENTERS NEED DETERMINATION (REVIEW CATEGORY H)
 10A NCAC 14B .0269 POSITRON EMISSION TOMOGRAPHY SCANNERS NEED DETERMINATION (REVIEW CATEGORY H)
 10A NCAC 14B .0270 FIXED MAGNETIC RESONANCE IMAGING SCANNERS NEED DETERMINATION BASED ON FIXED MRI SCANNER UTILIZATION (REVIEW CATEGORY H)
 10A NCAC 14B .0271 MAGNETIC RESONANCE IMAGING SCANNERS NEED DETERMINATION FOR A DEDICATED FIXED BREAST MRI SCANNER (REVIEW CATEGORY H)
 10A NCAC 14B .0272 FIXED MAGNETIC RESONANCE IMAGING SCANNERS NEED DETERMINATION BASED ON MOBILE MRI SCANNER UTILIZATION (REVIEW CATEGORY H)
 10A NCAC 14B .0273 NURSING CARE BED NEED DETERMINATION (REVIEW CATEGORY B)
 10A NCAC 14B .0274 ADULT CARE HOME BED NEED DETERMINATION (REVIEW CATEGORY B)
 10A NCAC 14B .0275 MEDICARE-CERTIFIED HOME HEALTH AGENCY OFFICE NEED DETERMINATION (REVIEW CATEGORY F)
 10A NCAC 14B .0276 DIALYSIS STATION NEED DETERMINATION METHODOLOGY FOR REVIEWS BEGINNING APRIL 1, 2002
 10A NCAC 14B .0277 DIALYSIS STATION NEED DETERMINATION METHODOLOGY FOR REVIEWS BEGINNING OCTOBER 1, 2002
 10A NCAC 14B .0278 HOSPICE HOME CARE NEED DETERMINATION (REVIEW CATEGORY F)
 10A NCAC 14B .0279 SINGLE COUNTY HOSPICE INPATIENT BED NEED DETERMINATION (REVIEW CATEGORY F)
 10A NCAC 14B .0280 CONTIGUOUS COUNTY

HOSPICE INPATIENT BED NEED DETERMINATION (REVIEW CATEGORY F)

10A NCAC 14B .0281 PSYCHIATRIC BED NEED DETERMINATION (REVIEW CATEGORY C)
 10A NCAC 14B .0282 CHEMICAL DEPENDENCY (SUBSTANCE ABUSE) TREATMENT BED NEED DETERMINATION (REVIEW CATEGORY C)
 10A NCAC 14B .0283 CHEMICAL DEPENDENCY (SUBSTANCE ABUSE) ADULT DETOX-ONLY BED NEED DETERMINATION (REVIEW CATEGORY C)
 10A NCAC 14B .0284 INTERMEDIATE CARE BEDS FOR THE MENTALLY RETARDED NEED DETERMINATION (REVIEW CATEGORY C)
 10A NCAC 14B .0285 POLICIES FOR GENERAL ACUTE CARE HOSPITALS

History Note: Authority G.S. 131E-176(25); 131E-177(1); 131E-183(b); 131E-183(1);
 Temporary Adoption Eff. January 1, 2002;
 Temporary Amendment Eff. April 8, 2002; March 15, 2002;
 Eff. April 1, 2003;
 Repealed Eff. April 1, 2012.

10A NCAC 14B .0289 POLICIES FOR NURSING CARE FACILITIES

History Note: Authority G.S. 131E-176(25); 131E-177(1); 131E-183(b);
 Temporary Adoption Eff. January 1, 2002;
 Eff. April 1, 2003;
 Repealed Eff. April 1, 2012.

10A NCAC 14B .0291 POLICIES FOR MEDICARE-CERTIFIED HOME HEALTH SERVICES
 10A NCAC 14B .0292 POLICY FOR RELOCATION OF DIALYSIS STATIONS
 10A NCAC 14B .0293 POLICIES FOR PSYCHIATRIC INPATIENT FACILITIES
 10A NCAC 14B .0294 POLICY FOR CHEMICAL DEPENDENCY TREATMENT FACILITIES
 10A NCAC 14B .0295 POLICIES FOR INTERMEDIATE CARE FACILITIES FOR MENTALLY RETARDED

History Note: Authority G.S. 131E-176(25); 131E-177(1); 131E-183(b);
 Temporary Adoption Eff. January 1, 2002;
 Eff. April 1, 2003;
 Repealed Eff. April 1, 2012.

10A NCAC 41A .0214 CONTROL MEASURES – HEPATITIS C

The following are the control measures for hepatitis C infection:

- (1) Infected persons shall not:
 - (a) share needles or syringes, any other drug-related equipment or paraphernalia, or personal items, such

- as razors, that may be contaminated with blood through previous use; or
 - (b) donate or sell blood, plasma, platelets, or other blood products.
- (2) Persons with acute hepatitis C infection shall:
 - (a) if the date of initial infection is known, identify to the local health director all needle partners since the date of infection;
 - (b) if the date of initial infection is unknown, identify persons who have been needle partners during the previous six months.
- (3) The attending physician shall:
 - (a) advise all patients known to be at high risk, including injection drug users, hemodialysis patients, patients who received blood transfusions or solid organ transplants before July 1992, patients who received clotting factor concentrates made before 1987, persons with HIV infection, and persons with known exposure to hepatitis C, that they should be tested for hepatitis C;
 - (b) advise infected persons of the potential for transmission to others via blood or body fluids;
 - (c) provide or recommend that the infected patient seek medical evaluation for the presence or development of chronic liver disease; and
 - (d) recommend that persons with chronic hepatitis C receive hepatitis A and hepatitis B vaccines unless serological testing indicates that they are immune to these infections by virtue of past infection or vaccination.
- (4) When a health care worker or other person has a needlestick, non-intact skin, or mucous membrane exposure to blood or body fluids that would pose a significant risk of hepatitis C transmission if the source were infected with the hepatitis C virus, the following apply:
 - (a) When the source is known, the attending physician or occupational health care provider responsible for the exposed person, if other than the attending physician of the person whose blood or body fluids is the source of the exposure, shall notify the attending physician of the source that an exposure has occurred. The attending physician of the source person shall discuss the exposure with the source and, unless the source is already known to be infected, shall test the source for hepatitis C virus

infection with or without consent unless it reasonably appears that the test cannot be performed without endangering the safety of the source person or the person administering the test. If the source person cannot be tested, an existing specimen of his or her blood, if one exists, shall be tested. The attending physician of the source person shall notify the attending physician of the exposed person of the infection status of the source.

- (b) The attending physician of the exposed person shall inform the exposed person about the infection status of the source and shall instruct the exposed person regarding the necessity for protecting confidentiality. If the source person is infected with hepatitis C virus or the source person's infection status is unknown, the attending physician of the exposed person shall advise the exposed person to seek testing for hepatitis C virus infection as soon as possible and again four to six months after the exposure. If the source person was hepatitis C virus infected, the attending physician shall inform the exposed person of the measures required in Sub-Items (1)(a) through (b) of this Rule.
- (5) The Centers for Disease Control and Prevention (CDC) Nationally Notifiable Diseases and Conditions (NNDC) Current Case Definitions for Hepatitis C are hereby incorporated by reference, including subsequent amendments and editions. The CDC NNDC may be accessed from the internet at (http://www.cdc.gov/osels/ph_surveillance/nn_dss/phs/infdis.htm). This document is also available for inspection at the North Carolina Division of Public Health, 1902 Mail Service Center, Raleigh NC 27603.

History Note: Authority G.S. 130A-135; 130A-144; Eff. April, 1, 2012.

TITLE 21 – OCCUPATIONAL LICENSING BOARDS AND COMMISSIONS

CHAPTER 14 – BOARD OF COSMETIC ART EXAMINERS

21 NCAC 14B .0307 CONTROL OF HEARINGS

(a) Purpose. The purpose of this Rule is to provide uniform procedures for the conduct of public comment hearings.

(b) The presiding officer at the hearings shall have control of the proceedings including the following:

- (1) extension of any time requirements,
- (2) recognition of speakers,
- (3) time allotment for presentations, and
- (4) direction of the flow of discussion and the management of the hearing.

(c) The presiding officer at all times shall take care that each person participating in the hearing is given an opportunity to present views, data and comments.

(d) Public comment hearings shall be open to the public, and members of the public shall be entitled to testify, subject to the provisions of this Rule.

(e) Public comment hearing shall be open to print and electronic media, subject to the following limitations by the board, or the person designated by the board to preside over the hearing, when such pooling are necessary to allow the hearing to go forward:

- (1) Pooling of the number of media representatives when their number and equipment together with the number of members of the public present exceeds the capacity of the hearing room;
- (2) Limitation on the placement of cameras to specific locations within the hearing room; or
- (3) Prohibition of interviews conducted within the hearing room during the hearing.

(f) Public comment hearings shall be presided over by the board or an individual knowledgeable in the subject area of the proposed rules who has been designated by the chairman to preside over the hearing.

(g) The person presiding over the hearing shall:

- (1) Call the hearing to order;
- (2) Identify the proposed rules which are the subject matter of the hearing, and provide copies of them upon request;
- (3) Cause a recording of the hearing to be made;
- (4) Establish speaker time limits;
- (5) Recognize those who wish to be heard;
- (6) If necessary, refuse to recognize people for speaking, or revoke recognition of speakers;
- (7) If necessary, limit the activity of the media;
- (8) If necessary, continue or move the hearing; and
- (9) Adjourn or continue the hearing.

(h) The hearing shall be continued when:

- (1) The weather is so inclement that it is reasonable to conclude that people wishing to attend the hearing are unable to do so;
- (2) The chairman or the individual designated by the chairman to preside over the hearing is ill or unavoidably absent; or
- (3) Continuing the hearing will facilitate greater participation by the public.

(i) The hearing may be moved to another location when the original location is not able to accommodate the number of people who wish to attend the hearing.

(j) The hearing shall be continued past the scheduled time or to another date when:

- (1) The time available is not sufficient to give each person who wishes to speak a reasonable opportunity to do so; or
- (2) The capacity of the room in which the hearing is to be held does not accommodate the number of people who wish to attend the hearing and it is not possible to move the hearing to another location.

(k) People who wish to speak about the rules which are the subject matter of the hearing shall be asked to write on the speaker's list their full names and if they represent other persons, the identity of the persons represented.

(l) People who wish to speak shall be asked to provide the information called for by Paragraph (k) of this Rule no later than before the last speaker on the list has finished speaking.

(m) People whose names appear on the speaker's list shall be afforded an opportunity to speak at the hearing within the limits on public participation.

(n) Written comments must be submitted by the deadline listed in the rule making notice.

(o) The person presiding over the hearing shall:

- (1) Refuse to recognize for speaking or revoke the recognition of any person who:
 - (A) Speaks or acts in an abusive or disruptive manner; or
 - (B) Refuses to keep comments relevant to the proposed rules which are the subject matter of the hearing;
- (2) Limit the duration of the hearing and limit the amount of time each speaker may speak to a time which allocates approximately equal speaking time to each person shown on the speaker's list as wishing to speak; and
- (3) Limit presentations on behalf of the same organization or entity to no more than three, provided that all those representing such organization or entity may enter their names and addresses into the record as supporting the position of the organization or entity.

History Note: Authority G.S. 88B-4; 143-318.4; 150B 21.2; Eff. February 1, 1976; Amended Eff. April 1, 2012.

21 NCAC 14B .0607 WAIVERS

(a) Individuals who wish to request a waiver of a rule shall submit to the Board a written request which includes:

- (1) The rule for which a waiver is requested;
- (2) The reason for requesting the waiver along with supporting documents;
- (3) Evidence of how the waiver will provide for the health and safety of the consumer or licensee; and
- (4) The signature of applicant.

(b) The Board shall approve a waiver request only if:

- (1) The administrative rule for which the waiver is being requested is not mandated by law; and

- (2) The Board finds that approval of the requested waiver shall not jeopardize the health and safety of employees or the public.

History Note: Authority G.S. 88B-4; Eff. April 1, 2012.

21 NCAC 14H .0201 APPLICATION FOR SHOP LICENSE

- (a) Rules in this Subchapter apply to all cosmetic art shops making initial application to operate a cosmetic art shop after the effective date of these Rules.
- (b) Shops licensed prior to March 1, 2012 may choose to comply with Rules .0202, .0203(c), .0204 and .0301 of this Subchapter.
- (c) Shops licensed prior to March 1, 2012 must comply with Rules .0201, .0203(a)-(b), .0302-.0304 and Sections .0400 and .0500 of this Subchapter.
- (d) Shops licensed prior to March 1, 2012 that make any structural changes must come into compliance with all rules in this Subchapter.
- (e) Persons desiring to open a cosmetic art shop in the State of North Carolina shall make application to the North Carolina State Board of Cosmetic Art Examiner on the Board's application form. Persons desiring to change ownership of a cosmetic art shop, relocate or reopen a shop which has been closed more than 90 days shall make application to the North Carolina State Board of Cosmetic Art Examiner on the Board's application form.

History Note: Authority G.S. 88B-2; 88B-4; 88B-14; 88B-22; Eff. April 1, 2012.

21 NCAC 14H .0203 NEWLY ESTABLISHED SHOPS

- (a) A cosmetic art shop shall be separate and apart from any building or room used for any other business or purpose, separated by a solid wall of at least seven feet in height and must have a separate outside entrance.
- (b) A newly established cosmetic art shop, shall be separate and apart from any building or room used for living, dining or sleeping and shall be separate and apart from any other room used for any other purpose by a solid wall of ceiling height, making separate and apart rooms used for a cosmetic art shop. All entrances to the cosmetic art shop shall be through solid, full length doors installed in solid walls of ceiling height.
- (c) A residential cosmetic art shop shall furnish bathroom facilities separate and apart from the residence.
- (d) An entrance to a cosmetic art shop from a passageway, walkway or mall area used only for access to the shop, or to the shop and other businesses, may be open.

History Note: Authority G.S. 88B-2; 88B-4; 88B-14; Eff. April 1, 2012.

21 NCAC 14H .0204 DIMENSIONS WITHIN COSMETIC ART SHOPS

Within the clinic area each shop shall maintain no less than the following working distances:

- (1) 48 inches of space from the center to the center of each styling chair, esthetics table or manicuring table;
- (2) 24 inches from the center of the chair forward;
- (3) 48 inches from the backrest behind the chair to any other styling chair, esthetics table or manicuring table; and
- (4) at least 30 inches of space from the back of each styling chair, esthetics table or manicuring table to the wall of the shop.

History Note: Authority G.S. 88B-2; 88B-4; 88B-14; Eff. April 1, 2012.

21 NCAC 14H .0301 WATER SUPPLY

- (a) Cosmetic art shops shall have a sink with hot and cold running water in the clinic area, separate from restrooms.
- (b) When a service is provided in a room closed off by a door, the water supply required in this Rule must be within 20 feet of the door or 25 feet from the service table or chair. The restroom sink shall not be used to meet this requirement.

History Note: Authority G.S. 88B-2; 88B-4; 88B-14; Eff. April 1, 2012.

21 NCAC 14H .0302 VENTILATION AND LIGHT

- (a) Ventilation shall be provided at all times in the areas where patrons are serviced in all cosmetic art shops and there must be a continuous exchange of air.
- (b) All doors and windows, if open for ventilation, must be effectively screened.
- (c) Light shall be provided in the service area.
- (d) All cosmetic art shops must adhere to any federal, state and local government regulation or ordinance regarding fire safety codes, plumbing and electrical work.

History Note: Authority G.S. 88B-2; 88B-4; 88B-14; Eff. April 1, 2012.

21 NCAC 14H .0303 BATHROOM FACILITIES

- (a) Toilet and hand washing facilities consisting of at least one commode and one hand washing sink with hot and cold running water, liquid soap and individual clean towels or hand air dryer shall be provided.
- (b) Shops with an initial licensure date after March 1, 2012 must have toilet and hand washing facilities in the bathroom.

History Note: Authority G.S. 88B-2; 88B-4; 88B-14; Eff. April 1, 2012.

21 NCAC 14H .0304 EQUIPMENT

Cosmetic art shops shall maintain equipment and supplies to safely perform any cosmetic art service offered in the shop.

History Note: Authority G.S. 88B-2; 88B-4; 88B-14; Eff. April 1, 2012.

21 NCAC 14H .0401 LICENSEES AND STUDENTS

(a) Each licensee and student shall wash his or her hands with soap and water or an equally effective cleansing agent immediately before and after serving each client.

(b) Each licensee and student shall wear clean garments and shoes while serving patrons.

(c) Licensees or students must not use or possess in a cosmetic art school or shop any of the following:

- (1) Methyl Methacrylate Liquid Monomer a.k.a. MMA;
- (2) Razor-type callus shavers designed and intended to cut growths of skin including but not limited to skin tags, corns and calluses;
- (3) FDA rated Class III devices;
- (4) Carbohic acid (phenol) over two percent strength;
- (5) Animals including insects, fish, amphibians, reptiles, birds or mammals to perform any service; or
- (6) Variable speed electrical nail file on the natural nail unless it has been designed for use on the natural nail.

(d) A licensee or student must not:

- (1) Use any product, implement or piece of equipment in any manner other than the product, implement or equipment's intended use as described or detailed by the manufacturer;
- (2) Diagnose any medical condition or treat any medical condition unless referred by a physician;
- (3) Provide any service unless trained prior to performing the service;
- (4) Perform services on a client if the licensee has reason to believe the client has any of the following:
 - (A) a contagious condition or disease;
 - (B) an inflamed, infected, broken, raised or swollen skin or nail tissue; or
 - (C) an open wound or sore in the area to be worked on;
- (5) Alter or duplicate a license issued by the Board;
- (6) Advertise or solicit clients in any form of communication in a manner that is false or misleading;
- (7) Use any FDA rated Class II device without the documented supervision of a licensed physician; or
- (8) Use any product that will penetrate the dermis.

(e) In using a disinfectant, the user shall wear any personal protective equipment, such as gloves, recommended by the manufacturer in the Material Safety Data Sheet.

History Note: Authority G.S. 88B-2; 88B-4; 88B-14; Eff. April 1, 2012.

21 NCAC 14H .0402 COSMETIC ART SHOPS AND SCHOOLS

(a) The cosmetic art facility shall be kept clean.

(b) Waste material shall be kept in receptacles with a disposable liner. The area surrounding the waste receptacles shall be maintained in a sanitary manner.

(c) All doors and windows shall be kept clean.

(d) Furniture, equipment, floors, walls, ceilings and fixtures must be clean and in good repair.

(e) Animals or birds shall not be in a cosmetic art shop or school. Fish in an enclosure and animals trained for the purpose of accompanying disabled persons are exempt.

(f) Cosmetic art shops and schools shall designate the entrance by a sign or lettering.

History Note: Authority G.S. 88B-2; 88B-4; 88B-14; Eff. April 1, 2012.

21 NCAC 14H .0403 DISINFECTION PROCEDURES

(a) Sanitation rules which apply to towels and cloths are as follows:

- (1) Clean protective capes, drapes, linens and towels shall be used for each patron;
- (2) After a protective cape has been in contact with a patron's neck it shall be placed in a clean, closed container until laundered with soap and hot water and dried in a heated dryer. Capes that cannot be laundered and dried in a heater dryer may be disinfected with an EPA registered hospital grade disinfectant mixed and used in accordance with the manufacturer directions; and
- (3) After a drape, linen or towel has been in contact with a patron's skin it shall be placed in a clean, covered container until laundered with soap and hot water and dried in a heated dryer. A covered container may have an opening so soiled items may be dropped into the container.

(b) Any paper or nonwoven protective drape or covering shall be discarded after one use.

(c) There shall be a supply of clean protective drapes, linens and towels at all times.

(d) Clean drapes, capes, linens, towels and all other supplies shall be stored in a clean area.

(e) Bathroom facilities must be kept cleaned.

(f) All implements shall be cleaned and disinfected after each use in the following manner:

- (1) They shall be washed with warm water and a cleaning solution and scrubbed to remove debris and dried.
- (2) They shall be disinfected in accordance with the following:
 - (A) EPA registered hospital/pseudomonacidal (bactericidal, virucidal, and fungicidal) or tuberculocidal that is mixed and used according to the manufacturer's directions. They shall

be rinsed with hot tap water and dried with a clean towel before their next use. They shall be stored in a clean, closed cabinet or container until they are needed; or

- (B) 1 and 1/3 cup of 5.25 percent household bleach to one gallon of water for 10 minutes. They shall be rinsed with hot tap water and dried with a clean towel before their next use. They shall be stored in a clean, closed cabinet or container until they are needed; or
- (C) UV-C, ultraviolet germicidal irradiation used accordance with the manufacturer's directions.

- (3) If the implement is not immersible or is not disinfected by UV-C irradiation, it shall be cleaned by wiping it with a clean cloth moistened or sprayed with a disinfectant EPA registered, hospital/pseudomonacidal (bactericidal, virucidal, and fungicidal) or tuberculocidal, used in accordance with the manufacturer's directions.

- (4) Implements that come in contact with blood, shall be disinfected by:

- (A) disinfectant, used in accordance with the manufacturer's instructions, that states the solution will destroy HIV, TB or HBV viruses and approved by the Federal Environmental Protection Agency; or
- (B) EPA registered hospital/pseudomonacidal (bactericidal, virucidal, and fungicidal) and tuberculocidal that is mixed and used according to the manufacturer's directions; or
- (C) household bleach in a 10 percent solution (1 and 2/3 cup of bleach to 1 gallon of water) for 10 minutes.

(g) All disinfected non-electrical implements shall be stored in a clean closed cabinet or clean closed container.

(h) All disinfected electrical implements shall be stored in a clean area.

(i) Disposable and porous implements and supplies must be discarded after use or upon completion of the service.

(j) Product that comes into contact with the patron must be discarded upon completion of the service.

(k) Clean, closable storage must be provided for all disinfected implements not in use. Containers with open faces may be covered/closed with plastic wrapping. Disinfected implements must be kept in a clean closed cabinet or clean closed container and must not be stored with any implement or item that has not been disinfected.

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

(m) All creams, lotions, wax, cosmetics, and other products dispensed to come in contact with patron's skin must be kept in

clean, closed containers, and must conform in all respects to the requirements of the Pure Food and Drug Law. Any product apportioned for use and removed from original containers must be distributed in a sanitary manner that prevents contamination of product or container. Any product dispensed in portions into another container must be dispensed into a sanitized container and applied to patrons by means of a disinfected or disposable implement or other sanitized methods. Any product dispensed in portions not dispensed into another container must be used immediately and applied to patrons by means of a disinfected or disposable implement or other sanitized methods. No product dispensed in portions may be returned to the original container.

(n) As used in this Rule whirlpool or footspa means any basin using circulating water.

(o) After use by each patron each whirlpool or footspa must be cleaned and disinfected as follows:

- (1) All water must be drained and all debris removed from the basin;
- (2) The basin must be disinfected by filling the basin with water and circulating:
 - (A) Two tablespoons of automatic dishwashing powder and 1/4 cup of 5.25 percent household bleach to one gallon of water through the unit for 10 minutes; or
 - (B) Surfactant or enzymatic soap with an EPA registered disinfectant with bactericidal, tuberculocidal, fungicidal and virucidal activity used according to manufacturer's instructions through the unit for 10 minutes;
- (3) The basin must be drained and rinsed with clean water; and
- (4) The basin must be wiped dry with a clean towel.

(p) At the end of the day each whirlpool or footspa must be cleaned and disinfected as follows:

- (1) The screen must be removed and all debris trapped behind the screen removed;
- (2) The screen and the inlet must be washed with surfactant or enzymatic soap or detergent and rinsed with clean water;
- (3) Before replacing the screen one of the following procedures must be performed:
 - (A) The screen must be totally immersed in a household bleach solution of 1/4 cup of 5.25 percent household bleach to one gallon of water for 10 minutes; or
 - (B) The screen must be totally immersed in an EPA registered disinfectant with bactericidal tuberculocidal, fungicidal and virucidal activity in accordance to the manufacturer's instructions for 10 minutes;
- (4) The inlet and area behind the screen must be cleaned with a brush and surfactant soap and

water to remove all visible debris and residue; and

- (5) The spa system must be flushed with low sudsing surfactant or enzymatic soap and warm water for at least 10 minutes and then rinsed and drained.
- (q) Every week after cleaning and disinfecting pursuant to Paragraphs (a) and (b) of this Rule each whirlpool and footspa must be cleaned and disinfected in the following manner:
 - (1) The whirlpool or footspa basin must be filled with water and 1/4 cup of 5.25 percent household bleach for each one gallon of water or EPA registered disinfectant with bactericidal, tuberculocidal, fungicidal and virucidal activity in accordance to the manufacturer's instructions; and
 - (2) The whirlpool or footspa system must be flushed with the bleach and water or EPA registered disinfectant solution for 10 minutes and allowed to sit for at least six hours; and
 - (3) The whirlpool or footspa system must be drained and flushed with water before use by a patron.
- (r) A record must be made of the date and time of each cleaning and disinfecting as required by this Rule including the date, time, reason and name of the staff member who performed the cleaning. This record must be made for each whirlpool or footspa and must be kept and made available for at least 90 days upon request by either a patron or inspector.
- (s) The water in a vaporizer machine must be emptied daily and the unit disinfected daily after emptying.
- (t) The area where services are performed that come in contact with the patron's skin including treatment chairs, treatment tables and beds shall be disinfected between patrons.

History Note: Authority G.S. 88B-2; 88B-4; 88B-14; Eff. April 1, 2012.

21 NCAC 14H .0404 FIRST AID

- (a) Each cosmetic art shop and school must have antiseptics, gloves or finger guards, sterile bandages and other necessary supplies available to provide first aid.
- (b) If the skin of the licensee or student is punctured, the licensee or student shall immediately do the following:
 - (1) Apply antiseptic and a sterilized bandage;
 - (2) Disinfect any implement exposed to blood before proceeding; and
 - (3) Put on disposable, protective gloves or a finger guard.
- (c) If the skin of the patron is punctured, the licensee or student shall immediately do the following:
 - (1) Make available to the patron antiseptic and a sterilized bandage;
 - (2) Disinfect any implement exposed to blood before proceeding; and
 - (3) Put on disposable, protective gloves or a finger guard.

History Note: Authority G.S. 88B-2; 88B-4; 88B-14;

Eff. April 1, 2012.

21 NCAC 14H .0501 INSPECTION OF COSMETIC ART SHOPS

- (a) A newly established cosmetic art shop, a shop which has been closed for more than 90 days, or a shop which has changed ownership must file an application for licensure with the Board prior to opening. A newly established cosmetic art shop, a shop which has been closed for more than 90 days, a shop which has changed ownership or a shop which has been operating without a license shall be inspected before a license will be issued.
- (b) Each cosmetic art shop must pass inspection by an agent of the Board pursuant to this Subchapter. Inspections shall be conducted annually and may be conducted without notice.

History Note: Authority G.S. 88B-2; 88B-4; 88B-14; 88B-27; Eff. April 1, 2012.

21 NCAC 14H .0502 FAILURE TO PERMIT INSPECTION

If an inspector is twice unable to inspect a salon after making an appointment to inspect the salon the Board may initiate proceedings to revoke or suspend the salon license or may refuse to renew the shop license.

History Note: Authority G.S. 88B-2; 88B-4; 88B-14; 88B-27; Eff. April 1, 2012.

21 NCAC 14H .0503 SANITARY RATINGS AND POSTING OF RATINGS

- (a) The sanitary rating of a beauty establishment shall be based on a system of grading outlined in this Subchapter. Based on the grading, all establishments shall be rated in the following manner:
 - (1) all establishments receiving a rating of at least 90 percent or more shall be awarded a grade A;
 - (2) all establishments receiving a rating of at least 80 percent, and less than 90 percent, shall be awarded grade B;
 - (3) all establishments receiving a rating of at least 70 percent or more, and less than 80 percent shall be awarded grade C;
 - (4) any cosmetic art shop or school with a sanitation grade of 70 percent or below shall be awarded a failed inspection notice.
- (b) Every beauty establishment shall be given a sanitary rating. A cosmetic art school shall be graded no less than three times a year, and a cosmetic art shop shall be graded once a year.
- (c) The sanitary rating or failed inspection notice given to a beauty establishment shall be posted in plain sight near the front entryway at all times.
- (d) All new establishments must receive a rating of at least 90 percent before a license will be issued.
- (e) The operation of a cosmetic art shop or school which fails to receive a sanitary rating of at least 70 percent (grade C) shall be sufficient cause for revoking or suspending the license.
- (f) A re-inspection for the purpose of raising the sanitary rating of a beauty establishment shall not be given within 30 days of

the last inspection unless the rating at the last inspection was less than 80 percent.

(g) A whirlpool and footspa sanitation record must be kept on each whirlpool and footspa for inspection on a form provided by the Board.

(h) All cosmetic art shops and schools with a failed inspection report shall be sufficient cause for the immediate suspension of licensure. All cosmetic art shops and schools with a failed inspection report must close until the sanitation conditions have improved to be awarded a passing grade.

(i) Mobile cosmetic art shops and schools are prohibited.

(j) A copy of the itemized and graded inspection report must be provided to the operator at the time of the inspection.

History Note: Authority G.S. 88B-2; 88B-4; 88B-14; 88B-26; 88B-27;

Eff. April 1, 2012.

21 NCAC 14H .0504 SYSTEMS OF GRADING BEAUTY ESTABLISHMENTS

The system of grading the sanitary rating of cosmetic art schools and shops based on the rules set out in this subchapter shall be as follows, setting out areas to be inspected and considered, and the maximum points given for compliance:

Sanitation	Point Value
Each licensee and student shall wash his or her hands with soap and water or an equally effective cleansing agent immediately before and after serving each client.	2
Each licensee and student shall wear clean garments and shoes while serving patrons.	2
The cosmetic art facility shall be kept clean.	3
Waste material shall be kept in receptacles with a disposable liner. The area surrounding the waste receptacles shall be maintained in a sanitary manner.	4
All doors and windows shall be kept clean.	2
Furniture, equipment, floors, walls, ceilings and fixtures must be clean and in good repair.	3
Clean protective capes, drapes, linens and towels shall be used for each patron.	3
After a cape, drape, linen or towel has been in contact with a patron's skin it shall be placed in a clean, closed container until laundered with soap and hot water and dried in a heated dryer.	5
Any paper or nonwoven protective drape or covering shall be discarded after one use.	2
There shall be a supply of clean protective drapes, linens and towels at all times.	2
Clean drapes, capes, linens and towels shall be stored in a clean area.	5
Bathroom facilities must be kept cleaned.	3
All implements shall be washed with warm water and a cleaning solution and scrubbed to remove debris and dried.	2
All implements shall be disinfected.	10
All disinfected electrical implements shall be stored in a clean area.	2
Disposable and porous implements and supplies must be discarded after use or upon completion of the service.	10
Any product that comes into contact with the patron must be discarded upon completion of the service.	3
Disinfected implements must be kept in a clean closed cabinet or clean closed container and must not be stored with any implement or item that has not been disinfected.	10
Lancets, disposable razors, and other sharp objects shall be disposed in puncture-resistant containers.	2
All creams, lotions, wax, cosmetics, and other products dispensed to come in contact with patron's skin must be kept in clean, closed containers and dispensed in a sanitary manner. No product dispensed in portions may be returned to the container.	10
After each patron's use each whirlpool or footspa must be cleaned and disinfected.	10
The water in a vaporizer machine must be emptied daily and the unit disinfected daily.	2
The area where services are performed that come in contact with the patron's skin including chairs, tables and beds shall be disinfected between patrons.	3

History Note: Authority G.S. 88B-2; 88B-4; 88B-14; 88B-23; 88B-26;

Eff. April 1, 2012.

21 NCAC 14H .0505 RULE COMPLIANCE AND ENFORCEMENT MEASURES

(a) The use of or possession of the following products or equipment in a school or shop shall result in civil penalty in the amount of three hundred dollars (\$300.00) per container of product or piece of equipment:

- (1) Methyl Methacrylate Liquid Monomer a.k.a. MMA; or
- (2) Razor-type callus shavers designed and intended to cut growths of skin including but not limited to skin tags, corns and calluses.

(b) The use of or possession of the following in a school or shop shall result in civil penalty in the amount of one hundred dollars (\$100.00) per use or possession:

- (1) Animals including insects, fish, amphibians, reptiles, birds or mammals to perform any service; or
- (2) Variable speed electrical nail file on the natural nail unless it has been designed for use on the natural nail.

(c) The action of any student or licensee to violate the Board rules in the following manner shall result in civil penalty in the amount of one hundred dollars (\$100.00) per instance of each action:

- (1) Use of any product, implement or piece of equipment in any manner other than the product's, implement's or equipment's intended use as described or detailed by the manufacturer;
- (2) Diagnosis of any medical condition or treatment of any medical condition unless referred by a physician; or
- (3) Use of any product that will penetrate the dermis; or
- (4) Provision of any service unless trained prior to performing the service; or
- (5) Performance of services on a client if the licensee has reason to believe the client has any of the following:
 - (A) a contagious condition or disease;
 - (B) inflamed infected, broken, raised or swollen skin or nail tissue; or
 - (C) an open wound or sore in the area to be worked on; or
- (6) Alteration of or duplication of a license issued by the Board; or
- (7) Advertisement or solicitation of clients in any form of communication in a manner that is false or misleading; or
- (8) Use of any FDA rated class II device without the documented supervision of a licensed physician.

(d) The presence of animals or birds in a cosmetic art shop or school shall result in civil penalty in the amount of twenty-five dollars (\$25.00) per animal or bird. Fish in an enclosure and animals trained for the purpose of accompanying disabled persons are exempt.

(e) The failure to record the date and time of each cleaning and disinfecting of a footspa in a cosmetic art school or shop as

required by this Subchapter including the date, time, reason and name of the staff member who performed the cleaning or the failure to keep or make such record available for at least 90 days upon request by either a patron or inspector shall result in civil penalty in the amount of twenty-five dollars (\$25.00) per footspa.

(f) The failure to clean and disinfect a footspa in a cosmetic art shop or school as required by this Subchapter shall result in civil penalty in the amount of one hundred dollars (\$100.00) per footspa.

(g) The failure to maintain in a cosmetic art shop and school antiseptics, gloves or finger guards, and sterile bandages available to provide first aid shall result in civil penalty in the amount of twenty-five dollars (\$25.00) per item.

(h) The failure to maintain a sink with hot and cold running water in the clinic area, separate from restrooms, shall result in civil penalty in the amount of one hundred dollars (\$100.00).

(i) The failure to maintain a water supply within 20 feet of the door or 25 feet from the service table or chair shall result in civil penalty in the amount of fifty dollars (\$50.00) per inspection occurrence.

(j) The failure to provide ventilation at all times in the areas where patrons are serviced in all cosmetic art shops shall result in civil penalty in the amount of twenty-five dollars (\$25.00).

(k) The failure to effectively screen all doors and windows open for ventilation shall result in civil penalty in the amount of twenty-five dollars (\$25.00).

(l) The failure to maintain equipment and supplies necessary to safely perform any cosmetic art service offered in the shop shall result in civil penalty in the amount of one hundred dollars (\$100.00).

(m) The failure to maintain a sanitation grade of 80 percent or higher shall result in a civil penalty in the amount of two hundred dollars (\$200.00).

(n) Repeated violations of the rules in this Subchapter exceeding three written notifications of any one rule documented to any one individual, shop or school shall result in a mandatory disciplinary hearing.

History Note: Authority G.S. 88B-2; 88B-4; 88B-14; 88B-23; 88B-24; 88B-26; 88B-27; Eff. April 1, 2012.

21 NCAC 14R .0105 CONTINUING EDUCATION

(a) Each licensee wishing to maintain his/her license shall obtain continuing education during each licensing period. The licensee shall maintain records of attendance of a continuing education course including the following information:

- (1) Course title and description;
- (2) Date conducted;
- (3) Address of location where the course was conducted; and
- (4) Continuing education hours earned.

(b) Each licensee must ensure at least 50 percent of subject matter broadens the licensee's knowledge of the cosmetic arts profession.

(c) Each instructor must ensure at least 50 percent of subject matter relates to teacher training techniques and enhance the ability to communicate.

(d) The continuing education shall be approved by the board providing it meets the requirements above.

(e) Audits of the licensee's continuing education may be conducted at any time. Upon the Board's request each licensee shall provide completed records to the Board.

(f) The Board may suspend a license, revoke a license, or deny the renewal of any license of any licensee who fails to comply with any provision of the rules in this Subchapter. Written justification of the suspension, denial, or revocation shall be given.

(g) Continuing education courses completed prior to an individual's being licensed by the Board shall not qualify for continuing education credit.

(h) Apprentices do not need to earn continuing education for renewal.

(i) Licensees are exempt from eight hours of continuing education requirements until the licensing period commencing after their initial licensure.

(j) After completion of the continuing education requirements for any licensing cycle the licensee shall forward the following:

- (1) the license renewal application;
- (2) the license renewal fee; and
- (3) A date and signature affirming the following pledge: "I hereby certify that I have obtained all continuing education hours required in accordance with the general statute and board rules and regulations. I am aware that false or dishonest misleading information may be grounds for 1) disciplinary action against my license; and further that 2) false statements are punishable by law."

(k) Failure to produce documents or file a response to a request for audit from the Board within 30 days of the request shall result in civil penalty to the licensee in the amount of two hundred fifty dollars (\$250.00).

(l) The presentation of fraudulent continuing education documentation to the Board by a licensee shall result in civil penalty of five hundred dollars (\$500.00).

(m) Licensees in inactive status can reactivate licensure by taking no less than eight hours of continuing education per year of inactivity up to 24 total hours.

History Note: Authority G.S. 88B-2; 88B-4; 88B-21; 88B-24; 88B-29;
Eff. April 1, 2012.

CHAPTER 29 – LOCKSMITH LICENSING BOARD

21 NCAC 29 .0405 EXEMPTION FROM EXAMINATION

History Note: Authority G.S. 74F-6;
Temporary Adoption Eff. August 13, 2002;
Eff. August 1, 2004;
Repealed Eff. April 1, 2012.

21 NCAC 29 .0503 PROTECTION OF THE PUBLIC INTEREST

(a) Locksmiths shall refrain from allowing their specialized skills, knowledge, or access to tools and information to be used in any manner that puts the safety and security of the public at risk.

(b) If a locksmith suspects wrongful intent or misrepresentation by a potential client, the locksmith shall refuse service and shall notify the law enforcement agency with jurisdiction.

(c) Locksmiths shall not knowingly infringe a restricted key system.

(d) Locksmiths shall record the identity of the customer for all service calls in which the locksmith opens a vehicle, building, room or secured container, or originates a key or in any other fashion provides the customer with access to any such property.

(e) Locksmiths shall endeavor to install all locking devices in compliance with all relevant codes, such as Uniform Building Code, National Fire Protection Association, and Americans with Disabilities Act and any local codes or ordinances which regulate architectural hardware. Locksmiths shall not install a locking device which produces a threat to life safety. If such a (pre-existing) condition is encountered, the locksmith shall inform the client and recommend appropriate remedial action.

(f) Locksmiths shall not become a party to disputes of ownership or authority. When an authorization dispute is deemed likely to arise, the locksmith shall advise the law enforcement agency having jurisdiction and request the presence of a uniformed officer. The locksmith shall refuse to provide service when there is an unresolved dispute of ownership or authority. Only instructions from a uniformed law enforcement officer or a court order shall be accepted as resolution of any such dispute.

(g) Locksmiths shall not knowingly interfere with the maintenance of a master key system. When master keyed cylinders are encountered, the key presented without its corresponding master key shall be presumed to be a subordinate key until otherwise determined. An attempt must be made to determine the holder of the master key and seek authorization for cylinder changes or key origination before such service is performed.

(h) Locksmiths shall keep key biting arrays, file keys and all client information confidential. Locksmiths shall not release any information or security device, such as a master key or safe combination, to any person without verifying that the recipient is entitled to receive it.

History Note: Authority G.S. 74F-6;
Temporary Adoption Eff. August 13, 2002;
Eff. August 1, 2004;
Amended Eff. April 1, 2012.

21 NCAC 29 .0802 REQUIREMENTS

(a) Every licensee shall obtain 24 contact hours of continuing education during each 3-year renewal cycle, except:

- (1) Persons exempted from eight contact hours in Rule .0805 of this Section; and
- (2) Persons who:
 - (A) are at least 62 years of age;

APPROVED RULES

- (B) have at least 15 years of experience as locksmiths;
- (C) have been North Carolina licensed locksmiths for at least nine years; and
- (D) are not subject to an investigation by the Locksmith Licensing Board.

(b) The contact hours of continuing education shall be in technical and professional subjects directly related to the practice of locksmithing.

(c) Licensees shall not carry forward any contact hours of continuing education into the subsequent renewal period.

(d) Licensees shall verify completion of the contact hours of continuing education for the previous license period with their application for license renewal.

*History Note: Authority G.S. 74F-6;
Eff. February 1, 2005;
Amended Eff. April 1, 2012.*

RULES REVIEW COMMISSION

This Section contains information for the meeting of the Rules Review Commission on Thursday May 1, 2012 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 2nd business day before the meeting. Please refer to RRC rules codified in 26 NCAC 05.

RULES REVIEW COMMISSION MEMBERS

Appointed by Senate

Addison Bell
Margaret Currin
Pete Osborne
Bob Rippy
Faylene Whitaker

Appointed by House

Ralph A. Walker
Curtis Venable
George Lucier
Garth K. Dunklin
Stephanie Simpson

COMMISSION COUNSEL

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

RULES REVIEW COMMISSION MEETING DATES

May 17, 2012 June 21, 2012
July 19, 2012 August 16, 2012

AGENDA

RULES REVIEW COMMISSION

Thursday, May 17, 2012 10:00 A.M.

1711 New Hope Church Rd., Raleigh, NC 27609

- I. Ethics reminder by the chair as set out in G.S. 138A-15(e)
- II. Approval of the minutes from the last meeting
- III. Follow-Up Matters:
 - A. Department of Transportation – 19A NCAC 02D .0531, .0532 (Bryan)
 - B. State Personnel Commission – 25 NCAC 01J .1101 (Bryan)
- IV. Review of Log of Filings (Permanent Rules) for rules filed between March 21, 2012 and April 20, 2012
- V. Review of Log of Filings (Temporary Rules) for any rule filed within 15 business days of the RRC Meeting
- VI. Commission Business
 - Next meeting: June 21, 2012

Commission Review

Log of Permanent Rule Filings

March 21, 2012 through April 20, 2012

GASOLINE AND OIL INSPECTION BOARD

The rules in Chapter 42 concern the gasoline and oil inspection board including purpose and definitions (.0100); quality of liquid fuel products (.0200); sale of gasoline (.0300); dispensing devices and pumps (.0400); registration and branding (.0500); condemned motor fuels and liquid fuels (.0600); and oxygenated gasoline.

Labeling of Dispensing Devices

02 NCAC 42 .0401

Amend/*

PUBLIC HEALTH, COMMISSION FOR

The rules in Chapter 41 concern epidemiology health.

The rules in Subchapter 41A deal with communicable disease control and include reporting of communicable diseases (.0100); control measures for communicable diseases including special control measures (.0200-.0300); immunization (.0400); purchase and distribution of vaccine (.0500); special program/project funding (.0600); licensed nursing home services (.0700); communicable disease grants and contracts (.0800); and biological agent registry (.0900).

Control Measures Tuberculosis
Amend/**

10A NCAC 41A .0205

CRIMINAL JUSTICE EDUCATION AND TRAINING STANDARDS COMMISSION

The rules in Chapter 9 are from the Criminal Justice Education and Training Standards Commission. This Commission has primary responsibility for setting statewide education, training, employment, and retention standards for criminal justice personnel (not including sheriffs).

The rules in Subchapter 9B cover minimum standards for: employment (.0100); schools and training programs (.0200); criminal justice instructors (.0300); completion of training (.0400); school directors (.0500); and certification of post-secondary criminal justice education programs (.0600).

Documentation of Educational Requirements
Amend/*

12 NCAC 09B .0106

Admission of Trainees
Amend/*

12 NCAC 09B .0203

Terms and Conditions of Specialized Instructor Certification
Amend/*

12 NCAC 09B .0305

The rules in Subchapter 9D concern professional certificate programs including law enforcement officers' professional certificate program (.0100); and criminal justice officers' professional certificate program (.0200).

General Provisions
Amend/*

12 NCAC 09D .0102

General Provisions
Amend/*

12 NCAC 09D .0202

The rules in Subchapter 9E relate to the law enforcement officers' in-service training program.

Required Annual In-Service Training Topics
Amend/*

12 NCAC 09E .0102

Minimum Training Specifications: Annual In-Service Training
Amend/*

12 NCAC 09E .0105

The rules in Subchapter 9G are the standards for correction including scope, applicability and definitions (.0100); minimum standards for certification of correctional officers, probation/parole officers, and probation/parole officers-intermediate (.0200); certification of correctional officers, probation/parole officers, probation/parole officers intermediate and instructors (.0300); minimum standards for training of correctional officers, probation/parole officers, and probation/parole officers-intermediate (.0400); enforcement of rules (.0500); professional certification program (.0600); and forms (.0700).

Moral Character
Amend/*

12 NCAC 09G .0206

Terms and Conditions of General Instructor Certification

12 NCAC 09G .0309

Amend/*	
<u>Terms and Conditions of Specialized Instructor Certification</u>	12 NCAC 09G .0311
Adopt/*	
<u>General Provisions</u>	12 NCAC 09G .0602
Amend/*	

HEARING AID DEALERS AND FITTERS BOARD

The rules in Subchapter 22F concern general examination and license provisions.

<u>Time of Examinations</u>	21 NCAC 22F .0101
Amend/*	
<u>Submission of Applications and Fees</u>	21 NCAC 22F .0103
Amend/*	
<u>Communication of Results of Examinations</u>	21 NCAC 22F .0107
Amend/*	
<u>Training and Supervision</u>	21 NCAC 22F .0114
Amend/*	

REAL ESTATE COMMISSION

The rules in Chapter 58 are from the North Carolina Real Estate Commission.

The rules in Subchapter 58A are rules relating to real estate brokers and salesmen including rules dealing with general brokerage (.0100); application for license (.0300); examinations (.0400); licensing (.0500); real estate commission hearings (.0600); petitions for rules (.0700); rulemaking (.0800); declaratory rulings (.0900); real estate recovery fund (.1400); forms (.1500); discriminatory practices prohibited (.1600); mandatory continuing education (.1700); limited nonresident commercial licensing (.1800); post-licensure education (.1900); annual reports (.2000); and brokers in military service (.2100).

<u>Residential Property and Owners' Association Disclosure S...</u>	21 NCAC 58A .0114
Amend/*	

This Section contains the full text of some of the more significant Administrative Law Judge decisions along with an index to all recent contested cases decisions which are filed under North Carolina's Administrative Procedure Act. Copies of the decisions listed in the index and not published are available upon request for a minimal charge by contacting the Office of Administrative Hearings, (919) 431-3000. Also, the Contested Case Decisions are available on the Internet at <http://www.ncoah.com/hearings>.

OFFICE OF ADMINISTRATIVE HEARINGS

Chief Administrative Law Judge
JULIAN MANN, III

Senior Administrative Law Judge
FRED G. MORRISON JR.

ADMINISTRATIVE LAW JUDGES

Beecher R. Gray
Selina Brooks
Melissa Owens Lassiter
Don Overby

Randall May
A. B. Elkins II
Joe Webster

<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>DATE</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
<u>ALCOHOLIC BEVERAGE CONTROL COMMISSION</u>			
ABC Commission v. TruVisions Enterprises, LLC, T/A Touch	10 ABC 7025	06/29/11	26:06 NCR 509
Elm Street Connection LLC, DBA Bella Mea Coal Fired Pizza v. ABC Commission	10 ABC 06298	11/07/11	
ABC Commission v. Universal Entertainment, LLC T/A Zoo City Saloon	11 ABC 2294	07/05/11	
ABC Commission v. Quick Quality Inc., T/A Quick Quality	11 ABC 2543	07/19/11	
ABC Commission v. Lead C. Corp v. T/A Burger King/Shell Convenience Store	11 ABC 5066	10/19/11	
ABC Commission v. CK2, LLC, T/A Quick Mart	11 ABC 02087	02/29/11	26:20 NCR 1566
ABC Commission v. GK Mart Inc., T/A GK Mart	11 ABC 02647	07/22/11	
ABC Commission v. Universal Entertainment, LLC T/A Zoo City Saloon (name changed to El Patron Night Club and Bar)	11 ABC 06892	11/04/11	
ABC Commission v. Triangle Food and Fun LLC, T/A Six Forks Pub	11 ABC 07107	09/16/11	
ABC Commission v. CH Pub LLC, T/A Kildares Irish Pub	11 ABC 07109	08/16/11	
ABC Commission v. G K Mart Inc., T/A G K Mart	11 ABC 07110	03/12/12	
ABC Commission v. Andrea Michelle Douglas T/A Hot Spot Convenience	11 ABC 10547	02/03/12	
ABC Commission v. MBM of NC Inc, T/A Super Mart 3	11 ABC 10549	11/15/11	
ABC Commission v. Octobers, Inc., T/A Toxaway House Restaurant	11 ABC 10955	12/20/11	
ABC Commission v. Charles Franklin Liles, T/A Leather Pockets Billiards and Lounge	11 ABC 11584	11/15/11	
ABC Commission v. Cueva de Lobos LLC v. T/A Cueva de Lobos Mexican Restaurant	11 ABC 11588	02/03/12	
ABC Commission v. FFM Bar Inc. T/A Drifters Country Saloon	11 ABC 11589	02/03/12	
ABC Commission v. Fat Cats Grill and Oyster Bar, Inc., T/A Fat Cats Grill and Oyster Bar	11 ABC 12674	02/28/12	
ABC Commission v. Stanley Ray Edwards, T/A Woogies	11 ABC 12968	01/04/12	
ABC Commission v. Walter Anthony Cox, T/A Dirty T's Tavern	11 ABC 13604	02/28/12	
<u>BOARD OF BARBER EXAMINERS</u>			
Michael Lindsey v. Board of Barber Examiners	11 BBE 09307	01/11/12	
<u>BOARD OF MASSAGE AND BODYWORK THERAPY</u>			
Byung Yoon Kim v. Board of Massage and Bodywork Therapy	11 BMT 09241	09/30/11	
<u>BOARD OF FUNERAL SERVICE</u>			
Board of Funeral Service v. David B. Lawson and David B. Lawson Mortuary, Inc	11 BMS 01794	11/08/11	26:20 NCR 1574
Board of Funeral Service v. David B. Lawson and David B. Lawson Mortuary, Inc	11 BMS 11820	11/08/11	26:20 NCR 1574
<u>BOARD OF NURSING</u>			
Daniel J Gleber v. Board of Nursing, Donna Mooney	11 BON 13615	01/27/12	
<u>DEPARTMENT OF CRIME CONTROL AND PUBLIC SAFETY</u>			
Donnie R. Holbrook, Susan R Holbrook v. Victim and Justice Service	09 CPS 0449	08/19/11	

CONTESTED CASE DECISIONS

Felicia G. Awaritoma v. Crime Victims Compensation Commission	10 CPS 01451	09/01/11	
Larry Overby v. Department of Crime Control Victim Compensation Division	10 CPS 06106	10/14/11	
Dianne Moody Costello v. Victim and Justice Services	11 CPS 05780	06/20/11	
Kimberly A. Whiteside v. Crime Victims Compensation Commission	11 CPS 08900	12/12/11	
Judy D. Hinson v. Department of Crime Control and Public Safety	11 CPS 08984	11/14/11	
Angie T. Hawkins v. Victims Compensation Commission	11 CPS 09142	12/19/11	
Gregory Keith Moseley v. Crime Victim Compensation	11 CPS 09309	11/14/11	
Rosalena Merriam v. Victims Compensation	11 CPS 09780	09/19/11	
Mary R Cameron v. Victim Compensation Services, NC Dept of Crime Control & Public Safety	12 CPS 00429	02/28/12	
DEPARTMENT OF HEALTH AND HUMAN SERVICES			
Gail Taylor-Hilliard v. DHHS	09 DHR 2455	11/02/11	
Scott M. Jensen, DMD v. DHHS, Division of Medical Assistance	09 DHR 3252	06/21/11	
Association of Home and Hospice Care of North Carolina, Inc., v. DMA, DHHS	09 DHR 6765	10/12/11	
Nanette B Daniels v. DHHS, Medical Examiner's Office	09 DHR 05281	10/07/11	26:16 NCR 1218
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	
Qingxia Chen and Chen Family Child Care Home Inc v. Division of Child Development	10 DHR 0790	07/29/11	
Theracare Home Health and Staffing, LLC v. DHHS, Division of Medical Assistance Program Integrity	10 DHR 1455	06/01/11	
Ronnie Newton v. DHHS, Division of Health Service Regulation	10 DHR 2172	08/22/11	
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	
Doris Kumba Abu v. DHHS, Division of Health Service Regulation	10 DHR 3995	12/22/11	
Qingxia Chen and Chen Family Child Care Home Inc v. Division of Child Development	10 DHR 4182	07/29/11	
Nanny's Korner Care Center by Mrs. Bernice M. Cromartie CEO v. DHHS, Division of Child Development	10 DHR 4241	12/21/11	
WakeMed v. DHHS, Division of Health Service Regulation, CON Section and Rex Hospital, Inc, d/b/a Rex Healthcare, Holly Springs Surgery Center, LLC and Novant Health, Inc	10 DHR 5274	05/17/11	26:04 NCR 274
Rex Hospital Inc d/b/a Rex Healthcare v. DHHS, Division of Health Service Regulation, CON Section And WakeMed, Springs Surgery Center, LLC and Novant Health, Inc	10 DHR 5275	05/17/11	26:04 NCR 274
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	
Carteret Family Practice Clinic, P.A., v. DHHS, DMA, Program Integrity Section	10 DHR 5859	07/13/11	26:06 NCR 516
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	
Yalonda Coleman v. Coleman Health Facility v. DHHS	10 DHR 6465	12/20/11	
Grover L. Hunt v. DHHS, Division of Health Service Regulation, Health Care Personnel Registry Section	10 DHR 6710	05/25/11	
Christopher Sanders v. DHHS, Division of Health Service Regulation, Health Care Personnel Registry	10 DHR 7511	06/23/11	
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	
Geraldine Highsmith, Pediatric Therapy Associates v. DHHS	10 DHR 8735	07/08/11	
First Path Home Care Services, Gregory Lockler v. DHHS	10 DHR 8736	09/20/11	
Randall Ephraim v. DHHS, Division of Health Service Regulation	10 DHR 9278	09/12/11	
Coretta Francine Hicks v. Health Care Registry	10 DHR 01065	08/19/11	
Brenda P Simms v. Longleaf Neuromedical Treatment Center, Dept. of Health and Human Services	10 DHR 01572	10/14/11	
Marcell Gunter, Alternative Life Programs Inc. v. DHHS, Durham Center LME and DMA (CSCEVC NC Medicaid Provider)	10 DHR 03827	06/23/11	
Cherry's Family Care #2, Albert Dominique Cherry v. DHHS, Regulations Adult Care License Section	10 DHR 04057	11/01/11	
Julia L. Dawes v. DHHS, Division of Health Service Regulation	10 DHR 04669	11/03/11	
Revonda McCluney Smith v. DHHS, Division of Health Service Regulation	10 DHR 04755	09/29/11	
Tonya M. Faison v. DHHS, Division of Health Service Regulation	10 DHR 05355	11/07/11	
Angela E. Bynum v. DHHS, Division of Health Service Regulation	10 DHR 05654	11/07/11	
American Human Services Inc, v. DHHS, Division of Medical Assistance	10 DHR 05575	08/19/11	26:06 NCR 540
Chera L Dargan v. Department of Health and Human Services Registry	10 DHR 05796	09/01/11	
Yourlinda Farrish v. DHHS, Division of Health Service Regulation	10 DHR 06107	11/07/11	
Gwendolyn Fox, Trinity III v. DMA Program Integrity DMA Controller's Section	10 DHR 06499	09/01/11	
Carter Behavior Health Services Inc. Terry Speller v. DMA/Program Integrity	10 DHR 06715	10/14/11	
WakeMed v. DHHS, Division of Health Service Regulation, CON Section	10 DHR 08008	08/19/11	26:08 NCR 705
Terry Melvin v. Health Care Personnel Registry	10 DHR 08545	10/26/11	
Edna Lee v. DHHS, Division of Health Service Regulation	10 DHR 08938	07/22/11	
Eugene J Byrom v. DHHS, Division of Health Service Regulation	10 DHR 09629	01/04/12	26:20 NCR 1587
Yolanda M. Brown v. Health Care Registry Personnel	10 DHR 09708	07/14/11	
James L. Graham v. DHHS, Division of Health Service Regulation, Health Care Personnel Registry Section	10 DHR 0303	06/28/11	
Geraldine Highsmith, Pediatric Therapy Associates v. DHHS	10 DHR 0691	07/08/11	
Geraldine Highsmith, Pediatric Therapy Associates v. DHHS	10 DHR 0762	07/08/11	
Geraldine Highsmith, Pediatric Therapy Associates v. DHHS	10 DHR 0763	07/08/11	
Angela Clark v. DHHS	11 DHR 1565	06/03/11	
Geraldine Highsmith, Pediatric Therapy Associates v. DHHS	11 DHR 2021	07/08/11	
April G. Cooper v. Edgecombe County, Dept. of Social Services (DHHS) Food Stamps	11 DHR 2146	06/15/11	

CONTESTED CASE DECISIONS

Patricia Anne Edwards v. DHHS, Division of Child Development	11 DHR 2149	06/06/11	
Nicole Shante McGee v. DHHS, Division of Facility Services, Health Care Personnel	11 DHR 2355	08/08/11	
Demetrius L. Brooks v. DHHS, Division of Health Service Regulation	11 DHR 2441	06/30/11	
Koisey Lorlu Dahn v. DHHS, Division of Health Service Regulation	11 DHR 2443	09/08/11	
Danielle Whitman v. DHHS	11 DHR 2709	08/08/11	
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	
Regina Michelle Massey v. DHHS, Division of Health Service Regulation	11 DHR 3107	12/08/11	
Daphne Davis v. DHHS, Division of Facility Services, Health Care Personnel Registry	11 DHR 3110	07/13/11	
Hee Soon Kwon d/b/a Beatties Ford Mart v. DHHS	11 DHR 3168	07/18/11	
Rai Care Centers of North Carolina II, LLC d/b/a Rai Care Centers-Concord v. DHHS, Division of Health Service Regulation, Certificate of Need Section and Total Renal Care of North Carolina	11 DHR 3173	12/15/11	
Willie and Vivian Blount v. DHHS, Division of Social Services, Regulatory and Licensing Services	11 DHR 3174	12/05/11	
Nellie v. Mitchell, Little Lamb's Daycare v. DHHS, Division of Child Development	11 DHR 3391	06/13/11	
The Charlotte-Mecklenburg Hospital Authority d/b/a Carolinas Rehabilitation-Mount Holly and d/b/a Carolinas Healthcare System v. DHHS, Division of Health Service Regulation, Certificate Of Need Section and Caromount Health, Inc. and Gaston Memorial Hospital, Inc.,	11 DHR 3396	12/13/11	
Rai Care Centers of North Carolina II, LLC d/b/a Rai Care Centers-Concord v. DHHS, Division of Health Service Regulation, Certificate of Need Section and Total Renal Care of North Carolina	11 DHR 3476	12/15/11	
Yolanda McKinnon v. DHHS, Division of Child Development	11 DHR 4117	06/09/11	
Kenneth Dellinger Executive Office KD Support Services d/b/a Kellys Care #5 v. DHHS, Division of Health Care Service Regulation Adult Care Licensure Section	11 DHR 4755	07/14/11	
Amy Robinson v. DHHS, Division of Facility Services	11 DHR 4758	07/27/11	
Angelicia Linney v. Alexander County DSS	11 DHR 4965	06/21/11	
Robin Whittsett-Crite/RJ Whittsett Residential Services v. DHHS	11 DHR 5146	07/12/11	
Caromount Health, Inc., Gaston Memorial Hospital, Inc., and Caromount Ambulatory Services, LLC d/b/a Caromount Endoscopy Center v. DHHS, Division of Health Services, Division of Health Service Regulation, Certificate of Need Section and Greater Gaston Center, LLC	11 DHR 5177	01/19/12	
Stephanie L. Phillips v. DHHS, Division of Child Development	11 DHR 5520	01/22/12	
Teresa Hall v. DHHS	11 DHR 5948	12/05/11	
Kathy Daniels v. CNS Registry	11 DHR 6318	08/04/11	
Calvin E. Cowan, Shirley Cowan v. DHHS	11 DHR 6880	08/16/11	
Melody Barnette v. Department of Social Services	11 DHR 7330	09/06/11	
Samuel Swindell v. DHHS, Regulatory and Licensing Section and Alexander Youth Network	11 DHR 8314	08/22/11	
Hetu Ngandu v. DHHS, Division of Health Service Regulation	11 DHR 00084	11/14/11	
Joyce Muhammad v. DHHS	11 DHR 00198	07/11/11	
Abiemwense Osagie v. DHHS, Health Service Regulation, Health Care Personnel Registry	11 DHR 00462	12/02/11	
Sarah Wanjiku Wambaa v. DHHS, Division of Health Service Regulation	11 DHR 01256	01/20/12	
Support Staff v. DHHS, Division of Medical Assistance	11 DHR 01449	07/11/11	
Pamela Terry – President/Administrator PALS-Magnolia v. DHHS, Division of Health Service Regulation Mental Health Licensure & Certification Section	11 DHR 01952	09/06/11	
Rashea Fields v. DHHS, Division of Health Service Regulation	11 DHR 02088	11/07/11	
Maithily H Patel v. Nutrition Service Branch, DHHS	11 DHR 02144	06/30/11	
Julia Ellen Brown v. DHHS, Division of Medical Assistance	11 DHR 02145	12/19/11	
Richard G. Ruffin v. DHHS	11 DHR 02295	11/01/11	
Diane Adams v. DHHS, Healthcare Personnel Registry	11 DHR 02987	10/13/11	
Rosanna Vernetta Leigh v. DHHS, Division of Health Service Regulation	11 DHR 03108	02/27/12	26:20 NCR 1592
Kishja Marlin v. DHHS	11 DHR 03313	07/07/11	
John Kato v. DHHS, Division of Health Service Regulation	11 DHR 03388	12/07/11	
Wonne Mills v. Department of Social Services/Fraud Department, Office of Administrative Hearings	11 DHR 03389	06/27/11	
Beau A. Davis v. DHHS	11 DHR 03691	06/20/11	
Edna Lee v. DHHS, Division of Health Service Regulation	11 DHR 03836	07/22/11	
Bertha's Place Inc, Wayne Louis Garris v. Mecklenburg County LME	11 DHR 04186	06/17/11	
Karana Kolivia Wallace v. DHHS	11 DHR 04190	11/14/11	
Crystal Lashay Eason v. DHHS, Division of Health Service Regulation, Health Care Personnel Registry	11 DHR 04473	08/12/11	
Nicole McGee v. Health Care Personnel Registry	11 DHR 04475	06/17/11	
Nyanga G. (Godee) Lumumba v. DHHS	11 DHR 01387	06/24/11	
Nyanga G. (Godee) Lumumba v. DHHS	11 DHR 01913	06/24/11	
Harvest Learning Center, LLC v. DHHS, Division of Child Development	11 DHR 04754	01/10/12	
Dondra R. Sugg v. Carteret County Social Services Food Stamp	11 DHR 04958	07/15/11	
Joann Everette v. Division of Child Development	11 DHR 04963	11/01/11	
Sandra Davis v. DHHS, Division of Medical Assistance	11 DHR 04967	08/29/11	
Stepping Stones Group Homes Inc v. DHHS, Division Of Health Service Regulation Mental Health	11 DHR 05068	07/19/11	

CONTESTED CASE DECISIONS

Licensure and Certification			
Sarah Wanjiku Wambaa v. DHHS, Division of Health Service Regulation	11 DHR 05144	01/20/12	
Donna Alicia Pant Deese v. DHHS, Division of Health Service Regulation, Health Care Personnel Register	11 DHR 05295	02/14/12	26:20 NCR 1597
Leslie Cowans v. DHHS, Division of Health Services Regulation	11 DHR 05426	09/08/11	
Janet K Wallace v. DHHS, Division of Health Service Regulation	11 DHR 05517	10/11/11	
Jerris McPhail v. Department of Health and Human Services	11 DHR 05518	07/19/11	
Cynthia Neely v. Dept. of Social Services	11 DHR 05786	07/28/11	
Sneed Academy, Anniassianna Sneed v. DHHS, Child Development Division	11 DHR 05885	12/05/11	
Tonya Monique Little v. Health Care Personnel Registry	11 DHR 06066	10/04/11	
Bobby F Huskey v. Dept. of Health and Human Service Division Health Service Regulation	11 DHR 06238	08/04/11	
Silverette Denise Swindell v. DHHS	11 DHR 06429	08/11/11	
Recovery Center of Durham v. Division of Health Service Regulation	11 DHR 06491	09/15/11	
Sandra Grace and Making Changes, Inc., v. The Beacon Center and DHHS	11 DHR 06792	08/26/11	
Comprehensive Rehab of Wilson Inc. Eileen R Carter v. Office of Controller DMA-Accounts Receivable, Rheba C Heggs	11 DHR 07331	08/18/11	
Darnell Holman v. DHHS, Division of Health Service Regulation	11 DHR 07856	09/23/11	
Teresa Slye v. DHHS, Office of the Chief Medical Examiner	11 DHR 07858	08/19/11	
Nicole Jackson v. DHHS, Division of Health Service Regulation	11 DHR 08103	08/22/11	
Tony Ledwell v. DHHS, Division of Health Service Regulation	11 DHR 08158	08/31/11	
Kevin Warren v. Health Care Personnel Registry	11 DHR 08552	08/23/11	
Jenny Michelle Lee v. DHHS, Division of Health Service Regulation	11 DHR 08558	11/30/11	
Orlando Stephen Murphy v. DHHS, Division of Health Service Regulation Health Care Personnel Health Care Personnel Registry Section	11 DHR 08677	03/05/12	
Aspirations and Miracles Community Support LLC, Embracing Change Center Inc & Embracing Change Services Inc v. DHHS, Division of Mental Health Developmental Disability and Substance Abuse Services, The Beacon Center, Edgecombe County, Local Management Entity & Karen Salaki Area Director in Her Official & Personal Capacities	11 DHR 08712	01/03/12	
At Home Personal Care Services Inc., v. DHHS, Division of Medical Assistance	11 DHR 08755	02/13/12	26:20 NCR 1607
Annette Adams v. DHHS, Division of Health Service Regulation	11 DHR 08897	09/19/11	
Robin R Chavis v. Division of Child Development, DHHS	11 DHR 08932	10/14/11	
Carson Daycare, Brenda Carson v. Division of Child Development – DHHS	11 DHR 09030	09/23/11	
Sherry Marie Jones v. Health Care Personnel Registry HCPR Investigations Branch	11 DHR 09146	09/29/11	
Charlene Johnson v. DHHS, Division of Health and Human Services	11 DHR 09147	11/10/11	
Bruce Buley v. DHHS, Division of Medical Assistance	11 DHR 09197	12/12/11	
Family Intervention & Prevention Services LLC, a North Carolina limited liability company	11 DHR 09243	08/05/11	
Audrey A Crawford v. DHHS	11 DHR 09308	09/09/11	
Ronald Theodore Harlee v. DHHS, Division of Health Service Regulation	11 DHR 09677	11/04/11	
Christina Bullard v. DHHS, Division of Health Service Regulation	11 DHR 09717	01/03/12	26:20 NCR 1619
Chenye Melton v. Health Care Personnel Registry	11 DHR 09839	12/01/11	
Precious Haven Inc, Melissa McAllister v. DHHS, Program Integrity	11 DHR 10077	12/12/11	
Booby Jean Graves v. Health Care Personnel Registry	11 DHR 10120	11/29/11	
Virgil Hutchinson/Southeastern Behavioral Healthcare Services LLC v. DHHS, Division of Health Service Regulation, Mental Health Licensure and Certification	11 DHR 10170	12/12/11	
Hope Mills v. DHHS, Health Services Regulation	11 DHR 10738	10/11/11	
Cathy Crosland v. DHHS	11 DHR 10959	11/01/11	
Shenika Boller v. DHHS, Division of Health Service Regulation, Health Care Personnel Registry	11 DHR 11280	01/12/12	
Tawanda Thompson v. DHHS, Division of Health Care	11 DHR 11321	12/08/11	
Shenika Boller v. DHHS, Division of Health Service Regulation, Health Care Personnel Registry	11 DHR 11733	01/12/12	
Trina Jackson v. Richmond County, Department of Social Services	11 DHR 12017	02/28/12	
Elizabeth Young v. Division of Child Development, DHHS	11 DHR 12802	01/20/12	
Carolyn S. Harris v. Division of Child Development, DHHS	11 DHR 13905	02/01/12	
Charlene Johnson v. DHHS, Division of Health Service Regulation	12 DHR 00523	02/29/12	

DEPARTMENT OF CORRECTION

Andria Lambert v. DOC	10 DOC 3417	08/11/11	
Robert Lee Hood v. DOC	11 DOC 7655	08/16/11	
John Channon Engle v. Department of Correction	11 DOC 07333	07/11/11	

DEPARTMENT OF JUSTICE

Timothy Scott Phillips v. Criminal Justice Education and Training Standards Commission	10 DOJ 2518	07/20/11	
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	
John Patrick Harris v. Sheriffs' Education and Training Standards Commission	10 DOJ 7772	07/21/11	
Robert Scott MacFayden v. Sheriffs' Education and Training Standards Commission	10 DOJ 7773	06/01/11	
Mark Mauldin v. Criminal Justice Education and Training Standards Commission	10 DOJ 00583	11/28/11	26:16 NCR 1349
Ahmed Joseph Blake v. Criminal Justice Education and Training Standards Commission	10 DOJ 03791	10/04/11	
Bryson Lawrence Cornett v. Criminal Justice Education and Training Standards Commission	10 DOJ 05279	10/31/11	26:16 NCR 1336
Thomas Lee Midgette v. Criminal Justice Education and Training Standards Commission	10 DOJ 07778	10/14/11	
Darryll Grey DeCotis v. Criminal Justice Education and Training Standards Commission	10 DOJ 07779	12/22/11	26:20 NCR 1628
Ikeisha Simone Jacobs v. Criminal Justice Education and Training Standards Commission	10 DOJ 07780	07/15/11	
Edwards Lee Bombria, IV v. Sheriffs' Education and Training Standards Commission	10 DOJ 08360	07/14/11	

CONTESTED CASE DECISIONS

Clifford Allan Jones v. Sheriffs' Education and Training Standards Commission	11 DOJ 2018	06/28/11	
Richard Alan Hadley v. Sheriffs' Education and Training Standards Commission	11 DOJ 2019	07/28/11	
Kristopher Adam Vance v. Sheriffs' Education and Training Standards Commission	11 DOJ 2020	07/21/11	
Jason Timothy Winters v. Sheriffs' Education and Training Standards Commission	11 DOJ 4825	07/28/11	
James Robert Graham v. Private Protective Services Board	11 DOJ 4956	09/09/11	
Heath Dwayne Kinney v. Alarm Systems Licensing Board	11 DOJ 4957	06/28/11	
Eric Steven Britt v. Alarm Systems Licensing Board	11 DOJ 5515	07/21/11	
Darren Jay Taylor v. Alarm Systems Licensing Board	11 DOJ 5516	07/21/11	
William Edgard Whidbee v. Sheriffs' Education and Training Standards Commission	11 DOJ 6778	09/03/11	
Clarence Carroll Hill v. Sheriffs' Education and Training Standards Commission	11 DOJ 6782	12/13/11	
Vakesha Barcliff Skinner v. Sheriffs' Education and Training Standards Commission	11 DOJ 6783	10/17/11	
Lisa Michelle Thomas v. Sheriffs' Education and Training Standards Commission	11 DOJ 6784	11/29/11	26:16 NCR 1375
John Benjamin Whitehurst v. Criminal Justice Education and Training Standards Commission	11 DOJ 6786	12/29/11	
Laduan Vinyah Jacobs v. Private Protective Services Board	11 DOJ 7650	07/21/11	
Glen Thomas Buckner v. Alarm Systems Licensing Board	11 DOJ 8429	09/09/11	
Charles William Evegan v. Sheriffs' Education and Training Standards Commission	11 DOJ 02016	06/03/11	
Darius Antuan McLean v. Sheriffs' Education and Training Standards Commission	11 DOJ 04824	07/11/11	
Dustin Elvin Campbell v. Criminal Justice Education and Training Standards Commission	11 DOJ 04832	08/30/11	
Drew Wayne Adkins v. Sheriffs' Education and Training Standards Commission	11 DOJ 06780	08/15/11	
Brandon Scott Faucette v. Sheriffs' Education and Training Standards Commission	11 DOJ 06785	10/24/11	
Robert Wayne Gregg v. Criminal Justice Education and Training Standards Commission	11 DOJ 06787	08/04/11	
Gary Richard Sessons v. Criminal Justice Education and Training Standards Commission	11 DOJ 06790	08/30/11	
Miriam A. Pearson v. DOJ, Campus Police Program	11 DOJ 07218	10/20/11	
Mary Rhene Freedle v. Private Protective Services Board	11 DOJ 08430	01/05/12	
Charles Hubert Beatty v. Private Protective Services Board	11 DOJ 08757	01/05/12	
James Bennett Barbour v. Office of Administrative Hearings, Company Police Program	11 DOJ 09435	11/01/12	
John Forest Dupree v. Private Protective Services Board	11 DOJ 09436	10/19/12	
Rodney Dale; Class (John Doe) Health Taylor Gerard v. State of North Carolina, Department of Justice, Charlotte Mecklenburg Police Department, Mecklenburg County Superior Court, Mecklenburg County Sheriffs' Office, Mecklenburg County Attorney's Office	11 DOJ 09708	08/10/11	
Charles Lovelace Williams v. Criminal Justice Education and Training Standards Commission	11 DOJ 10313	10/25/11	
Dustin Matthew James v. Criminal Justice Education and Training Standards Commission	11 DOJ 10314	10/31/11	
Horatio Vernon Cameron Jr v. Criminal Justice Education and Training Standards Commission	11 DOJ 10317	01/09/12	
Stacey Lanier Green v. Criminal Justice Education and Training Standards Commission	11 DOJ 10319	01/06/12	
Julian Maurice Sideberry v. Criminal Justice Education and Training Standards Commission	11 DOJ 10320	12/12/11	
David Lee Putman v. Criminal Justice Education and Training Standards Commission	11 DOJ 10321	10/26/11	
Grover W. Singleton v. Private Protective Services Board	11 DOJ 10366	11/14/11	
Cameron Reed Greer v. Alarm Systems Licensing Board	11 DOJ 11399	11/10/11	
Ernest A. Rhyne v. Private Protective Services Board	11 DOJ 11546	01/10/12	
Roy R. Carpenter v. Private Protective Services Board	11 DOJ 11547	01/10/12	
Joshua O. Brown v. Private Protective Services Board	11 DOJ 11590	01/10/12	
Melvin Eugene Honeycutt Jr. v. Alarm Systems Licensing Board	11 DOJ 12446	12/29/11	
Corey Phillip Bauer v. Alarm Systems Licensing Board	11 DOJ 12477	12/21/11	
Joland Hancock Beverly v. Private Protective Services Board	11 DOJ 13034	01/05/12	
Chanita Hopson v. Sheriffs' Education and Training Standards	11 DOJ 13149	02/03/12	

DEPARTMENT OF LABOR

Hilliard Glass Company, Inc v. Department of Labor, Wage and Hour Bureau	11 DOL 07329	07/15/11
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DEPARTMENT OF TRANSPORTATION

Whalebone Chevron v. DOT	11 DOT 08554	12/06/11
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DEPARTMENT OF STATE TREASURER

Malcolm Woodall v. Department of State Treasurer, Retirement Systems Division	10 DST 6343	09/01/11
Edwinna Sexton v. DST, Retirement Systems Divisions	10 DST 02710	10/23/11
John E. Legette v. Retirement System	10 DST 07375	10/18/11
Evelyn C Howard v. Department of State Treasurer, Retirement Systems Division	11 DST 02726	10/31/11
William H Borden v. Department of State Treasurer Retirement Systems Division	11 DST 10072	01/04/12

STATE BOARD OF EDUCATION

Ralph David Surridge v. Board of Education, June Atkinson, Superintendent of Public Instruction	09 EDC 06818	01/25/12
Jeffery Covington v. State Board of Education	10 EDC 7273	06/21/11
Barbara Cheskin v. The Appeals Panel for Graduate Pay Approval and Non-Teaching Work Experience Credit Public Schools of NC		
Joseph Dawson v. State Board of Education	10 EDC 06744	07/25/11
Paula Frances v. Department of Public Instruction State Superintendent's Ethic Committee	11 EDC 02922	01/06/12
Charla Ann Lewallen v. State Board of Education	11 EDC 04191	07/20/11
Barbara Cheskin v. The Appeals Panel For Graduate Pay Approval and Non-Teaching Work Experience Credit Public Schools of NC	11 EDC 04952	10/11/11
Claire Scarborough-Hakin v. Department of Public Instruction	11 EDC 07328	11/22/11
Janice Lucille Muse v. Public Schools of North Carolina State Board of Education, Department of Public Instruction	11 EDC 08155	07/19/11
Stephanie Alina Sossamon v. Dept. of Public Instruction	11 EDC 08431	07/19/11

DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

Superior Realty, LLC v. DENR	09 EHR 6631	06/10/11	
William & Kathy Teague v. DENR, Division of Coastal Management	10 EHR 4673	12/19/11	26:20 NCR 1652
James & Vicky Snead v. DENR, Division of Coastal Management	10 EHR 4674	12/19/11	26:20 NCR 1652
Alvin Raynor v. DENR, Division of Coastal Management	10 EHR 4689	12/19/11	26:20 NCR 1652
Floyd A. Rager, Jr., and Marianne Rager v. Cherokee Co. Health Department, DENR	10 EHR 6163	07/20/11	
Rose Acre Farms, Inc., NPDES Permit No. NCA 148024 and NC Poultry Federation Inc. v. DENR	10 EHR 6501	10/17/11	26:16 NCR 1383
Farmington Square LLC, Jawahar Muniyandi v. City of Raleigh Stormwater Management	10 EHR 01613	07/14/11	
Kevan Busik v. DENR, Division of Coastal Management and 1118 Longwood Avenue, Realty Corporation	10 EHR 08355	06/01/11	26:05 NCR 427
Jeff Snavelly/Triad Siteworks Inc v. NCDENR	11 EHR 2475	06/06/11	
Mary Louies Haggins v. Environmental Service, Terra Jane Barnhill	11 EHR 03694	07/21/11	
Jeryl D Jones v. DENR	11 EHR 04312	08/31/11	
Chris & Mary Ricksen v. Swain County Health Department, DENR	11 EHR 05427	08/05/11	
Carolyn Grayson Owens and Guy Owens	11 EHR 11866	10/04/11	

DEPARTMENT OF INSURANCE

Janet McKillop v. Blue Cross Blue Shield of, State Health Plan	11 INS 2711	08/04/11	
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OFFICE OF STATE PERSONNEL

Charline Emory v. DHHS, O'Berry Neuro-Medical Treatment Center	09 OSP 4492	11/18/11	26:16 NCR 1239
Lewis Ray Murray v. NCSU	09 OSP 00570	08/30/11	
Millie E. Hershner v. DOA and The NC Human Relations Commission	09 OSP 06538	02/03/12	26:20 NCR 1672
Sandra J. Barile v. Dare County Department of Social Services	10 OSP 0469	07/11/11	
Vlzdimir Zaytsev v. DENR	10 OSP 0905	07/13/11	
Gary W. Buchanan v. DOC	10 OSP 3181	07/15/11	
Mary Bach v. Gaston County DSS	10 OSP 3419	06/23/11	
Daniel Wayne Creson v. DOC	10 OSP 4113	06/16/11	
Robert Lindsey v. Department of Correction	10 OSP 5362	07/05/11	
Beverly M. Terry v. County of Durham, Department of Social Services	10 OSP 5765	07/26/11	26:06 NCR 526
Christopher Sanders v. DHHS	10 OSP 5943	06/23/11	
Katherine Kwesell Harris v. DOT, Retirement of Systems Division	10 OSP 5946	08/24/11	
Jason M. Grady v. J. Iverson Riddle Developmental Center	10 OSP 6002	12/09/11	
Charlotte Boyd v. DOT	10 OSP 6533	06/17/11	
Vivian Parker v. DOC	10 OSP 6901	09/26/11	26:16 NCR 1401
Tanisha M. Moore v. DOC	10 OSP 7756	12/06/11	
Denise Mclean v. DOC	10 OSP 8549	08/01/11	
Laren Pinnix-Ingram v. Cabarrus County DSS	10 OSP 9271	09/13/11	
Dewayne Johnson v. Department of Correction	10 OSP 9415	01/26/12	
Johnathan Wesley Bunn v. Albemarle Correctional Institution	10 OSP 03990	01/06/12	
Major Anthony Moss v. Butner Public Safety, a Division of the North Carolina Department of Crime Control and Public Safety	10 OSP 05078	11/22/11	26:16 NCR 1423
Earlene F. Hicks v. State Health Plan	10 OSP 06200	09/19/11	
Cynthia White v. School of Science and Math	10 OSP 06491	07/21/11	
Tiffany Ann Benson v. Debbie Hughes, DOC	10 OSP 07416	01/18/12	26:20 NCR 1695
Shelia A. Hawley v. DOC, EEO/Title VII Section	10 OSP 07698	10/28/11	
Fay Lassiter v. Department of Correction, Division of Prisons	10 OSP 07880	12/19/11	
Barbara Jenkins v. Department of Commerce/NCIC	10 OSP 08215	08/15/11	
Michael Shaw v. NCCU	10 OSP 09086	12/21/11	
Reginald Lyons v. Fayetteville State University	11 OSP 0510	08/19/11	
Melissa A McLean v. Ms. Gerri Robinson, MSW Social Services Director, Durham County, Dept. of Social Services	11 OSP 1379	06/03/11	
Teneysia M. Perry v. NCCU-Human Resources, James Dockery	11 OSP 1920	12/08/11	
Oswald Woode v. DHHS	11 OSP 1960	12/09/11	
Cheryl Simmons v. Department of Corrections	11 OSP 2720	01/25/12	26:20 NCR 1719
Vickie D. Randleman v. NCSU	11 OSP 3838	06/09/11	
David Hill v. DOC	11 OSP 4671	02/03/12	26:20 NCR 1733
Mary K. Severt v. Iredell Dept. of Social Services	11 OSP 4757	06/27/11	
Damien C Washington v. Caswell Development Center	11 OSP 4819	02/29/12	
Carol Ann Melton v. Allen Reed Rutherford Correctional Center	11 OSP 5143	07/14/11	
Dr. Arlise McKinney v. UNC at Greensboro	11 OSP 6163	07/14/11	
Olewole Popoola v. DHHS, Dorothea Dix Hospital	11 OSP 9962	10/04/10	
Christopher L Swayzer v. Department of Social Services	11 OSP 06767	10/25/11	
Lynnette Cole v. Davidson County	11 OSP 10019	07/26/11	
Henry Dennis Tysor III v. Dept. of Corrections, Fountain Corrections	11 OSP 02643	07/12/11	
Jessie M Chambers v. Brown Creek Correctional Institution	11 OSP 03747	06/23/11	
Janet R Reed v. Brunswick County, Department of Social Services	11 OSP 03751	02/17/12	26:21 NCR 1807
Archie Andrew Copeland v. Department of Juvenile Justice and Delinquency Prevention	11 OSP 04591	02/02/12	26:21 NCR 1814
David Wesley Vondiford v. DOT	11 OSP 04954	07/29/11	
Kennedy Willams v. UNC Charlotte	11 OSP 06901	10/26/11	
Tiffany Lashanda Elkerson v. RJ Blackley ADATC	11 OSP 08106	10/07/11	
John Fargher v. DOT	11 OSP 08111	12/15/11	

CONTESTED CASE DECISIONS

Willie McBryde v. DOC	11 OSP 08112	12/09/11
Kimberly B. Allison v. Office of Administrative Office of the Courts	11 OSP 08847	08/15/11
Elton Bryan Weaver v. Duplin Soil & Water Conservation District, Mike Aldridge, County Manager, Donna Rouse, Department Head	11 OSP 09303	02/03/12
Clark D. Whitlow v. Human Resource Department of Charlotte Mecklenburg Library	11 OSP 10873	12/08/11
Helaina Himson v. Department of Public Instruction	11 OSP 11404	03/05/12
Renee Delores Roberts v. Department of Administration	11 OSP 11457	12/15/11
Natalynn P. Tollison v. Patty Killion, PHP Department N.C. State University	11 OSP 11732	02/15/12
Katherine Kwesell Harris v. Dr. Barry Sheperd, Superintendent and Cabarrus County Schools, State of North Carolina	11 OSP 11735	12/13/11
Salwah Holder-Lucky v. Department of Community Corrections Probation, Parole Division	11 OSP 11865	01/06/12
Natalynn P. Tollison v. Dan McWhorter, CVM Academic Affairs, N.C. State University	11 OSP 11958	02/15/12
Devin Drye v. DOT, Division of Motor Vehicles	11 OSP 12181	02/29/12
Ricky Simmons v. Employment Security Commission	11 OSP 12323	02/01/12
Wanda Edwards v. UNC-Dental Facility Practice ("UNC-DEP"), Office of the Vice Chancellor for Human Resources	11 OSP 13045	01/20/12
Onie Whitely v. Gay Long Disability Determination Services	11 OSP 13211	12/22/11
Herman Jones v. Department of Corrections, Alvin W. Keller Jr., Secretary Bianca N. Harris, Warden	11 OSP 13607	02/27/12
Jeff Sloan v. Chancellor Harold L. Martin Sr and William B. Harvey and Melody C. Pierce at North Carolina A&T University	11 OSP 14884	03/01/12
Ray Barrett Flowers v. Department of Cultural Resources, Division of State Historic Site/Jim Steele Manager, Fort Fisher State Historical Site	12 OSP 00115	02/22/12

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
Jennifer M Bingham v. State of NC Department of Secretary of State, Notary Enforcement Section	11 SOS 12321	01/30/12

UNC HOSPITALS

Arthur R. Morris, Jr., v. UNC Hospitals	11 UNC 3693	11/16/11
Mirian Rodriguaz Rayes v. UNC Hospitals	11 UNC 03556	12/06/11
Julie D Laramie v. UNC Hospital	11 UNC 03625	12/06/11
Elizabeth Pate v. UNC Hospital Systems	11 UNC 06879	08/31/11
Linda K Shaw v. UNC Hospitals	11 UNC 09432	09/30/11

Filed

STATE OF NORTH CAROLINA 2012 FEB 17 AM 11: 51 IN THE OFFICE OF
COUNTY OF BRUNSWICK Office of ADMINISTRATIVE HEARINGS
Administrative Hearings 11 OSP 03751

Janet R Reed)	
Petitioner)	
)	
vs.)	DECISION
)	
Brunswick County Dept of Social Services)	
Respondent)	

This matter comes on to be heard and being heard by the Hon. Donald W. Overby, Administrative Law Judge presiding, upon the Petition of Janet Reed filed with the Office of Administrative Hearings on the 28th day of March, 2011. The Petitioner's Petition alleges that the Petitioner was discharged without just cause and for failure to receive priority consideration.

Present for the hearing were the Petitioner, Janet Reed, appearing *pro se*.

The Respondent Brunswick County Department of Social Services appeared represented by Counsel, Huey Marshall.

PROCEDURAL ISSUE

Respondent filed a Motion to Dismiss with OAH on April 21, 2011. By Order dated June 29, 2011, Judge Melissa Owens Lassiter denied that motion.

Respondent filed an identical Motion to Dismiss on August 15, 2011. The only change was the date the motion was signed. This matter was reassigned to the undersigned ALJ on August 22, 2011. By Order dated August 22, 2011, the Motion was denied.

When this matter was called for hearing, counsel for Respondent referred to having filed a motion previously that he would address later. The only motion was the motions to dismiss. At the conclusion of the evidence, Respondent renewed its motion to dismiss. This ALJ referred to a Court Appeals decision, although not by name, that is on point, and which states:

Our Courts have thus clearly held that one judge may not reconsider the legal conclusions of another judge. *Woolridge*, 357 N.C. at 549-50, 592 S.E.2d at 194. There is a limited exception to this rule for interlocutory orders addressed to the discretion of the trial court: "If the initial ruling is one which was addressed to the discretion of the trial judge, another trial judge may rehear an issue and enter a contradictory ruling if there has been a material change in the circumstances of the parties." When a judge ... rules as a matter of law, whether he allows or disallows the motion, no discretion is involved and his ruling finally determines the rights of the parties unless it is reversed upon appeal.

Adkins v. Stanly County Bd. of Educ., 203 N.C. App. 642, 692 S.E.2d 470, 473 (2010)

There has been no assertion or a material change in the circumstances of the parties. The Respondent's motion was denied at the close of the evidence. In as much as Respondent raised the issue in its post-hearing submissions, the Motion is still denied.

WITNESSES

The Respondent called two witnesses:

Glenda Harper, Petitioner's Supervisor

Mr. Neil Walters, Acting Director for Respondent

Petitioner testified on her own behalf.

FINDINGS OF FACT

1. This matter is properly before the Office of Administrative Hearings ("OAH"), which has both personal and subject matter jurisdiction. The parties were properly noticed for hearing.

2. At all times relevant to this proceeding, Petitioner was a career state employee, as defined by N.C. Gen. Stat. § 126-1, and was subject to the provisions of the State Personnel Act.

3. The uncontroverted testimony of the Petitioner is that she was employed by the Respondent from January 26, 2006, to January 18, 2011. She would have vested for retirement purposes in eight (8) days.

4. Testimony from Respondent is that there were problems with Petitioner's attendance almost from the outset of her employment and that she had had seven written warnings for tardiness. Respondent's Exhibit 4 shows a listing of the seven purported written warnings.

5. Only three written warnings were introduced into evidence, dated April 19, 2010, June 1, 2010, and October 14, 2010. All others were more than twelve months old at the time of Petitioner's pre-disciplinary meeting. Therefore, it must be assumed these other written warnings were not considered by Respondent in making the decision to terminate Petitioner's employment. They were not considered in this decision.

6. Petitioner was out of work on Family Medical Leave dating back to at least September, 2009. The certification for the first time she went out on FMLA status, dated October 5, 2009, cites that Petitioner was "unable to interact with people due to anxiety and stress. . . . Patient having job related stress and anxiety. She reports this anxiety is due to continual harassment by her supervisor."

7. The second certification for FML, dated October 19, 2010, likewise cites stress and anxiety. This certification states that the Petitioner would be prevented from performing her job functions "if the work environment is unchanged."

8. The uncontroverted testimony is that Petitioner functioned well in the various work settings with the exception of the "front desk." Petitioner's family physician's office provided Respondent with a note dated September 28, 2010 that stated that Petitioner's medical condition would be adversely affected if she were to be transferred back to the front desk and recommended allowing her to continue at the same work location. This note was provided three weeks prior to the family physician certifying Petitioner for FMLA.

9. Petitioner had provided Respondent with a Brunswick County Wellness Center dated September 16, 2010, which likewise stated that it was very stressful for Petitioner to work the front desk and that to do so would cause her anxiety. Respondent's witness Ms. Harper told Petitioner that note was not sufficient. The only reason Ms. Harper gave for rejecting that note was because of Ms. Harper's personal opinion of the person who had written the note.

10. During Ms. Harper's relatively brief testimony, she stated that she could not remember, or words to that effect, at least eighteen times, all in response to questions asked by Petitioner. During times when she could remember, she corroborated Petitioner's contentions.

11. Ms. Harper initially testified that she did not remember if Petitioner had ever discussed her medical conditions with her. She did not remember Petitioner was under a Doctor's care. However, she did ultimately remember that she was aware that Petitioner was suffering from depression, anxiety and panic attacks.

12. Ms. Harper would have been aware of Petitioner's conditions at least as far back as 2009 when Petitioner first went out on medical leave. Also, she would have been aware because Petitioner was physically taken by ambulance from Respondent's place of business on two occasions.

13. Ms. Harper had instituted a plan to rotate the various employees to the front desk; however, she was going to move the Petitioner back to the front desk at a time when she had two notes from medical care providers recommending against it, and at a time when at least two other employees had never worked the front desk. Some employees did not rotate at all.

14. Ms. Harper did not recall that Petitioner challenged one of the dates she was alleged to be tardy in that the system that recorded sign-in was not functioning properly. By email Petitioner immediately informed Ms. Harper of the problem and that others had problems with the system as well. The evidence that others had problems with the system is uncontroverted.

15. Ms. Harper did not remember that Petitioner was in the Human Resources office on another of the questioned dates, and that in fact the Human Resources officer called Ms. Harper to verify that. Petitioner was in the HR office to file for disability. This evidence is uncontroverted.

16. Petitioner's uncontroverted evidence is that she returned from having been on Family Medical Leave for three months, and was sent home one day after returning and was terminated on the very next day.

17. Neil Walters was acting director for Respondent. His first letter to establish a pre-disciplinary conference was dated October 14, 2010 and the conference was to be held the same day. Petitioner passed out and was physically unable to attend.

18. By letter dated October 21, 2010, Mr. Walters informed Petitioner that the pre-disciplinary conference would be scheduled on her return to work.

19. By letter dated January 12, 2011, Mr. Walters set the pre-disciplinary conference for 8:30 am on the day she would return to work, without specificity. There is no letter offered into evidence as a result of the pre-disciplinary conference which would have terminated her employment. That letter is essential in that it establishes the parameters for Petitioner's dismissal.

20. It is obvious that Respondent did in fact terminate her, because she pursued administrative remedies by appealing that decision, which went back to Mr. Walters; however, the subsequent correspondence does not obviate the necessity for the actual termination letter.

21. The reasons given for termination Petitioner's employment from the pre-disciplinary conference letter and from the post termination appeals letters shows that she was terminated primarily for habitual tardiness. The pre-disciplinary letter refers to absenteeism as a ground. There is no evidence of any problem with absenteeism, and the dismissal letter does not address it.

22. Mr. Walters did remember talking with Petitioner about her medical condition, but he does not remember why there were no accommodations made for her in light of two valid doctor's notes concerning her health issues.

23. Mr. Walters was not aware that Ms. Harper gave Petitioner another written warning on the very morning Petitioner was scheduled for a pre-disciplinary conference.

24. Mr. Walters responded to Petitioner's questions by answering that he did not remember or words to that effect at least eight times. To several other questions, he answered that he did not remember but what she was asking was probably correct.

25. The recommendation for dismissal came from Ms. Hardy to Mr. Walters.

26. Ms. Harper admits that she knows of no one else ever fired for being tardy, particularly within the last five years. Ms. Harper was employed with Respondent for twenty six years.

27. Although Respondent was on notice and aware of Petitioner's health issues, Respondent did absolutely nothing to try to accommodate her. In fact, just the opposite is true in that Respondent took actions which were detrimental to Petitioner contrary to two notes from doctors. There is no evidence that the accommodations could not have been made.

CONCLUSIONS OF LAW

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

2. Respondent has the burden of proof and has failed to carry that burden.

3. Petitioner is a career State employee. No career State employee may be terminated without "just cause." N.C.G.S. § 126-35.

4. The issue of "just cause" has been more defined by the North Carolina Supreme Court in *Carroll*:

Determining whether a public employer had just cause to discipline its employee requires two separate inquiries: first, "whether the employee engaged in the conduct the employer alleges," and second, "whether that conduct constitutes just cause for [the disciplinary action taken]."

N. Carolina Dept. of Env't & Natural Res. v. Carroll, 358 N.C. 649, 665-66, 599 S.E.2d 888, 898 (2004)

5. The first inquiry is one of fact. The Petitioner was terminated because of tardiness. There is some evidence that she was in fact tardy at times.

6. The second inquiry is whether the employee's conduct gave rise to "just cause" for the disciplinary action taken.

Nonetheless, the fundamental question in a case brought under N.C.G.S. § 126-35 is whether the disciplinary action taken was "just." Inevitably, this inquiry requires an irreducible act of judgment that cannot always be satisfied by the mechanical application of rules and regulations. "Just cause," like justice itself, is not susceptible of precise definition. It is a "flexible concept, embodying notions of equity and fairness," that can only be determined upon an examination of the facts and circumstances of each individual case.

North. Carolina Dept. of Env't & Natural Res. v. Carroll, 358 N.C. 649, 669, 599 S.E.2d 888, 900 (2004)

7. Under the facts and circumstances of this case, it was not “just” to terminate Petitioner for tardiness. The number of times she was tardy are not such as to justify her termination, especially in light of the fact that some of the times of alleged tardiness are not supported by competent evidence. No one else has been terminated by Respondent for tardiness. Most importantly, Respondent made no effort to make accommodations for Petitioner when it was on notice of her health issues, and the accommodations could have been made and she had functioned well in other settings at work.

8. Respondent was in error to terminate Petitioner. To terminate her under the facts and circumstances of this case was arbitrary and capricious

9. In Petitioner’s post-hearing submissions, she raises for the first time a question of discrimination. The petition only raised an issue of discharge without cause and failure to receive priority consideration. The issue of discrimination is not properly before this Tribunal.

DECISION

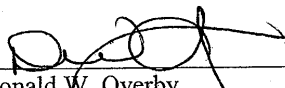
Respondent’s decision to terminate Petitioner should be and is hereby **REVERSED**. Petitioner is entitled to be restored to her position of employment, or to a comparable position with same pay grade. She is to be paid all compensation to which she would otherwise have been entitled since the date of her termination, including any and all benefits to which she would have been entitled.

ORDER AND NOTICE

Pursuant to N.C. Gen. Stat. § 150B-36(a), before the agency makes a Final Decision in this case, it is required to give each party an opportunity to file exceptions to this decision, and to present written arguments to those in the agency who will make the Final Decision. N.C. Gen. Stat. 150B-36(b)(3) requires the agency to serve a copy of its Final Decision on each party, and furnish a copy of its Final Decision to each party’s attorney of record and to the Office of Administrative Hearings, 6714 Mail Service Center, Raleigh, NC 27699-6714.

In so far as this matter involves a local government employee subject to Chapter 126 pursuant to North Carolina General Statute § 126-5(a)(2), the decision of the State Personnel Commission, absent a finding of discrimination, shall be advisory to the local appointing authority which shall render a Final Agency Decision. Further requirements of rights, notices and timelines to the Parties shall be forthcoming from the State Personnel Commission and/or the local appointing authority as the circumstances and stage of the process may dictate.

This the 17th day of February, 2012.

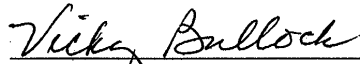

Donald W. Overby
Administrative Law Judge

A copy of the foregoing was mailed to:

Janet R Reed
9662 Holly Hills Drive NE
Leland, NC 28451
PETITIONER

Huey Marshall
County of Brunswick
PO Box 249
Bolivia, NC 28422-0249
ATTORNEY FOR RESPONDENT

This the 17th day of February, 2012.


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

Bobbi Wardlaw-Brown
Michael Rieder
Linda Washington
Sharyn Holt
Kim Davis-Gore
Karen McDonald
Brenda Logan

- P. Ex. 9: "Hand Delivered" Management Referral to EAP dated 24 May 2010
- P. Ex. 9A: Mandatory Deer Oaks EAP Services Referral Form signed by Human Resources Director
- P. Ex. 9B: Mandatory Deer Oaks EAP Services Referral Form signed by Petitioner dated 25 May 2010
- P. Ex. 9C: Deer Oaks EAP Services Authorization to Obtain/Exchange Information
- P. Ex. 12A: Temporary Restraining Order filed 1 June 2010
- P. Ex. 12C: Order Continuing Temporary Restraining Order filed 9 June 2010
- P. Ex. 13: Mutual Settlement Agreement and Release dated 19 October 2010
- P. Ex. 15B: Mandatory Deer Oaks EAP Services Referral Form signed by Petitioner dated 6 December 2010
- R. Ex. 1: Facsimile to Office of State Personnel (OSP)
- R. Ex. 2: Letter from OSP Accepting Investigation dated 22 March 2010
- R. Ex. 3: Investigations Roles and Responsibilities from OSP
- R. Ex. 4: Investigation Plan Timeline from OSP
- R. Ex. 5: Investigation Report from OSP
- R. Ex. 6: N.C. State Personnel Manual, Section 8. Workplace Violence
- R. Ex. 7: Letter from OSP Completing Investigation dated 24 May 2010
- R. Ex. 8: DJJDP: District 25 Organizational Chart
- R. Ex. 9: Letter from Michael Rieder to Petitioner dated 24 May 2010

- R. Ex. 10: Temporary Restraining Orders and Dismissal with Prejudice
- R. Ex. 11: Mutual Settlement Agreement dated 19 October 2010
- R. Ex. 12: E-mails from Michael Rieder
- R. Ex. 13: Mandatory Deer Oaks EAP Services Referral Form
- R. Ex. 14: DJJDP 16/HR 11.4. Human Resources/Staff Development and Training/Employee Assistance Program
- R. Ex. 15: DJJDP Policies signed by Petitioner
- R. Ex. 16: Facsimile from DJJDP to Deer Oaks EAP Services
- R. Ex. 18: Deer Oaks EAP Services Authorization Form dated 6 December 2010
- R. Ex. 19: Letter from Deer Oaks EAP Services dated 30 December 2010
- R. Ex. 20: Affidavit of Marilyn Barrera
- R. Ex. 21: Letter from Karen McDonald to Petitioner dated 19 January 2011
- R. Ex. 22: Letter from Karen McDonald to Petitioner dated 24 January 2011
- R. Ex. 23: Final Agency Decision dated 1 April 2011
- R. Ex. 24: E-mails from Karen McDonald
- R. Ex. 25: Pre-disciplinary Conference notes
- R. Ex. 26: Proposed Rules, North Carolina Register Vol. 17 Issue 21 dated 1 May 2003

EVIDENTIARY RULING

At hearing, Respondent's Exhibits 19 and 20 were offered through Sharyn Holt, the former Assistant Human Resources Manager for Respondent. Petitioner objected to the admission of Respondent's Exhibits 19 and 20 as hearsay. Respondent contended that the exhibits were admissible under the N.C.R. Evid. 803 business records exception, N.C.G.S. §150B-29, and 26 N.C.A.C. 03.0122. The undersigned reserved the right to make an evidentiary

ruling on Respondent's Exhibits marked 19 and 20 following the hearing.

Upon careful consideration, the undersigned rules that Respondent's Exhibit 20 (Affidavit) is not admitted. The affidavit does not contain evidence that has probative value and is therefore inadmissible. (26 NCAC 03.0122) Respondent's Exhibit 19 contains double hearsay regarding what Dr. Mumford reported to Deer Oaks EAP Services. The document does not include factual statements and at most includes only conclusory statements that Petitioner was not cooperative or compliant during the interview. Nevertheless, in the discretion of the understand finds that Respondent's Exhibit 19 is admitted pursuant to 26 NCAC 03.0122. This rule allow allows the ALJ, in its discretion, to admit all evidence that has probative value, and then give such evidence whatever weight is deemed appropriate. The probative value of Respondent's Exhibit 19 is scant. The only description of what Petitioner did or didn't do (that could possibly constitute evidence of non-compliance or non-cooperation) was that he failed to sign the required authorizations during the interview process. The undersigned finds as a matter of law that because of the existing Superior Court Restraining Order, Petitioner was not required to sign the authorization forms from Dr. Mumford's office. The undersigned also finds as a matter of law that Respondent's Exhibit 19 is not sufficiently probative of whether Petitioner was cooperative. The underlying reason given for Petitioner's termination was insubordination.

FINDINGS OF FACT

1. Petitioner Archie Andrew Copeland ("Petitioner") is a citizen and resident of Morganton, North Carolina.
2. Petitioner is at all relevant times a state employee pursuant to North Carolina General Statutes Chapter 126 with respect to Article 14 of Chapter 126, being at all relevant

times employed by the Respondent North Carolina Department of Respondent and Delinquency Prevention ("Respondent").

3. Petitioner had 15 years of service with DHHS and 16 years of service with Respondent. T. 503. At the time of his termination he was an Office Assistant IV. T. 503. In his 16 years of service up to the events of this case, he had no disciplinary history of any kind with Respondent. T. 503. At no time in his 16 years of service had Respondent ever accused Petitioner of insubordination. T. 503. From 2000 to 2006 Petitioner received an overall performance rating of "Outstanding," the highest rating given by Respondent. T. 421-422. See Respondent's Exhibit 5.

4. Respondent received a "hostile work environment" complaint about Petitioner from a co-worker.¹ Petitioner likewise submitted a "hostile work environment" complaint about a co-worker in his own right.

5. Respondent requested that the State Personnel Commission ("SPC") conduct an investigation of the "hostile work environment" against Petitioner. It did not make a similar request regarding Petitioner's complaint. Respondent did not inform the investigators from the SPC of Petitioner's own complaint.

6. In the interim, Petitioner through counsel filed a petition for a contested case hearing alleging that Respondent had violated the law by failing to remove inaccurate and misleading information from Petitioner's personnel file.

7. This Petition was filed in the OAH on February 10, 2010 and was titled *Archie Andrew Copeland v. North Carolina Department of Respondent and Delinquency Prevention*, 10 OSP 0587. Within 15 days of this filing, on February 24, 2010, Respondent escorted and barred Petitioner from the workplace on so-called "investigatory leave", apparently prompted by the OSP "investigation" of the "hostile work environment" complaint against Petitioner.

¹ As Respondent's witness Nellie Riley of the Office of State Personnel eventually conceded, there is no such thing as a "hostile work environment" charge in the state personnel definition except for sexual harassment cases, which was not an issue here.

8. On March 21, 2010, Respondent received the report from the OSP investigators. See Respondent's Exhibit 5. This report made numerous recommendations. The recommendation of real relevance to this proceeding is that the Respondent:

Require psychological fitness for duty exam for Mr. Copeland if the agency determines there is an objective and reasonable basis for the referral based on consistency with policy.

See Respondent's Exhibit 5.

9. The final report from OSP in which the above-referenced recommendation was contained was dated May 24, 2010. Linda Washington, Respondent's Human Resources Director of ten years, T. 390, testified that the decision to send Petitioner for a Fitness for Duty evaluation was made the same date.

10. Referrals for Fitness for Duty evaluations and other "EAP" ("Employee Assistance Program") are handled by a third party contractor based on Austin, Texas known as Deer Oaks, LLC ("Deer Oaks") Washington testified that referrals to Deer Oaks are made through the Human Resources department of Respondent. T. 306.

11. When asked, Washington could not state how many Fitness for Duty evaluations Respondent had ordered in the calendar year preceding the referral of Petitioner. T. 327.

12. Washington, claiming she was already familiar with the Respondent's EAP policy, did not review the Respondent's EAP policy before deciding that Petitioner should be ordered to the referral. T. 333.²

13. Reference the portion of the OSP recommendation, "if the agency determines that there is an objective and reasonable basis for the referral based on agency policy," Washington

² But see Washington's substantial failure to comply with the provisions of the policy, below.

identified no specific steps other than reading the report from OSP that Respondent undertook to determine that the potential referral was reasonable and consistent with policy. T. 332-334:

Q. What else did you do to determine whether [the fitness for duty referral] was consistent with the policy?

A. (No response).

Q. Anything?

A. Nothing else.

Q. Nothing else?

A. Uh-huh.

....

T. 332-34.

14. And indeed, Respondent's EAP policy is specifically inconsistent with State Personnel regulations. Respondent's EAP policy basically mirrors the former OSP EAP policy (including Fitness for Duty Evaluations: that was repealed in 2004 – six years prior to the events here.

SECTION .1000. STATE EMPLOYEES' ASSISTANCE PROGRAM

.1001 PURPOSE [REPEALED]

.1002 POLICY [REPEALED]

.1003 ORGANIZATION OF PROGRAM [REPEALED]

.1004 SERVICES OFFERED TO AGENCIES, UNIVERSITIES AND EMPLOYEES [REPEALED]

.1005 ELIGIBILITY FOR SERVICES [REPEALED]

.1006 SELF REFERRAL [REPEALED]

.1007 SUPERVISORY REFERRAL [REPEALED]

.1008 MANAGEMENT DIRECTED REFERRAL [REPEALED]

.1009 CONFIDENTIALITY [REPEALED]

.1010 RESPONSIBILITIES OF THE EMPLOYEE ASSISTANCE PROGRAM [REPEALED]

.1011 RESPONSIBILITIES OF AGENCIES/UNIVERSITIES [REPEALED]

.1012 PURPOSE³

15. The letter ordering Petitioner to the Fitness for Duty referral was likewise dated May 24, 2010 and was signed by Respondent's Deputy Secretary, Michael Rieder.

16. Rieder testified that he considered the Fitness for Duty evaluation recommendation "reasonable" if it came from the OSP. T. 248. But see the recommendation, which charges *Respondent* with reviewing the facts to ensure that such an evaluation is warranted. Rieder never read the recommendation. T. 249.

17. Prior to ordering Petitioner to the Fitness for Duty evaluation, Rieder did not review the OSP's EAP policies. T. 248. Rieder had no knowledge of what, if any, review his agency's human resources personnel undertook to see if the Fitness for Duty evaluation was reasonable and warranted, as directed by the OSP recommendation. T. 252-253. Rieder likewise had no knowledge of how long such a review would reasonably take, or if it would or should take longer than one day. T. 253.

18. On May 24, 2010, the same date as the OSP report, Petitioner and his counsel attended a settlement conference at the OAH with the Hon. Melissa Owens Lassiter. Petitioner's most recent continuation of "investigatory leave" had expired as of that day. At this conference, following the reaching on an agreement to settle 10 OSP 0587. Following that agreement, without previous discussion or warning, Washington presented Petitioner with a hand-delivered letter, signed by Rieder, ordering Petitioner's "referral" for a mandatory Fitness for Duty evaluation. See Respondent's Exhibit 9.

19. Under Respondent's EAP policy as written, a "Fitness for Duty" evaluation can only be directed upon certain specific findings, including communicating the "specific reasons for the fitness for duty evaluation". See Respondent's Exhibit 14. Respondent's letter of May 24, 2010 did not so communicate those specific reasons to Petitioner, but stated only:

³ Even if Respondent retained the authority to order Fitness for Duty evaluations under its policy despite the repeal of the governing OSP regulations providing for such evaluations, the evidence of Respondent's wholesale failure to comply with its own policies concerning the referral process is beyond dispute.

"The decision to refer you to EAP is due to your inappropriate conduct in the workplace and OSP recommendation after conducting their investigation into the allegations of inappropriate conduct creating a hostile work environment."

20. What constitutes the alleged "inappropriate conduct in the workplace" is not set forth in Respondent's May 24, 2010 letter, nor is the "OSP recommendation" included or specified. Nor does Respondent state what kind of "hostile work environment" is at issue or how Petitioner allegedly created it. Petitioner confirmed that he was not told, then or ever, what supposed "conduct in the workplace" prompted this order. T. 508. Respondent had not initiated any disciplinary action regarding this supposed "conduct". T. 509. Respondent did not give Petitioner any details about what the "recommendation from OSP" was about, or why it was given. T. 509. Nor was Petitioner told that the allegation of "hostile work environment" that prompted the investigation conducted by OSP was found to be unsubstantiated – and Respondent was aware of this at the time it made the referral. T. 509.

21. Petitioner's counsel cross-examined Sharyn Holt, Respondent's witness who worked in Human Resources and who was directly involved in the referral, about the sufficiency of the letter ordering Petitioner to the Fitness for Duty evaluation. As noted, Respondent was obligated under its EAP policy to give Petitioner the "specific reason or reasons for the Fitness for Duty/Risk Evaluation." Exhibit 14, (D)(3). Respondent told Petitioner only that the reason for the evaluation was his "inappropriate conduct in the workplace" and "a recommendation from OSP," and nothing else – as Holt admitted. T. 437, see also 445. The following exchange then took place:

Q. And nothing else.

A. That is correct.

Q. All right. Do you consider that to be specific?

A. (No response).

Q. It's not, is it?

A. No.

T. 437-438.

22. The May 24, 2010 letter directly threatened Petitioner with termination from employment with alleged “insubordination” if he failed to comply.

23. The May 24, 2010 letter likewise ordered Petitioner, on pain of termination for “insubordination,” to disclose the results of the “Fitness for Duty” evaluation both to Rieder and to Washington. The letter does not direct Petitioner to “cooperate” with the referral in any specific way, nor in fact does it use the term “cooperate” at all. See Respondent’s Exhibit 9. The letter does direct Petitioner to attend the referral and sign documents permitting release of the referral information to Respondent, including Washington and Rieder. Id.

24. Petitioner was subsequently directed by a representative of Deer Oaks to report to a psychologist, R. Carl Mumpower, in Asheville, North Carolina for the Fitness for Duty evaluation on June 2, 2010. Respondent did not call Dr. Mumpower as a witness nor did it subpoena Dr. Mumpower to testify. No person associated with Deer Oaks appeared as a witness at the hearing.

25. On May 25, 2010, one day *after* giving the referral to Petitioner, Respondent sent referral information for Petitioner to Deer Oaks. See Respondent’s Exhibit 16. Washington wrote the referral. Washington identified Respondent’s Exhibit 16 as the “referral” sent to Deer Oaks regarding Petitioner. T. 337.

26. Washington testified that Exhibit 16 was all the information Respondent sent to Deer Oaks prior to the referral. T. 338. Exhibit 16 consists of a handwritten copy of the “mandatory referral form,” a typewritten copy of the same (both written by Washington – T. 339), and a “consent form” signed by Petitioner (Petitioner was not given the option of “consenting” to the evaluation, per Washington’s testimony). T. 338.

27. In Exhibit 16, Washington stated as the sole basis for the referral of Petitioner: "To determine fitness for duty, if employee can safely and effectively perform essential functions and work effectively with others in the workplace." See Exhibit 16, T. 339.

28. Washington was asked whether Exhibit 16 was all the information Respondent sent to Deer Oaks connected with Petitioner's referral, and Washington answered, "To my understanding, yes." T. 338. This was subsequently confirmed by Holt.

29. Washington was asked whether sending Exhibit 16 fulfilled Respondent's obligations for fitness for duty evaluations under Respondent's EAP policy, and Washington answered, "Yes." T. 339-340. As noted, Washington had repeatedly and emphatically testified prior to this exchange that she did not need to read Respondent's EAP policy because she was familiar with and knew it. T. 333-335.

30. However, review of Exhibit 14, the Respondent's EAP policy (and further cross-examination of Washington), revealed that Respondent systematically and repeatedly failed to comply with its own policies in the mandatory fitness for duty referral given to Petitioner.

31. There is nothing in the EAP policy about a fitness for duty evaluation determining whether someone can "work effectively with others in the workplace." The EAP policy defines a "Fitness for Duty Risk Evaluation" as:

A referral to address extraordinary situations where an employee poses an immediate hazard or risk to himself or others in the workplace. It may also be used to determine an employee's medical or psychological fitness to perform his essential job functions.

See Exhibit 14, T. 340.

32. As noted, there is nothing in the EAP policy about using such a referral to address "working effectively with others in the workplace." T. 341, Exhibit 14. And, as Washington

acknowledged, Respondent did not state as grounds for the referral of Petitioner he posed “an immediate hazard or risk to himself or others in the workplace.” T. 341.

33 Respondent stated as grounds for the Fitness for Duty referral, and Washington confirmed, that Respondent was supposedly seeking an evaluation to determine if Petitioner could perform his essential job functions. T. 341.

34. However, Respondent’s EAP policy requires that certain information must be provided to the EAP (here, Deer Oaks) “**in advance** of the referral.” T. 341-342, Exhibit 14 (D). This included: “*Precipitating events, documented performance and/or behavioral concerns, pending or previous disciplinary actions, and employee’s job description and essential job functions.*” Exhibit 14 (D).

35. Again, Respondent wholly failed to comply with its policy with respect to the referral information. No information at all was sent until after the referral was made to Petitioner. And Washington’s subsequent referral to Deer Oaks of May 25, which again was the sole information provided to Deer Oaks by Respondent prior to or in connection with the Petitioner’s fitness for duty referral, lists **zero precipitating events** and **zero documented performance and behavioral concerns**. T. 342. Washington’s referral likewise lists **zero pending or previous disciplinary actions**. T. 342-343. In fact, none of these terms are even referenced, let alone discussed, on Washington’s referral document.

36. Most tellingly, in an evaluation which respondent claimed was intended to determine whether Petitioner could perform his essential job functions, a *description of Petitioner’s job* and his *essential job functions* appears **nowhere** on the referral form. T. 342. See Exhibit 16. The following exchange occurred between Washington and Petitioner’s counsel:

Q. Finally, where is the employee’s job description and essential job functions?

A. It wasn’t included in the document.

Q. All right. How is it, ma'am, that somebody could evaluate an employee's essential job functions without them being provided to them?

A. Unless there was a conversation which I was not privy to, because I didn't refer – I didn't handle it after the initial. I can't speak to that.

Q. You testified under oath that Exhibit 16 were the documents that were provided to the EAP provider, did you not?

A. I did.

Q. And there is nothing, in the sense of any documentary description of Mr. Copeland's job functions provided to the EAP prior to that evaluation, isn't that true?

A. That I am aware of, that's true.

Q. Thank you. And your policy requires that you do that, doesn't it?

A. That's what the policy states.

Q. And your policy requires that you list the precipitating events, the documented performance or behavioral concerns, and the pending or previous disciplinary action, and you, likewise, provided none of that whatsoever in terms of documentary provision –

A. I did not do that. I'm – I'm not saying it didn't occur. I did not personally do that.

Q. Ma'am, did you not testify not five minutes ago that Exhibit 16 represented the sum total of the documents that your agency provided to EAP in advance of the referral?

A. That I was aware of.

T. 343-344.

37. When asked who else sent documents to Deer Oaks connected with Petitioner's Fitness for Duty evaluation, Washington identified Sharon Holt, the Assistant Human Resources Director. T. 344. However, Washington was unable to identify a single document demonstrating that Respondent provided the EAP Petitioner's job description or essential job functions, either prior to the evaluation or at any time. T. 345-347.

38. Holt, who was the other HR person involved with Petitioner's "mandatory" Fitness for Duty evaluation referral, was cross examined about Respondent's efforts to comply with its own EAP policy with respect to Petitioner's referral.

39. In contrast to Washington, who claimed that the basis for Petitioner's referral was to determine if he could perform the essential functions of his job, Holt claimed that "workplace violence" or the purported potential for same was "a part of it". T. 424. However, as Holt then admitted, the referral makes no reference at all to supposed "workplace violence" on the part of Petitioner. T. 425-426. Further, Holt admitted that on the referral form itself, under "Reason for Referral," Respondent said nothing whatever about Petitioner posing an immediate hazard or risk to himself or others in the workplace as a reason for the referral. T. 427; Exhibit 16.⁴

40. Like Washington, Holt admitted on cross examination that "work[ing] effectively with others in the workplace" did not appear in Respondent's EAP policy as a reason for a referral:

Q. Would you show us where the Fitness for Duty/Risk Evaluation allows a referral to determine whether someone can work effectively with others in the workplace?

A. Well, it – it's not listed under No. 1 in the fitness for duty.

Q. Is it listed under No. 2?

A. No.

Q. Is it listed under No. 3?

A. It is not.

Q. No. 4?

A. No.

Q. It's not listed anywhere, is it?

⁴ See Respondent's 14.

A. No, it's not.

Q. And yet, knowing that your policies refer to "extraordinary situations", you sent him off for referral ... citing a reason for the referral that appears nowhere in your fitness for duty policy. Is that correct?

A. That's correct.

T. 428-429.

41. As with Washington, Holt conceded that the referral notice contained **none** of the information required by the EAP policy, including Petitioner's job description and essential job functions, even though determining Petitioner's ability to perform those functions was the supposed basis for the referral. T. 431.

42. Petitioner responded to the May 24, 2010 letter by immediately instituting legal action against the Respondent in the Superior Court of Wake County, North Carolina. This case was filed as *Archie Andrew Copeland, Plaintiff, v. North Carolina Department of Respondent and Delinquency Prevention, Michael Rieder, Defendants*, 10 CVS 9247. The action sought damages and injunction against the Respondent and Rieder under the Whistleblower Act, N.C.G.S. 126, Article 14, and Article I, Sections 14 and 35 of the Constitution of North Carolina. Among other relief, Petitioner sought a temporary restraining order against the Respondent with respect to the mental health evaluation.

43. On Friday, May 28, 2010, at approximately 4 PM, the Hon. Donald W. Stephens, Resident Superior Court Judge for Wake County, North Carolina, heard Petitioner's Motion for a Temporary Restraining Order at the Courthouse in Raleigh, North Carolina. Counsel for Plaintiff and Defendant were present. Judge Stephens issued the following order (see Petitioner's Exhibits 12A-12C):

This Court, having received the Plaintiff's application for a Temporary Restraining Order in the above-captioned matter, heard this matter at 4 PM Friday, May 28, 2010 at the Courthouse in Wake County, North Carolina. Counsel for Plaintiff and counsel for Defendants were present.

1. Plaintiff, on statutory and alternative constitutional grounds, seeks a Temporary Restraining Order preventing his compelled submission to a mental health evaluation to which he has been ordered to report on Wednesday, June 2, at 9 AM, as well as the compelled sharing of the information in that evaluation with the Defendants.

2. The Court finds that immediate and irreparable harm is threatened to the Plaintiff by the compelled disclosure to the Defendants or any representative thereof: (a) the results of, (b) any information created by, and/or (c) any information obtained in connection with any Fitness for Duty Evaluation of Plaintiff's mental health and/or other compelled EAP referral pending a hearing for preliminary injunction as provided by law. The Court finds that no immediate and irreparable harm is threatened to the Plaintiff by simply attending and participating in the evaluation.

3. Accordingly, the Court orders that none of (a) the results of, (b) any information created by, and/or (c) any information obtained in connection with any Fitness for Duty Evaluation of Plaintiff's mental health and/or other compelled EAP referral shall be shared with or provided to the Defendants or any representative thereof pending a hearing for preliminary injunction as provided by law, nor shall the Defendants or any representative thereof seek to obtain such information.

4. The Court has considered the issue of security and has concluded that no financial security is required of the Plaintiff with respect to this order.

5. This order shall expire by its own terms ten (10) days after its issuance and the findings set forth herein shall be binding only for the time period of this order and for the specific purposes of this order. This matter shall be set for hearing on such date as the Court directs, not later than ten days from the date of issuance of this order.

Entered this _____ day of _____, 2010 at _____ PM.

SO ORDERED

Donald W. Stephens
Senior Resident Superior Court Judge
Judge Presiding.

44. Judge Stephens did not order Petitioner to participate in any subsequent activity with Dr. Mumpower, and found only that the scheduled visit on Wednesday, June 2, 2011 did not

threaten Petitioner with irreparable harm. Under the order, no information regarding the evaluation or Petitioner's mental health was to be shared with Respondent on the grounds that such would cause Petitioner immediate and irreparable harm.

45. The TRO was extended by the order of the Hon. Carl F. Fox, Superior Court Judge at the ten-day hearing while the Court took certain matters under advisement, and was in effect until the Petitioner's lawsuit was eventually dismissed later in the year.

46. At the hearing of this case, Rieder acknowledged that the TROs (originally and as extended) were court orders directing that Petitioner did not have to share any information regarding his mental health, including the results of any Fitness for Duty evaluation, with the Respondent. T. 259-260:

Q. So you would agree with me that ... there was a court order in effect as of June 1st [2010] that Mr. Copeland didn't have to share any information from that evaluation with you or your agency or any representative thereof. Would you agree with that?

A. Information produced by the evaluation, that's right.

Q. And you had given him an order on May 24th that he had to share that information, correct?

A. That's right.

Q. And he went out and got a court order that said he didn't have to, correct?

A. That's correct.

Id.

47. Subsequent to Judge Stephens's TRO order, Petitioner reported to Dr. Mumpower's office on Wednesday, June 2, 2010. Washington confirmed that Petitioner did attend the Fitness for Duty Evaluation. T. 348. Petitioner attended the evaluation with Mumpower at the time and place directed by Respondent. T. 518. He filled out paperwork. He

has not visited Mumpower's office again since that time, nor was he asked to. T. 519, 557-558.⁵ He spoke with Mumpower on one other occasion regarding the release of information form from the meeting at issue. T. 519.

48. No witness for Respondent was present at, or in way participated in, the evaluation meeting between Mumpower and Petitioner on June 2, 2010.

49. No evidence was presented that either Respondent or Deer Oaks, which handled and directed the referrals, requested or required Petitioner to attend any subsequent meetings with Mumpower. There is no evidence that any of the limited correspondence between Deer Oaks and Respondent, even to the extent admissible, was shared with Petitioner prior to his dismissal.

50. Subsequent to the hearing with Judge Fox, the parties through their representatives began discussions to try and settle the lawsuit. On October 19, 2010, the Petitioner and Respondent signed a "Mutual Settlement Agreement and Release" ("Settlement Agreement"). See Respondent's Exhibit 11.

51. In the Settlement Agreement, Petitioner agreed to release the result from his June 2 meeting with Mumpower and abide by the results. Between October 19, 2010 and Petitioner's dismissal, Respondent shared with Petitioner no recommendations by Mumpower or Deer Oaks.

52. On December 19, 2011, Respondent served on Petitioner a pre-disciplinary conference notification stating that it intended to dismiss Petitioner for "insubordination". See Respondent's Exhibit 21 and 22, Dismissal Letter. Reviewing these letters, it is hard to determine what precise conduct Petitioner Respondent considers to be insubordinate. The letters do say that Petitioner "reported to the intake interview but did not cooperate with the evaluation and did not sign Authorization to Obtain/Exchange Information Form." Id. Further, Respondent alleged that "On December 30, 2010, the [Respondent] received information from Deer Oaks, our third party

⁵ Respondent attempted to suggest that Mumpower did say that he wanted to see Petitioner again. However, Petitioner repeated that he did not interpret any comments by Mumpower as a request to return. There was no evidence presented that the EAP directed another visit nor that Respondent directed another referral.

Employee Assistance Program, that you had failed to cooperate with the fitness for duty evaluation and no determination could be made regarding your fitness to return to work.” Id. Both letters also stated that “The temporary restraining order did not relieve you of the required attendance and participation in the evaluation.” See Pre-disciplinary Conference Letter, January 20, 2011.

53. The Respondent’s dismissal letter does not state the manner in which Petitioner supposedly “failed to cooperate” with the evaluation. See N.C.G.S. 126-35(a): “In cases of such disciplinary action, the employee **shall, before the action is taken, be furnished with a statement in writing setting forth in numerical order the specific acts or omissions that are the reasons for the disciplinary action** and the employee’s appeal rights.”

54. No witness testified as to the supposed manner in which Petitioner supposedly failed to cooperate with the evaluation. As noted, Mumpower did not testify at the hearing and no documentation of any kind from Mumpower was offered into evidence by the Respondent.

55. Respondent offered into evidence a document dated December 30, 2010, supposedly prepared by a “Guy Jeff Powell, Ph.D,” associated with Deer Oaks. See Respondent’s Exhibit 19. Powell did not testify at the hearing. Petitioner testified that he did not know Powell and had never spoken with him. There is no evidence that Powell participated in any discussions between Petitioner and Mumpower; indeed, this is unlikely as the evidence is that Powell is associated with Deer Oaks in Austin, Texas.

56. Powell did not testify at the hearing either, and no evidence was submitted by Respondent in the form of an affidavit by Powell himself attempting to authenticate and admit his statement as a business record or for any other purpose.

57. Respondent submitted an affidavit from Marilyn Barrera, who identifies herself as the “custodian of Deer Oaks Employee Assistance program records kept in the course of regularly conducted business activity.” See Respondent’s Exhibit 20. Barrera, who likewise did not testify

at the hearing of this case, stated in her affidavit that reports such as Exhibit 19 were regularly conducted by Deer Oaks. Id.

58. Barrera's affidavit did not state that the information communicated by Powell was made "at or near" the time of the evaluation on June 2, 2010. The Court notes that December 30, 2010 is more than six months after the evaluation. No affidavit by Powell was offered. No affidavit by Mumpower was offered.

59. No other factual contentions other than those offered in the December 30, 2010 letter from Powell were offered by the Respondent at hearing in support of its contentions that Petitioner was properly dismissed for insubordination, or engaged in insubordinate conduct. For example, Washington stated her "understanding" that Petitioner did not cooperate with the evaluation. However, Washington admitted that she was not present at the evaluation and did not participate in it, nor was any evidence presented that she spoke to anyone who did participate in it. T. 348. As for Holt, she testified as follows:

Q. ... Do you agree or disagree with me that Mr. Copeland didn't have to sign an Authorization to Obtain and Exchange Information Form at the time of this evaluation?

A. I agree with that.

Q. So his refusal to sign [the form] was something that he was allowed to do under the court order, correct?

A. Correct.

Q. All right. And then, it [the document] says, "And Mr. Copeland was uncooperative during the interview." Do you see any further information or explanation as to how [Petitioner] was uncooperative other than his refusal to sign those forms?

A. There is no other information.

T. 407-408.

60. Petitioner consistently denied being insubordinate in any fashion. T. 485.

61. Petitioner completed the internal grievance process alleging dismissal without just cause and the Respondent upheld its decision, upon which Petitioner timely appealed to the OAH.

CONCLUSIONS OF LAW

Based on these Findings of Fact, the Court makes the following CONCLUSIONS OF LAW:

1. The OAH has subject matter jurisdiction over this cause and notice of hearing was proper.

2. There is no evidence that Powell, at Deer Oaks in Texas, was present at the interview in Asheville or so much as spoke to Petitioner at any time. Indeed, Petitioner testified that he was not, without contradiction. Thus, Respondent is attempting, through Barrera's Affidavit (Person One) to offer what Powell (Person Two) was allegedly told by Mumpower (Person Three) about Petitioner's conduct – a classic hearsay within hearsay, given again that neither Powell nor Mumpower testified by affidavit or otherwise.

3. Petitioner was a career State employee at the time of his dismissal. Because he is entitled to the protections of the North Carolina State Personnel Act, and has alleged that Respondent lacked just cause for his dismissal, the Office of Administrative Hearings has jurisdiction to hear his appeal and issue a Decision to the State Personnel Commission. N.C.G.S. §§ 126-1 *et seq.*, 126-35, 126-37(a).

4. N.C.G.S. § 126-35(a) provides that "No career State employee subject to the State Personnel Act shall be discharged, suspended, or demoted for disciplinary reasons, except for just cause." In a career State employee's appeal of a disciplinary action, the department or agency employer bears the burden of proving that "just cause" existed for the disciplinary action. N.C.G.S. 126-35(d).

5. The Court notes as it did in Evidentiary Ruling herein that even after considering Dr. Mumpower statement, they do not assist the Respondent in meeting its burden of proof. The

evidence shows conclusively, and indeed Respondent's witnesses on two occasions conceded, that as of the date of the evaluation Petitioner was not required to sign the Authorization to Obtain/Exchange Information Form in question. Petitioner had a valid court order that permitted him to deny any of this information to the Respondent, and to the extent Respondent's insubordination claim is based on that refusal, under those facts, such a contention is clearly erroneous, contrary to rule or law, and arbitrary and capricious, and lacked just cause for dismissal.

6. As for the "compliance" and "cooperation" statements, these do not, in and of themselves, prove by a preponderance of the evidence a case for insubordination in any event. Neither the Mumpower testimony nor any other evidence was offered to show **in what manner** Petitioner was supposedly non-compliant or non-cooperative with Mumpower. See N.C.G.S. 126-35(a) – "specific" acts or omissions which are the basis for the disciplinary action. The Court takes notice, and rejects, the suggestion from Respondent's counsel Gail Dawson during the hearing that Petitioner's act in hiring an attorney and challenging the Fitness for Duty referral in Superior Court was "evidence" of insubordination – such actions were clearly lawful acts intended to vindicate legal rights, and were found cause to bar sharing any mental health information with Respondent by two Superior Court judges.

7. 25 NCAC 11.2301(c) enumerates two grounds for disciplinary action, including dismissal, based upon just cause: (1) unsatisfactory job performance, including grossly inefficient job performance; and (2) unacceptable personal conduct. One definition of "unacceptable personal conduct" is insubordination, which is the willful failure or refusal to carry out a reasonable order from an authorized supervisor. Insubordination is considered unacceptable personal conduct for which any level of discipline, including dismissal, may be imposed without prior warning. 25 NCAC 11.2304(b)(8).

8. N.C.D.E.N.R. v. Clifton Carroll, 358 N.C. 649, 599 S.E.2d 888 (2004), states that the fundamental question in determining just cause is whether the disciplinary action taken was just. Citing further, "Inevitably, this inquiry requires an irreducible act of judgment that cannot always be satisfied by the mechanical application of rules and regulations." Our Supreme Court

said that there is no bright line test to determine “just cause”—it depends upon the specific facts and circumstances in each case. Furthermore, “not *every* violation of law gives rise to ‘just cause’ for employee discipline.”

9. Insubordination is “the refusal to accept a reasonable and proper assignment from an authorized supervisor.” See Employment Security Commission v. Lachman, 305 N.C. 492, 506, 290 S.E.2d 616, 624-625 (1982). The refusal which is the basis of the offense must be a willful refusal, Id., Kandler v. Department of Correction, 80 N.C. App. 444, 451, 342 S.E.2d 910, 914 (1986), and the reasonableness of the assignment must be determined **in light of the relative circumstances existing at the time of the incident**, Lachman, 305 N.C. at 506, 290 S.E.2d at 624-625, and in light of the employee's reasonable perception of those circumstances. Kandler, 80 N.C. App. at 451, 342 S.E.2d at 914

10. Respondent has not met the burden of persuading me by preponderance or greater weight of the evidence presented that it had just cause, procedurally and substantively, to terminate Petitioner’s employment. My reasons for concluding that this dismissal was not just are as follows:

11. The order in question was not “reasonable” as required by law considering the *reasonableness of the assignment in light of the relative circumstances existing at the time of the incident.* Urback v. East Carolina University, 105 N.C. App. 605, 608, 414 S.E.2d 100, 102, disc. review denied, 331 N.C. 291, 417 S.E.2d 70 (1992); ESC v. Lachman, 305 N.C. 492, 290 S.E.2d 616 (1982).

12. The Court notes on this point the wholesale failure of the Respondent to abide by its own EAP policy with respect to the Fitness for Duty referral. Even assuming *arguendo* Respondent had authority after the repeal of the relevant OSP regulations to order such a referral in the first place, Respondent’s EAP policy placed numerous preconditions on Fitness for Duty referrals. These included giving Petitioner the specific reasons for the referral. By the admission of Respondent’s own witness, it did not give Petitioner the specific reasons for the referral T.

437-438. Further, Respondent failed to comply with its own policy, as shown, by citing a reason for the referral that did not exist under that policy. T. 428-429.

13. Additionally, Respondent utterly failed to provide the EAP with the information required by its own policy to be shared with the EAP prior to the referral. Washington's referral of Petitioner, which again was the sole information provided to Deer Oaks EAP by Respondent prior to or in connection with the Petitioner's fitness for duty referral, lists *zero precipitating events* and *zero documented performance and behavioral concerns*. T. 342. Washington's referral likewise lists *zero pending or previous disciplinary actions*. T. 342-343. In fact, none of these terms are even referenced, let alone discussed, on Washington's referral document.

14. These are more than mere procedural issues, for two reasons. First, the very nature of an involuntary mental health evaluation is a situation fraught with potential for abuse. Requiring an agency to list such things as the specific precipitating events and providing documented prior performance and behavioral concerns serves a check against using this "extraordinary" situation without due deliberation, documentation, and consideration. This is not, again, a case of Respondent leaving out one or two items. This is a case of an experienced HR director who testified directly and assertively that she was familiar with the Respondent's EAP policy – and then admitted (along with her subordinate) that she submitted a referral for Petitioner that complied with none of it.

15. Secondly, while Respondent stated that the primary reason for the referral was to determine whether Petitioner could perform his essential job functions, a description of Petitioner's job and his *essential job functions* appears *nowhere* on the referral form. T. 342. See Exhibit 16. The Court notes again the following exchange between Washington and Petitioner's counsel:

Q. Finally, where is the employee's job description and essential job functions?

A. It wasn't included in the document.

Q. All right. How is it, ma'am, that somebody could evaluate an employee's essential job functions without them being provided to them?

A. Unless there was a conversation which I was not privy to, because I didn't refer – I didn't handle it after the initial. I can't speak to that.

Q. You testified under oath that Exhibit 16 were the documents that were provided to the EAP provider, did you not?

A. I did.

Q. And there is nothing, in the sense of any documentary description of Mr. Copeland's job functions provided to the EAP prior to that evaluation, isn't that true?

A. That I am aware of, that's true.

Q. Thank you. And you policy requires that you do that, doesn't it?

A. That's what the policy states.

16. The Court will answer the question to which Washington claimed she could not speak: **it is manifestly impossible for any person, of whatever profession, to evaluation someone's ability to perform the essential functions of his job without being told what those essential functions are**, and without being provided a job description as specifically required by the EAP policy. The Court observes that if Washington's testimony is to be believed, she was thoroughly familiar with the requirements of her agency's EAP policy but made an either deliberate or negligent action to thoroughly and systematically ignore them.

17. No matter how Petitioner cooperated or non-cooperated at the evaluation, Respondent failed to provide the essential information needed to conduct the very analysis it supposedly intended the referral to obtain. This wholesale – and on this point, also very specific – failure to comply with its own policy made the order manifestly unreasonable – and, indeed, effectively pointless. Petitioner had no specific idea why he was being sent for the referral, as the rules required. Respondent provided no information required by the rules to the EAP. Respondent cannot reasonably ignore its own policies wholesale and then, on the very same issue on which it ignores them, successfully charge Petitioner with insubordination on the sole, vague, hearsay within hearsay grounds that Petitioner failed to “cooperate” with someone who offered no testimony at the hearing.

18. This leads to the other deficiency in the evidence: all else aside, Respondent failed to establish that Petitioner willfully refused to comply with an order. The Petitioner was legally entitled to refuse any mental health information to the Respondent under the terms of the TRO. The allegation of “uncooperative” does not suffice, as noted, because there was absolutely no testimony, burdened by hearsay or otherwise, of any precise manner in which Petitioner supposedly failed to cooperate, and how.

19. This failure – to cite the specifics of the alleged non-cooperation is particularly important as, for all any of us know at this point, the supposed non-cooperation could have been a refusal to share information with the Respondent – which again Petitioner had a legal right to do. The Powell letter does not say, and the Court notes again that this is an issue which could have been easily clarified by a deposition or subpoena to Mumpower to explain what he meant by this otherwise undocumented and unsubstantiated allegation.

20. Particularly under circumstances where the Respondent wholesale ignored its own policy with respect to the referral, appears to have acted without substantial and due deliberation in ordering it, and acted in such a manner in its own right to render any evaluation by Mumpower pointless due to the total lack of information on the essential functions of Petitioner’s job, an allegation of “not cooperative,” even unburdened by the evidentiary deficiencies of this case, is far too slender a reed on which to conclude, for the party with the burden of proof, that Petitioner was properly dismissed for insubordination.

21. Accordingly, the Court finds that the Respondent lacked just cause to dismiss the Petitioner for unacceptable personal conduct in the form of insubordination.

DECISION

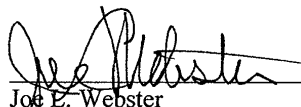
Based upon the foregoing Findings of Fact and Conclusions of Law, Respondent’s decision to terminate Petitioner’s employment should be reversed and Petitioner should be retroactively reinstated with back pay and attorney’s fees, as well as all other remedies available under law.

ORDER AND NOTICE

The North Carolina State Personnel Commission will make the Final Decision in this contested case. N.C. Gen. Stat. § 150B-36(b), (b1), (b2), and (b3) enumerate the standard of review and procedures the agency must follow in making its Final Decision, and adopting and/or not adopting the Findings of Fact and Decision of the Administrative Law Judge.

Pursuant to N.C. Gen. Stat. § 150B-36(a), before the agency makes a Final Decision in this case, it is required to give each party an opportunity to file exceptions to this Decision, and to present written arguments to those in the agency who will make the Final Decision. N.C. Gen. Stat. 150B-36(b)(3) requires the agency to serve a copy of its Final Decision on each party, and furnish a copy of its Final Decision to each party's attorney of record and to the Office of Administrative Hearings, 6714 Mail Service Center, Raleigh, NC 27699-6714.

This the 9th day of February, 2012.



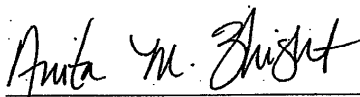
Joe E. Webster
Administrative Law Judge

A copy of the foregoing was mailed to:

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ATTORNEY FOR RESPONDENT

This the 10th day of February, 2012.



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