

NORTH CAROLINA REGISTER

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October 1, 2012

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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.

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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.

State of North Carolina



BEVERLY EAVES PERDUE
GOVERNOR

EXECUTIVE ORDER NO. 126

DECLARATION OF A STATE OF DISASTER FOR HALIFAX AND NORTHAMPTON COUNTIES

WHEREAS, the North Carolina Emergency Management Act, Chapter 166A of the North Carolina General Statutes authorizes the issuance of a proclamation declaring an area to be a disaster area as defined in N.C.G.S. § 166A-6 and categorizing the disaster as a Type I, Type II or Type III disaster; and

WHEREAS, on August 25, 2012, Halifax and Northampton Counties in North Carolina were impacted by severe flooding as a result of severe weather; and

WHEREAS, as a result of the damage from the severe weather and flooding, Halifax County proclaimed a local state of emergency on August 25, 2012; and

WHEREAS, a joint preliminary damage assessment was done by local, state and federal emergency management officials on August 29, 2012; and

WHEREAS, I have determined that a State of Disaster, as defined in N.C.G.S. §166A-6, exists in the State of North Carolina, specifically in the counties of Halifax and Northampton; and

WHEREAS, pursuant to N.C.G.S. § 166A-6, the criteria for a Type I disaster are met if: (1) the Secretary of the Department of Public Safety has provided a preliminary damage assessment to the Governor and the General Assembly; (2) Halifax County declared a local state of emergency pursuant to N.C.G.S. § 166A-8; (3) the preliminary damage assessment has met or exceeded the criteria established for the Small Business Disaster Loan Program pursuant to 13 C.F.R. Part 123; and (4) a major disaster declaration by the President of the United States pursuant to the Stafford Act has not been declared; and

WHEREAS, pursuant to N.C.G.S. § 166A-6.01, if a State of Disaster is declared, the Governor may make State funds available for disaster assistance in the form of individual assistance and public assistance for recovery from those disasters for which federal assistance under the Stafford Act is either not available or does not adequately meet the needs of the citizens of the State in the disaster area.

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

Section 1. Pursuant to N.C.G.S. § 166A-6, a Type I State of Disaster is hereby declared for Halifax County and Northampton County.

Section 2. I authorize state disaster assistance in the form of individual assistance grants to eligible entities located within the disaster area that meet the terms and conditions under N.C.G.S. § 166A-6.01(b)(1).

Section 3. I hereby order this declaration: (a) to be distributed to the news media and other organizations calculated to bring its contents to the attention of the general public; (b) to be promptly filed with the Secretary of the Department of Public Safety, the Secretary of State, and the clerks of superior court in the counties to which it applies; and (c) to be distributed to others as necessary to ensure proper implementation of this declaration.

Section 4. This Type I Disaster Declaration shall expire 30 days after issuance unless renewed by the Governor or the General Assembly. Such renewals may be made in increments of 30 days each, not to exceed a total of 120 days from the date of first issuance.

IN WITNESS WHEREOF, I have hereunto signed my name and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh, this 31st day of August in the year of our Lord two thousand and twelve, and of the Independence of the United States of America the two hundred and thirty-seventh.




Beverly Hayes Perdue
Governor

ATTEST:


Elaine F. Marshall
Chief Deputy Secretary of State

State of North Carolina



BEVERLY EAVES PERDUE
GOVERNOR

EXECUTIVE ORDER NO. 127

DECLARATION OF A STATE OF DISASTER FOR THE TOWN OF MURPHY

WHEREAS, the North Carolina Emergency Management Act, Chapter 166A of the North Carolina General Statutes authorizes the issuance of a proclamation declaring an area to be a disaster area as defined in N.C.G.S. § 166A-6 and categorizing the disaster as a Type I, Type II or Type III disaster; and

WHEREAS, on March 2, 2012, the Town of Murphy, Cherokee County, North Carolina was impacted by severe weather, including severe thunderstorms, high winds, and tornadoes; and

WHEREAS, as a result of the damage from the severe weather and tornadoes, the Town of Murphy declared a local state of emergency on March 3, 2012; and

WHEREAS, a joint preliminary damage assessment was done by local, state and federal emergency management officials on March 5, 2012; and

WHEREAS, I have determined that a State of Disaster, as defined in N.C.G.S. §166A-6, exists in the State of North Carolina, specifically in the Town of Murphy; and

WHEREAS, pursuant to N.C.G.S. § 166A-6, the criteria for a Type I disaster are met if: (1) the Secretary of the Department of Public Safety has provided a preliminary damage assessment to the Governor and the General Assembly; (2) the Town of Murphy and Cherokee County have declared a local state of emergency pursuant to N.C.G.S. § 166A-8; (3) the preliminary damage assessment has met or exceeded the State infrastructure criteria set out in N.C.G.S. § 166A-6.01(b)(2); and (4) a major disaster declaration by the President of the United States pursuant to the Stafford Act has not been declared; and

WHEREAS, pursuant to N.C.G.S. § 166A-6.01, if a State of Disaster is proclaimed, the Governor may make State funds available for disaster assistance in the form of individual assistance and public assistance for recovery from those disasters for which federal assistance under the Stafford Act is either not available or does not adequately meet the needs of the citizens of the State in the disaster area.

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

Section 1. Pursuant to N.C.G.S. § 166A-6, a Type I State of Disaster is hereby declared for the Town of Murphy, Cherokee County.

Section 2. I authorize state disaster assistance in the form of public assistance grants to eligible entities located within the disaster area that meet the terms and conditions under N.C.G.S. § 166A-6.01(b)(2). These grants are for costs associated with the following:

- a. Debris clearance
- b. Emergency protective measures.

Section 3. I hereby order this proclamation: (a) to be distributed to the news media and other organizations calculated to bring its contents to the attention of the general public; (b) to be promptly filed with the Secretary of the Department of Public Safety, the Secretary of State, and the clerks of superior court in the counties to which it applies; and (c) to be distributed to others as necessary to ensure proper implementation of this proclamation.

Section 4. This Type I Disaster Declaration shall expire 30 days after issuance unless renewed by the Governor or the General Assembly. Such renewals may be made in increments of 30 days each, not to exceed a total of 120 days from the date of first issuance.

IN WITNESS WHEREOF, I have hereunto signed my name and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh, this 31st day of August in the year of our Lord two thousand and twelve, and of the Independence of the United States of America the two hundred and thirty-seven.



Beverly Eaves Perdue

Beverly Eaves Perdue
Governor

ATTEST:

Elaine F. Marshall by *Richard Maddox*
Elaine F. Marshall
Chief Deputy Secretary of State



U.S. Department of Justice
Civil Rights Division

TCH:RSB:JBG:KG:tst
DJ 166-012-3
2012-3776

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

August 24, 2012

Karen M. McDonald, Esq.
City Attorney
433 Hay Street
Fayetteville, North Carolina 28301

Anthony Fox, Esq.
Parker Poe Adams & Bernstein
P.O. Box 389
Raleigh, North Carolina 27602-0389

Dear Ms. McDonald and Mr. Fox:

This refers to Ordinance No. 2008-10-511, which annexes property, and Session Law 2012-03 (H.B. 5) (2012), which deannexes the same property from the City of Fayetteville in Cumberland County, North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, 42 U.S.C. 1973c. We received your submission on July 3, 2012.

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

Sincerely,

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

T. Christian Herren, Jr.
Chief, Voting Section

APPROVED RULES

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

Rules approved by the Rules Review Commission at its meeting on August 16, 2012.

**REGISTER CITATION TO THE
NOTICE OF TEXT****CHILD CARE COMMISSION**

<u>Definitions</u>	10A NCAC 09 .0102*	26:20 NCR
<u>Application for a Voluntary Rated License</u>	10A NCAC 09 .2802*	26:20 NCR
<u>Quality Points Options</u>	10A NCAC 09 .2829*	26:20 NCR

BLIND, COMMISSION FOR THE

<u>Economic Needs Schedule</u>	10A NCAC 63F .0403	26:20 NCR
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COSMETIC ART EXAMINERS, BOARD OF

<u>Fees</u>	21 NCAC 14A .0404*	26:22 NCR
<u>Application for Salon License</u>	21 NCAC 14F .0101	26:22 NCR
<u>Separation of Beauty Salon</u>	21 NCAC 14F .0104	26:22 NCR
<u>Newly Established Residential Salons</u>	21 NCAC 14F .0105	26:22 NCR
<u>Dimensions of Beauty Salon</u>	21 NCAC 14F .0107	26:22 NCR
<u>Inspection of Cosmetic Art Shops</u>	21 NCAC 14F .0108	26:22 NCR
<u>Signs</u>	21 NCAC 14F .0109	26:22 NCR
<u>Failure to Permit Inspection</u>	21 NCAC 14F .0113	26:22 NCR
<u>Sanitary Ratings and Posting of Ratings</u>	21 NCAC 14H .0105	26:22 NCR
<u>Water Supply</u>	21 NCAC 14H .0107	26:22 NCR
<u>Floor Coverings</u>	21 NCAC 14H .0108	26:22 NCR
<u>Ventilation and Light</u>	21 NCAC 14H .0109	26:22 NCR
<u>Bathroom Facilities</u>	21 NCAC 14H .0110	26:22 NCR
<u>Cleanliness of Operators</u>	21 NCAC 14H .0111	26:22 NCR
<u>Cleanliness of Clinic Area</u>	21 NCAC 14H .0112	26:22 NCR
<u>Cleanliness of Scissors, Shears, Razors and Other Equipment</u>	21 NCAC 14H .0113	26:22 NCR
<u>Care of Creams: Lotions: and Cosmetics</u>	21 NCAC 14H .0114	26:22 NCR
<u>First Aid</u>	21 NCAC 14H .0115	26:22 NCR
<u>Animals</u>	21 NCAC 14H .0117	26:22 NCR
<u>Systems of Grading Beauty Establishments</u>	21 NCAC 14H .0118	26:22 NCR
<u>Whirlpool, Footspa and Facial Steamer Sanitation</u>	21 NCAC 14H .0120	26:22 NCR
<u>Prohibited Practices</u>	21 NCAC 14H .0121	26:22 NCR
<u>Revocation of Licenses and Other Disciplinary Measures</u>	21 NCAC 14P .0108	26:22 NCR
<u>Establishment of Cosmetic Art Schools</u>	21 NCAC 14P .0111	26:22 NCR
<u>Sanitary Ratings and Posting of Ratings - Applicable to E...</u>	21 NCAC 14P .0112	26:22 NCR
<u>Operations of Schools of Cosmetic Art</u>	21 NCAC 14P .0113*	26:22 NCR

<u>Cosmetology Curriculum</u>	21	NCAC 14P .0114	26:22 NCR
<u>Continuing Education Requirements</u>	21	NCAC 14R .0101*	26:22 NCR
<u>Application Criteria and Continuing Education Course Appr...</u>	21	NCAC 14R .0102	26:22 NCR
<u>Criteria for Continuing Education Courses</u>	21	NCAC 14R .0103	26:22 NCR
<u>License Renewal Procedures</u>	21	NCAC 14R .0104	26:22 NCR
<u>Apprentice Cosmetology Curriculum</u>	21	NCAC 14T .0603	26:22 NCR
<u>School Performance Requirements</u>	21	NCAC 14T .0705*	26:22 NCR

MEDICAL BOARD

<u>Definitions</u>	21	NCAC 32M .0101*	26:20 NCR
<u>Nurse Practitioner Registration</u>	21	NCAC 32M .0103*	26:20 NCR
<u>Process for Approval to Practice</u>	21	NCAC 32M .0104*	26:20 NCR
<u>Inactive Status</u>	21	NCAC 32M .0108*	26:20 NCR

NURSING, BOARD OF

<u>Definitions</u>	21	NCAC 36 .0801*	26:17 NCR
<u>Nurse Practitioner Registration</u>	21	NCAC 36 .0803*	26:17 NCR
<u>Process for Approval to Practice</u>	21	NCAC 36 .0804*	26:17 NCR
<u>Inactive Status</u>	21	NCAC 36 .0808*	26:17 NCR

TITLE 10A – DEPARTMENT OF HEALTH AND HUMAN SERVICES

10A NCAC 09 .0102 DEFINITIONS

The terms and phrases used in this Chapter are defined as follows except when the context of the rule requires a different meaning. The definitions prescribed in G.S. 110-86 also apply to these Rules.

- (1) "Agency" as used in Section .2200 of this Chapter, means Division of Child Development and Early Education, Department of Health and Human Services located at 319 Chapanoke Road, Suite 120, Raleigh, North Carolina 27603.
- (2) "Appellant" means the person or persons who request a contested case hearing.
- (3) "Basic School-Age Care" training (BSAC training) means the training on the elements of quality afterschool care for school-age children, developed by the North Carolina State University Department of 4-H Youth Development and subsequently revised by the North Carolina School-age Quality Improvement Project. Other training shall be approved as equivalent if the Division determines that the content of the training offered is substantially equivalent to the BSAC training.
- (4) "Child Care Program" means a single center or home, or a group of centers or homes or both,

that are operated by one owner or supervised by a common entity.

- (5) "Child care provider" as defined by G.S. 110-90.2(a)(2)a. and used in Section .2700 of this Chapter, includes the following employees who have contact with the children in a child care program:
 - (a) facility directors,
 - (b) administrative staff,
 - (c) teachers,
 - (d) teachers' aides,
 - (e) cooks,
 - (f) maintenance personnel, and
 - (g) drivers.
- (6) "Child Development Associate Credential" means the national early childhood credential administered by the Council for Early Childhood Professional Recognition.
- (7) "Curriculum" means a curriculum that has been approved by the NC Child Care Commission as comprehensive, evidence-based and with a reading component.
- (8) "Developmentally appropriate" means suitable to the chronological age range and developmental characteristics of a specific group of children.
- (9) "Division" means the Division of Child Development and Early Education within the Department of Health and Human Services.

- (10) "Drop-in care" means a child care arrangement where children attend on an intermittent, unscheduled basis.
- (11) "Early Childhood Environment Rating Scale - Revised Edition" (Harms, Clifford, and Cryer, 2005, published by Teachers College Press, New York, NY) is the instrument used to evaluate the quality of care received by a group of children in a child care center, when the majority of children in the group are two and a half years old through five years old, to achieve three or more points for the program standards of a rated license. This instrument is incorporated by reference and includes subsequent editions. Individuals wishing to purchase a copy may call Teachers College Press at 1-800-575-6566. The cost of this scale in June 2012 is twenty-one dollars and ninety-five cents (\$21.95). A copy of this instrument is on file at the Division at the address given in Item (1) of this Rule and is available for public inspection during regular business hours.
- (12) "Experience working with school-aged children" means working with school-age children as an administrator, program coordinator, group leader, assistant group leader, lead teacher, teacher or aide.
- (13) "Family Child Care Environment Rating Scale – Revised Edition" (Harms, Cryer and Clifford, 2007, published by Teachers College Press, New York, NY) is the instrument used to evaluate the quality of care received by children in family child care homes to achieve three or more points for the program standards of a rated license. This instrument is incorporated by reference and includes subsequent editions. Individuals wishing to purchase a copy may call Teachers College Press at 1-800-575-6566. The cost of this scale in June 2012 is twenty-one dollars and ninety-five cents (\$21.95). A copy of this instrument is on file at the Division at the address given in Item (1) of this Rule and is available for public inspection during regular business hours.
- (14) "First aid kit" is a collection of first aid supplies (such as bandages, tweezers, disposable nonporous gloves, micro shield or face mask, liquid soap, cold pack) for treatment of minor injuries or stabilization of major injuries.
- (15) "Group" means the children assigned to a specific caregiver or caregivers, to meet the staff/child ratios set forth in G.S. 110-91(7) and this Chapter, using space which is identifiable for each group.
- (16) "Health care professional" means:
 - (a) a physician licensed in North Carolina;
 - (b) a nurse practitioner approved to practice in North Carolina; or
 - (c) a licensed physician assistant.
- (17) "Household member" means a person who resides in a family home as evidenced by factors including maintaining clothing and personal effects at the household address, receiving mail at the household address, using identification with the household address, or eating and sleeping at the household address on a regular basis.
- (18) "If weather conditions permit" means:
 - (a) temperatures that fall within the guidelines developed by the Iowa Department of Public Health and specified on the Child Care Weather Watch chart. These guidelines shall be used when determining appropriate weather conditions for taking children outside for outdoor learning activities and playtime. This chart may be downloaded free of charge from <http://www.idph.state.ia.us/hcci/common/pdf/weatherwatch.pdf>, and is incorporated by reference and includes subsequent editions and amendments;
 - (b) following the air quality standards as set out in 15A NCAC 18A .2832(d). The Air Quality Color Guide can be found on the Division's web site at <http://xapps.enr.state.nc.us/aq/ForecastCenter> or call 1-888-RU4NCAIR (1-888-784-6224); and
 - (c) no active precipitation. Caregivers may choose to go outdoors when there is active precipitation if children have appropriate clothing such as rain boots and rain coats, or if they are under a covered area.
- (19) "Infant/Toddler Environment Rating Scale - Revised Edition" (Harms, Cryer, and Clifford, 2003, published by Teachers College Press, New York, NY) is the instrument used to evaluate the quality of care received by a group of children in a child care center, when the majority of children in the group are younger than thirty months old, to achieve three or more points for the program standards of a rated license. This instrument is incorporated by reference and includes subsequent editions. Individuals wishing to purchase a copy may call Teachers College Press at 1-800-575-6566. The cost of this scale in June 2012 is twenty-one dollars and ninety-five cents (\$21.95). A copy of this instrument

- is on file at the Division at the address given in Item (1) of this Rule and is available for public inspection during regular business hours.
- (20) "ITS-SIDS Training" means the Infant/Toddler Safe Sleep and SIDS Risk Reduction Training developed by the NC Healthy Start Foundation for the Division of Child Development and Early Education for caregivers of children ages 12 months and younger.
- (21) "Licensee" means the person or entity that is granted permission by the State of North Carolina to operate a child care facility. The owner of a facility is the licensee.
- (22) "North Carolina Early Educator Certification (certification)" is an acknowledgement of an individual's verified level of educational achievement based on a standardized scale. The North Carolina Institute for Child Development Professionals certifies individuals and assigns a certification level on two scales:
- (a) the Early Care and Education Professional Scale (ECE Scale) in effect as of July 1, 2010; or
 - (b) the School Age Professional Scale (SA Scale) in effect as of May 19, 2010.
- Each scale reflects the amount of education earned in the content area pertinent to the ages of children served. The ECE Scale is designed for individuals working with or on behalf of children ages birth to five. The SA Scale is designed for individuals working with or on behalf of children ages 5 to 12 who are served in school age care settings.
- (23) "North Carolina Early Childhood Credential" means the state early childhood credential that is based on completion of required early childhood coursework taken at any NC Community College. Other post secondary curriculum coursework shall be approved as equivalent if the Division determines that the content of the other post secondary curriculum coursework offered is substantially equivalent to the NC Early Childhood Credential Coursework. A copy of the North Carolina Early Childhood Credential requirements is on file at the Division at the address given in Item (1) of this Rule and is available for public inspection or copying at no charge during regular business hours.
- (24) "Owner" means any person with a five percent or greater equity interest in a child care facility, however stockholders of corporations who own child care facilities are not subject to mandatory criminal history checks pursuant to G.S. 110-90.2 and G.S. 110-91(8) unless they are a child care provider.
- (25) "Parent" means a child's parent, legal guardian, or full-time custodian.
- (26) "Part-time care" means a child care arrangement where children attend on a regular schedule but less than a full-time basis.
- (27) "Passageway" means a hall or corridor.
- (28) "Person" means any individual, trust, estate, partnership, corporation, joint stock company, consortium, or any other group, entity, organization, or association.
- (29) "Preschooler" or "preschool-age child" means any child who does not fit the definition of school-age child in this Rule.
- (30) "School-Age Care Environment Rating Scale" (Harms, Jacobs, and White, 1996, published by Teachers College Press) is the instrument used to evaluate the quality of care received by a group of children in a child care center, when the majority of the children in the group are older than five years, to achieve three or more points for the program standards of a rated license. This instrument is incorporated by reference and includes subsequent editions. Individuals wishing to purchase a copy may call Teachers College Press at 1-800-575-6566. The cost of this scale in June 2012 is twenty-one dollars and ninety-five cents (\$21.95). A copy of this instrument is on file at the Division at the address given in Item (1) of this Rule and is available for public inspection during regular business hours.
- (31) "School-age child" means any child who is attending or who has attended, a public or private grade school or kindergarten and meets age requirements as specified in G.S. 115C-364.
- (32) "Seasonal Program" means a recreational program as set forth in G.S. 110-86(2)(b).
- (33) "Section" means Division of Child Development and Early Education.
- (34) "Substitute" means any person who assumes the duties of a staff person for a time period not to exceed two consecutive months.
- (35) "Track-Out Program" means any child care provided to school-age children when they are out of school on a year-round school calendar.
- (36) "Volunteer" means a person who works in a child care facility and is not monetarily compensated by the facility.

History Note: Authority G.S. 110-85; 110-88; 143B-168.3; Eff. January 1, 1986; Amended Eff. April 1, 1992; October 1, 1991; October 1, 1990; November 1, 1989; Temporary Amendment Eff. January 1, 1996; Amended Eff. September 1, 2012; July 3, 2012; July 1, 2012; November 1, 2007; May 1, 2006; May 1, 2004; April 1, 2003; July 1, 2000; April 1, 1999; July 1, 1998; April 1, 1997.

10A NCAC 09 .2802 APPLICATION FOR A VOLUNTARY RATED LICENSE

(a) After a licensed child care center or home has been in operation for a minimum of six consecutive months, the procedures in this Rule apply to request an initial two- through five-star rated license or to request that a rating be changed to a two- through five-star rated license.

(b) The operator shall submit a completed application to the Division for a voluntary rated license on the form provided by the Division.

(c) An operator may apply for a star rating based on the total number of points achieved for each component of the voluntary rated license. In order to achieve a two- through five-star rating, for a two component license the minimum score achieved must be a least four points as follows:

TOTAL NUMBER OF POINTS	RATING
4 through 6	Two Stars
7 through 9	Three Stars
10 through 12	Four Stars
13 through 15	Five Stars

(d) Facilities with a four or five-star rated license that are licensed to serve four-year-old children must implement a curriculum as defined in 10A NCAC 09 .0102 with their four year olds. This requirement must be met in any licensed child care facility.

(e) A Division representative shall assess the facility requesting a voluntary rated license to determine if all applicable requirements have been met to achieve the score for the requested star rating. The assessment may include a review of Division records and site visits.

(f) The Division shall provide for Infant/Toddler Environment Rating Scale Revised Edition, Early Childhood Environment Rating Scale - Revised Edition, School-Age Care Environment Rating Scale, or Family Child Care Environment Rating Scale - Revised Edition assessments to be completed, as appropriate for the program, free of charge to operators requesting an initial three or more points for program standards.

(g) Upon completion of the Division's assessment:

- (1) If the assessment indicates all the applicable requirements to achieve the score for the requested rating have been met, the Division shall issue the rating.
- (2) If the assessment indicates all the applicable requirements to achieve the score for the requested rating are not met, the Division shall notify the operator of the requirements that were not met and the requested voluntary rating shall not be issued. The operator may:
 - (A) Accept the rating for which the Division has found the operator to be eligible;
 - (B) Withdraw the request and reapply when the identified requirements to achieve the score for the requested rating have been met; or
 - (C) Appeal the denial of the requested rating as provided in G.S. 110-94.

History Note: Authority G.S. 110-85; 110-88(7); 110-90(4); 143B-168.3; S.L. 2011-145, s.10.7(b);

Eff. April 1, 1999;

Amended Eff. September 1, 2012; July 1, 2010; May 1, 2006.

10A NCAC 09 .2829 QUALITY POINT OPTIONS

Operators may earn one additional quality point as follows:

- (1) Education options:
 - (a) Completing additional education coursework as follows:
 - (i) An Infant and Toddler Certificate, by 75 percent of infant and toddler teachers,
 - (ii) An A.A.S. or higher in early childhood education or child development by 75 percent of teachers,
 - (iii) A BA or BS or higher in early childhood education or child development by 75 percent of lead teachers,
 - (iv) An A.A.S. or higher in early childhood education or child development by all lead teachers,
 - (v) A North Carolina School Age Care Credential or have completed six semester hours in school-age coursework by 75 percent of group leaders, or
 - (vi) An Infant and Toddler Certificate or has a BA or BS or higher in early childhood education or child development by a family child care home provider;
 - (b) Completing 20 additional annual in-service training hours for full-time lead teachers and teachers, and staff working part-time completing additional hours based on the chart in Rule .0707(c) of this Chapter;
 - (c) Completing 20 additional annual in-service training hours for family child care home providers;
 - (d) 75 percent of lead teachers and teachers having at least 10 years verifiable early childhood work experience;
 - (e) All lead teachers and teachers having at least five years verifiable early childhood work experience employed by no more than two different employers;
 - (f) Having a combined turnover rate of 20 percent or less for the administrator, program coordinator, lead teachers, teachers and group

- leader positions over the last 12 months if the program has earned at least four points in education;
- (g) In a stand alone school age program, 75 percent of group leaders having at least five years verifiable school-age work experience employed in no more than two different school-age settings; or
- (2) Programmatic options:
 - (a) Using age or developmentally appropriate curriculum that addresses five domains of development. This programmatic option is not available to facilities that are required to use an approved curriculum in accordance with Rule .2802(d) of this Section;
 - (b) Having group sizes decreased by at least one child per age group from the seven point level as described in Rule .2818(c) of this Section;
 - (c) Having staff/child ratios decreased by at least one child per age group from the seven point level as described in Rule .2818(c) of this Section;
 - (d) Meeting at least two of the following three programs standards:
 - (i) Having enhanced policies which include the following topics: emergency evacuation plan, field trip policy, staff development plan, medication administration, enhanced discipline policy, and health rules for attendance;
 - (ii) Having a staff benefits package that offers at least four of the following six benefits: paid leave for professional development, paid planning time, vacation, sick time, retirement or health insurance; or
 - (iii) Having evidence of an infrastructure of parent involvement that includes at least two of the following: parent newsletters offered at least quarterly, parent advisory board, periodic conferences for all children, or parent information meetings offered at least quarterly;
 - (e) Completing a 30 hour or longer business training course by a family child care home provider;

- (f) Completing a business training course and a wage and hour training by the center administrator that is at least 30 hours total;
- (g) Restricting enrollment to four preschool children in a family child care home; or
- (h) Reducing infant capacity by at least one child from the seven point level for a family child care home as described in Rule .2821(g)(3) of this Section.

History Note: Authority G.S. 110-85;110-88(7); 110-90(4); 143B-168.3; S.L. 2011-145, s.10.7(b); Eff. May 1, 2006; Amended Eff. December 1, 2006; Recodified from Rule .2823 Eff. August 1, 2012; Amended Eff. September 1, 2012.

10A NCAC 63F .0403 ECONOMIC NEEDS SCHEDULE

- (a) The Division of Services for the Blind shall determine a consumer's financial eligibility for services subject to a financial needs test by application of the financial eligibility scale established by the General Assembly. Copies of the economic needs schedule can be found at any Division office.
- (b) The Division shall obtain financial information from consumers to determine their financial eligibility to receive services listed in Rule .0402(c) of this Section. Financial information obtained may include wage and earning statement, State and Federal income tax forms, W2 form, bank statements and other information to document income or other financial resources. If the consumer does not have documents to verify income, the consumer shall complete a verification form provided by the agency and signed by the consumer's last employer, the individual who financially supports the consumer, or the agency representative who processes the consumer's public support. For the purpose of this Rule, "public support" means economic payment provided by state or federal government to someone in economic need.

History Note: Authority G.S. 111-28; 34 C.F.R. 361.54; Eff. February 1, 1976; Readopted Eff. November 16, 1977; Amended Eff. April 1, 1990; February 1, 1986; February 1, 1982; July 1, 1979; Temporary Amendment Eff. August 1, 2001; Amended Eff. September 1, 2012; August 1, 2002.

TITLE 21 – OCCUPATIONAL LICENSING BOARD AND COMMISSIONS

CHAPTER 14 – BOARD OF COSMETIC ART EXAMINERS

21 NCAC 14A .0404 FEES

(a) Fees paid by personal checks that are returned for any reason shall be treated in the same manner as though no fee had been tendered and the bank's returned check fee not to exceed twenty five dollars (\$25.00) shall be assessed to the account holder. All subsequent payments must be submitted via credit card, money order or certified check.

(b) All moneys tendered in payment of fees shall be in the exact amount required for said fees.

(c) Licenses, certifications, duplicates, inactivations, or reactivations will not be processed until all fees and assessed civil penalties are paid in full.

*History Note: Authority G.S. 25-3-506; 88B-2; 88B-4;
Eff. September 1, 2012.*

21 NCAC 14F .0101 APPLICATION FOR SALON LICENSE

*History Note: Authority G.S. 88B-14;
Eff. February 1, 1976;
Amended Eff. August 1, 2000; April 1, 1988;
Repealed Eff. September 1, 2012.*

21 NCAC 14F .0104 SEPARATION OF BEAUTY SALON

21 NCAC 14F .0105 NEWLY ESTABLISHED RESIDENTIAL SALONS

*History Note: Authority G.S. 88B-4; 88B-4(9);
Eff. February 1, 1976;
Amended Eff. April 1, 2011; August 1, 2000; May 1, 1998; July 1, 1990; January 1, 1989; April 1, 1988;
Repealed Eff. September 1, 2012.*

21 NCAC 14F .0107 DIMENSIONS OF BEAUTY SALON

21 NCAC 14F .0108 INSPECTION OF COSMETIC ART SHOPS

21 NCAC 14F .0109 SIGNS

*History Note: Authority G.S. 88B-4; 88B-4(a)(9); 88B-14;
88B-21; 88-23;
Eff. February 1, 1976;
Amended Eff. July 1, 2010; November 1, 2005; April 1, 1995;
October 1, 1991; January 1, 1989; April 1, 1988; May 1, 1988;
Repealed Eff. September 1, 2012.*

21 NCAC 14F .0113 FAILURE TO PERMIT INSPECTION

*History Note: Authority G.S. 88-23;
Eff. April 1, 1988;
Repealed Eff. September 1, 2012.*

21 NCAC 14H .0105 SANITARY RATINGS AND POSTING OF RATINGS

*History Note: Authority G.S. 88B-4; 88B-23; 88B-24;
Eff. February 1, 1976;
Amended Eff. January 1, 2011; June 1, 2009; June 1, 2007;
August 1, 1998; June 1, 1994; April 1, 1991; January 1, 1989;
Repealed Eff. September 1, 2012.*

**21 NCAC 14H .0107 WATER SUPPLY
21 NCAC 14H .0108 FLOOR COVERINGS
21 NCAC 14H .0109 VENTILATION AND LIGHT
21 NCAC 14H .0110 BATHROOM FACILITIES
21 NCAC 14H .0111 CLEANLINESS OF OPERATORS
21 NCAC 14H .0112 CLEANLINESS OF CLINIC AREA
21 NCAC 14H .0113 CLEANLINESS OF SCISSORS:
SHEARS: RAZORS AND OTHER EQUIPMENT
21 NCAC 14H .0114 CARE OF CREAMS: LOTIONS:
AND COSMETICS
21 NCAC 14H .0115 FIRST AID**

*History Note: Authority G.S. 88B-4; 88B-4(a)(9); 88B-14;
88-23;
Eff. February 1, 1976;
Amended Eff. August 1, 1998; June 1, 1994; April 1, 1991;
January 1, 1989; April 1, 1988;
Temporary Amendment Eff. January 20, 1999;
Amended Eff. April 1, 2011; January 1, 2011; July 1, 2010;
December 1, 2008; January 1, 2008; October 1, 2006; February 1, 2006
November 1, 2005; December 1, 2004; September 1, 2004;
February 1, 2004; August 1, 2000;
Repealed Eff. September 1, 2012.*

**21 NCAC 14H .0117 ANIMALS
21 NCAC 14H .0118 SYSTEMS OF GRADING BEAUTY ESTABLISHMENTS**

*History Note: Authority G.S. 88B-2; 88B-4; 88B-14; 88B-17;
88B-23;
Eff. February 1, 1976;
Amended Eff. August 1, 1998; June 1, 1994; April 1, 1991;
January 1, 1989;
Temporary Amendment Eff. January 20, 1999;
Amended Eff. Amended Eff. July 1, 2010; December 1, 2008;
August 1, 2000;
Repealed Eff. September 1, 2012.*

21 NCAC 14H .0120 WHIRLPOOL, FOOTSPA AND FACIAL STEAMER SANITATION

*History Note: Authority G.S. 88B-4; 88B-14;
Eff. February 1, 2004;
Amended Eff. January 1, 2011; December 1, 2008; May 1, 2007;
October 1, 2006; November 1, 2005;
Repealed Eff. September 1, 2012.*

21 NCAC 14H .0121 PROHIBITED PRACTICES

History Note: Authority G.S. 88B-2; 88B-4; Eff. April 1, 2004; Amended Eff. January 1, 2011; January 1, 2008; May 1, 2007; December 1, 2004; Repealed Eff. September 1, 2012.

21 NCAC 14P .0108 REVOCATION OF LICENSES AND OTHER DISCIPLINARY MEASURES

(a) The presumptive civil penalty for allowing unlicensed practitioners to practice in a licensed cosmetic art shop is:

- | | | |
|-----|-------------|-----------|
| (1) | 1st offense | \$500.00 |
| (2) | 2nd offense | \$750.00 |
| (3) | 3rd offense | \$1000.00 |

(b) The presumptive civil penalty for practicing cosmetology, natural hair care, manicuring or esthetics with a license issued to another person is:

- | | | |
|-----|-------------|------------|
| (1) | 1st offense | \$500.00 |
| (2) | 2nd offense | \$800.00 |
| (3) | 3rd offense | \$1,000.00 |

(c) The presumptive civil penalty for altering a license, permit or authorization issued by the Board is:

- | | | |
|-----|-------------|-----------|
| (1) | 1st offense | \$500.00 |
| (2) | 2nd offense | \$800.00 |
| (3) | 3rd offense | \$1000.00 |

(d) The presumptive civil penalty for submitting false or fraudulent documents is:

- | | | |
|-----|-------------|------------|
| (1) | 1st offense | \$500.00 |
| (2) | 2nd offense | \$800.00 |
| (3) | 3rd offense | \$1,000.00 |

(e) The presumptive civil penalty for refusing to present photographic identification is:

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

(f) The presumptive civil penalty for permitting an individual to practice cosmetic art with an expired license is:

- | | | |
|-----|-------------|----------|
| (1) | 1st offense | \$ 50.00 |
| (2) | 2nd offense | \$100.00 |
| (3) | 3rd offense | \$250.00 |

(g) The presumptive civil penalty for practicing or attempting to practice by fraudulent misrepresentation is:

- | | | |
|-----|-------------|-----------|
| (1) | 1st offense | \$500.00 |
| (2) | 2nd offense | \$800.00 |
| (3) | 3rd offense | \$1000.00 |

(h) The presumptive civil penalty for the illegal use or possession of equipment or Methyl Methacrylate Monomer (MMA) in a cosmetic art shop or school is:

- | | | |
|-----|-------------|-----------|
| (1) | 1st offense | \$300.00 |
| (2) | 2nd offense | \$500.00 |
| (3) | 3rd offense | \$1000.00 |

(i) The presumptive civil penalty for failure to maintain footspa sanitation records is:

- | | | |
|-----|-------------|----------|
| (1) | 1st offense | \$100.00 |
| (2) | 2nd offense | \$200.00 |
| (3) | 3rd offense | \$300.00 |

History Note: Authority G.S. 88B-4; 88B-24; 88B-29; Temporary Adoption Eff. January 1, 1999;

Eff. August 1, 2000;

Amended Eff. September 1, 2012; September 1, 2011; July 1, 2010; December 1, 2008; January 1, 2006; April 1, 2004; August 1, 2002; April 1, 2001.

21 NCAC 14P .0111 ESTABLISHMENT OF COSMETIC ART SCHOOLS

(a) The presumptive civil penalty for failure to provide minimum floor space or equipment and supplies as required by Subchapters 14G, 14I, 14J, 14K, 14O, 14S and 14T is:

- | | | |
|-----|-------------|----------|
| (1) | 1st offense | \$200.00 |
| (2) | 2nd offense | \$350.00 |
| (3) | 3rd offense | \$500.00 |

(b) The presumptive civil penalty for failure to provide instruction at a ratio required is:

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

(c) The presumptive civil penalty for failure to report a change in the teaching staff is:

- | | | |
|-----|-------------|-------------------|
| (1) | 1st offense | warning (\$50.00) |
| (2) | 2nd offense | \$100.00 |
| (3) | 3rd offense | \$200.00 |

(d) The presumptive civil penalty for failure to submit an application for the approval of a school in the case of a change of location or ownership is:

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

History Note: Authority G.S. 88B-4(2); 88B-16; 88B-29; Temporary Adoption Eff. January 1, 1999; Eff. August 1, 2000; Amended Eff. September 1, 2012; July 1, 2010; February 1, 2004.

21 NCAC 14P .0112 SANITARY RATINGS AND POSTING OF RATINGS - APPLICABLE TO ESTABLISHMENTS WITH A SANITATION GRADE OF LESS THAN 80%

(a) The presumptive civil penalty for failure to display an inspection grade card is:

- | | | |
|-----|-------------|----------|
| (1) | 1st offense | \$50.00 |
| (2) | 2nd offense | \$100.00 |
| (3) | 3rd offense | \$200.00 |

(b) The presumptive civil penalty for non-working toilet facilities is:

- | | | |
|-----|-------------|-------------------|
| (1) | 1st offense | warning (\$50.00) |
| (2) | 2nd offense | \$100.00 |
| (3) | 3rd offense | \$200.00 |

(c) The presumptive civil penalty for failure to maintain equipment, furnishings and floor coverings is:

- | | | |
|-----|-------------|-------------------|
| (1) | 1st offense | warning (\$25.00) |
| (2) | 2nd offense | \$50.00 |
| (3) | 3rd offense | \$100.00 |

(d) The presumptive civil penalty for failure to provide hot and cold running water is:

- | | | |
|-----|-------------|-------------------|
| (1) | 1st offense | warning (\$50.00) |
| (2) | 2nd offense | \$100.00 |

- (3) 3rd offense \$200.00
- (e) The presumptive civil penalty for keeping any animal or bird in a cosmetic art shop or school is: (Trained animals accompanying sightless or hearing impaired persons are exempt)
- (1) 1st offense warning (\$25.00)
- (2) 2nd offense \$50.00
- (3) 3rd offense \$100.00
- (f) The presumptive civil penalty for failure of operators in cosmetic art shops to wear clean outer garments with sleeves is:
- (1) 1st offense warning (\$50.00)
- (2) 2nd offense \$100.00
- (3) 3rd offense \$200.00
- (g) The presumptive civil penalty for failure to store used or clean protective drapes, linens or towels, or failure to launder used protective drapes, linens or towels is:
- (1) 1st offense warning (\$50.00)
- (2) 2nd offense \$100.00
- (3) 3rd offense \$200.00
- (h) The presumptive civil penalty for failure to dispose of supplies or instruments which come in direct contact with a patron and which cannot be disinfected is:
- (1) 1st offense warning (\$50.00)
- (2) 2nd offense \$100.00
- (3) 3rd offense \$200.00
- (i) The presumptive civil penalty for failure to disinfect non-electrical instruments and equipment is:
- (1) 1st offense warning (\$50.00)
- (2) 2nd offense \$100.00
- (3) 3rd offense \$200.00
- (j) The presumptive civil penalty for failure to store and label creams, powders, and other cosmetic preparations is:
- (1) 1st offense warning (\$25.00)
- (2) 2nd offense \$50.00
- (3) 3rd offense \$100.00
- (k) The presumptive civil penalty for failure to have necessary first aid equipment on hand is:
- (1) 1st offense warning (\$25.00)
- (2) 2nd offense \$50.00
- (3) 3rd offense \$100.00
- (l) The presumptive civil penalty for failure to provide necessary lighting or ventilation is:
- (1) 1st offense warning (\$50.00)
- (2) 2nd offense \$100.00
- (3) 3rd offense \$200.00
- (m) The presumptive civil penalty for windows and doors not effectively screened is:
- (1) 1st offense warning (\$50.00)
- (2) 2nd offense \$100.00
- (3) 3rd offense \$200.00
- (n) The presumptive civil penalty for trash containers not covered is:
- (1) 1st offense warning (\$25.00)
- (2) 2nd offense \$50.00
- (3) 3rd offense \$100.00
- (o) The presumptive civil penalty for failure to use EPA approved disinfectant is:
- (1) 1st offense \$50.00
- (2) 2nd offense \$100.00
- (3) 3rd offense \$200.00

(p) The presumptive civil penalty for failure to maintain a sanitary establishment (80% rating or better) is:

- (1) 1st offense warning (\$25.00)
- (2) 2nd offense \$50.00
- (3) 3rd offense \$100.00

History Note: Authority G.S. 88B-4; 88B-29; Temporary Adoption Eff. January 1, 1999; Eff. August 1, 2000; Amended Eff. September 1, 2012; December 1, 2008; February 1, 2006.

21 NCAC 14P .0113 OPERATIONS OF SCHOOLS OF COSMETIC ART

(a) The presumptive civil penalty for failure to record student's hours of daily attendance is:

- (1) 1st offense warning (\$100.00)
- (2) 2nd offense \$200.00
- (3) 3rd offense \$300.00

(b) The presumptive civil penalty for failure to report withdrawal or graduation of a student within 30 working days is:

- (1) 1st offense warning (\$50.00)
- (2) 2nd offense \$100.00
- (3) 3rd offense \$200.00

(c) The presumptive civil penalty for failure to submit cosmetology enrollments within 30 working days or manicurist, natural hair care specialist and esthetician enrollments within 15 working days is:

- (1) 1st offense warning (\$50.00)
- (2) 2nd offense \$100.00
- (3) 3rd offense \$200.00

(d) The presumptive civil penalty for failure to display a copy of the sanitation rules is:

- (1) 1st offense warning (\$50.00)
- (2) 2nd offense \$100.00
- (3) 3rd offense \$200.00

(e) The presumptive civil penalty for failure to post consumer sign "Cosmetic Art School - Work Done Exclusively by Students" is:

- (1) 1st offense warning (\$50.00)
- (2) 2nd offense \$100.00
- (3) 3rd offense \$200.00

(f) The presumptive civil penalty for allowing a cosmetic art shop to operate within a cosmetic art school is:

- (1) 1st offense \$200.00
- (2) 2nd offense \$400.00
- (3) 3rd offense \$600.00

(g) The presumptive civil penalty for a cosmetic art school that is not separated from a cosmetic art shop or other business by a solid wall, floor to ceiling, with an separate entrance and a door that stays closed at all times is:

- (1) 1st offense \$200.00
- (2) 2nd offense \$400.00
- (3) 3rd offense \$600.00

(h) The presumptive civil penalty for failure to have any student wear a clean washable uniform or identification is:

- (1) 1st offense warning (\$50.00)
- (2) 2nd offense \$100.00

(3) 3rd offense \$200.00

History Note: Authority G.S. 88B-4; 88B-16; 88B-29; Temporary Adoption Eff. January 1, 1999; Eff. August 1, 2000; Amended Eff. September 1, 2012; July 1, 2010; December 1, 2008; April 1, 2004.

21 NCAC 14P .0114 COSMETOLOGY CURRICULUM

(a) The presumptive civil penalty for a school allowing cosmetology or apprentice cosmetology students with less than 300 hours credit to work on the public. (Shampoo and scalp manipulations are exempt) is:

(1)	1st offense	\$100.00
(2)	2nd offense	\$200.00
(3)	3rd offense	\$300.00

(b) The presumptive civil penalty for a school for manicurist students with less than 60 hours credit working on the public is:

(1)	1st offense	\$100.00
(2)	2nd offense	\$200.00
(3)	3rd offense	\$300.00

(c) The presumptive civil penalty for a school for esthetician students with less than 75 hours credit working on the public is:

(1)	1st offense	\$100.00
(2)	2nd offense	\$200.00
(3)	3rd offense	\$300.00

(d) The presumptive civil penalty for a school for natural hair care students with less than 60 hours credit working on the public is:

(1)	1st offense	\$100.00
(2)	2nd offense	\$200.00
(3)	3rd offense	\$300.00

History Note: Authority G.S. 88B-4; 88B-29; Temporary Adoption Eff. January 1, 1999; Eff. August 1, 2000; Amended Eff. September 1, 2012; July 1, 2010.

21 NCAC 14R .0101 CONTINUING EDUCATION REQUIREMENTS
21 NCAC 14R .0102 APPLICATION CRITERIA AND CONTINUING EDUCATION COURSE APPROVAL
21 NCAC 14R .0103 CRITERIA FOR CONTINUING EDUCATION COURSES
21 NCAC 14R .0104 LICENSE RENEWAL PROCEDURES

History Note: Authority G.S. 88B-4; 88B-21(e); Eff. May 1, 2004; Amended Eff. February 1, 2011; January 1, 2011; July 1, 2010; December 1, 2008; May 1, 2007; January 1, 2006; December 1, 2004; Repealed Eff. September 1, 2012.

21 NCAC 14T .0603 APPRENTICE COSMETOLOGY CURRICULUM

(a) To meet the approval of the Board, an apprentice cosmetologist training course must consist of at least 1200 hours of instruction in theory and practical application, divided as follows:

Theory and Performance Requirements	Hours	Services	
Beginners: Professional image, sanitation, bacteriology, disinfection, first aid, anatomy, electricity, chemistry, professional ethics, draping, shampooing, roller sets, pin curls, ridge curls with C shaping, fingerwaves, braids, artificial hair, up-styles, blowdrying brush control, blowdrying with curling iron, pressing/thermal, hair cutting, partings, perm wraps, relaxer sectioning, color application sectioning, scalp treatments, manicures, pedicures, and artificial nails	300		
Advanced: Styles and techniques of cosmetology services including arranging, dressing, curling, waving, cleansing, cutting, singeing, bleaching or coloring hair, esthetics and manicuring; and business management and salon business	900		
Performance Requirements		Mannequin	Live Model
Scalp and hair treatments			8
Fullhead fingerwave and style		3 or	3
Fullhead pincurl and style		3 or	3
Hair styling – sets, blowdrying, thermal press/flat iron, and artificial hair		56	80
Haircuts		8	60

Chemical reformation or permanent waving and relaxers		19	8
Temporary color			1
Color application – semi, demi, permanent color and hair lightening		8	11
Multidimensional color – low/high lighting, cap, bleach		3	8
Lash and brow color			1
Nail care – manicures and pedicures			12
Artificial nails sets		4 or	4
Facials with surface manipulations			7
Makeup application			1
Hair removal			3

- (b) A minimum of 300 hours of theory is required prior to conducting live model performances on the public.
- (c) Certification of live model or mannequin performance completions is required along with the graduation form and application for the examination.
- (d) A live model may be substituted for a mannequin for any mannequin service.
- (e) All mannequin services may be performed using a simulated product.
- (f) Simulated product is not allowed for credit for live model performance.
- (g) Mannequin services shall not be substituted for live model services.
- (h) Sharing of performance completions is not allowed.
- (i) Credit for a performance shall be given to only one student.
- (j) A nail set is one hand including all four fingers and thumb.

History Note: Authority G.S. 88B-2; 88B-4; 88B-16; 88B-17;
Eff. January 1, 2012;
Amended Eff. September 1, 2012.

21 NCAC 14T .0705 SCHOOL PERFORMANCE REQUIREMENTS

- (a) Each cosmetic art school shall meet or exceed a program completion rate of at least 50 percent during any five year period and shall meet or exceed a student pass rate on state licensure examinations of at least 70 percent during any three year period.
- (b) The school shall allow the teachers to have the opportunity to prepare for class, evaluate students' progress in the course, counsel students individually, and participate in activities of continuing education.
- (c) Cosmetic art schools must provide to substitutes copies of lesson plans and the performance evaluation plan for the successful grading of clinical performances.
- (d) School attendance policies shall give appropriate performances attendance credit for all hours attended;
- (e) If a graduate meets all the financial, hours, academic, and performance requirements, the school must provide the student with the examination application.
- (f) Cosmetic Art schools shall maintain current bond according to G.S. 88B-17 and shall submit certification of renewal or new bond prior to expiration of the bond approved by the Board.
- (g) Each school shall submit to the Board upon renewal financial records of prepaid tuition and a letter signed by an authorized representative of the school documenting the calculations made and the method of computing the amount of the bond for the preceding year. Each school shall maintain and submit to the Board proof of bond in an amount of ten thousand dollars (\$10,000), or equivalent to prepaid tuition received during the previous year, whichever is greater.

History Note: Authority G.S. 88B-2; 88B-4; 88B-16; 88B-17;
Eff. January 1, 2012;
Amended Eff. September 1, 2012.

CHAPTER 32 – MEDICAL BOARD

21 NCAC 32M .0101 DEFINITIONS

The following definitions apply to this Subchapter:

- (1) "Approval to Practice" means authorization by the Medical Board and the Board of Nursing for a nurse practitioner to perform medical acts within her or his area of educational preparation and certification under a collaborative practice agreement (CPA) with a licensed physician in accordance with this Subchapter.
- (2) "Back-up Supervising Physician" means the licensed physician who, by signing an agreement with the nurse practitioner and the primary supervising physician(s), shall provide supervision, collaboration, consultation and evaluation of medical acts by the nurse practitioner in accordance with the collaborative practice agreement when the Primary Supervising Physician is not available. Back-up supervision shall be in compliance with the following:

- (a) The signed and dated agreements for each back-up supervising physician(s) shall be maintained at each practice site.
 - (b) A physician in a graduate medical education program, whether fully licensed or holding only a resident's training license, shall not be named as a back-up supervising physician.
 - (c) A fully licensed physician in a graduate medical education program who is also practicing in a non-training situation and has a signed collaborative practice agreement with the nurse practitioner and the primary supervising physician may be a back-up supervising physician for a nurse practitioner in the non-training situation.
- (3) "Board of Nursing" means the North Carolina Board of Nursing.
- (4) "Collaborative practice agreement" means the arrangement for nurse practitioner-physician continuous availability to each other for ongoing supervision, consultation, collaboration, referral and evaluation of care provided by the nurse practitioner.
- (5) "Disaster" means a state of disaster as defined in G.S. 166A-4(1a) and proclaimed by the Governor, or by the General Assembly pursuant to G.S. 166A-6.
- (6) "Joint Subcommittee" means the subcommittee composed of members of the Board of Nursing and members of the Medical Board to whom responsibility is given by G.S. 90-8.2 and G.S. 90-171.23(b)(14) to develop rules to govern the performance of medical acts by nurse practitioners in North Carolina.
- (7) "Medical Board" means the North Carolina Medical Board.
- (8) "National Credentialing Body" means one of the following credentialing bodies that offers certification and re-certification in the nurse practitioner's specialty area of practice:
- (a) American Nurses Credentialing Center (ANCC);
 - (b) American Academy of Nurse Practitioners (AANP);
 - (c) American Association of Critical Care Nurses Certification Corporation (AACN);
 - (d) National Certification Corporation of the Obstetric, Gynecologic and Neonatal Nursing Specialties (NCC); and
 - (e) the Pediatric Nursing Certification Board (PNCB).
- (9) "Nurse Practitioner" or "NP" means a currently licensed registered nurse approved to perform medical acts consistent with the nurse's area of nurse practitioner academic educational preparation and national certification under an agreement with a licensed physician for ongoing supervision, consultation, collaboration and evaluation of medical acts performed. Such medical acts are in addition to those nursing acts performed by virtue of registered nurse (RN) licensure. The NP is held accountable under the RN license for those nursing acts that he or she may perform.
- (10) "Primary Supervising Physician" means the licensed physician who shall provide on-going supervision, collaboration, consultation and evaluation of the medical acts performed by the nurse practitioner as defined in the collaborative practice agreement. Supervision shall be in compliance with the following:
- (a) The primary supervising physician shall assure both Boards that the nurse practitioner is qualified to perform those medical acts described in the collaborative practice agreement.
 - (b) A physician in a graduate medical education program, whether fully licensed or holding only a resident's training license, shall not be named as a primary supervising physician.
 - (c) A fully licensed physician in a graduate medical education program who is also practicing in a non-training situation may supervise a nurse practitioner in the non-training situation.
- (11) "Registration" means authorization by the Medical Board and the Board of Nursing for a registered nurse to use the title nurse practitioner in accordance with this Subchapter.
- (12) "Supervision" means the physician's function of overseeing medical acts performed by the nurse practitioner.
- (13) "Volunteer Approval" means approval to practice consistent with this Subchapter except without expectation of direct or indirect compensation or payment (monetary, in kind or otherwise) to the nurse practitioner.

*History Note: Authority G.S. 90-8.1; 90-8.2; 90-18(c)(14); 90-18.2;
Eff. January 1, 1991;
Amended Eff. September 1, 2012; December 1, 2009; December 1, 2006; August 1, 2004; May 1, 1999; January 1, 1996.*

21 NCAC 32M .0103 NURSE PRACTITIONER REGISTRATION

(a) The Board of Nursing shall register an applicant as a nurse practitioner who:

- (1) has an unrestricted license to practice as a registered nurse in North Carolina and, when applicable, an unrestricted approval, registration or license as a nurse practitioner in another state, territory, or possession of the United States;
- (2) has successfully completed a nurse practitioner education program as outlined in Rule .0105 of this Subchapter;
- (3) is certified as a nurse practitioner by a national credentialing body consistent with 21 NCAC 36 .0801(8); and
- (4) has supplied additional information necessary to evaluate the application as requested.

(b) Beginning January 1, 2005, new graduates of a nurse practitioner program, who are seeking first-time nurse practitioner registration in North Carolina shall:

- (1) hold a Master's or higher degree in Nursing or related field with primary focus on Nursing;
- (2) have successfully completed a graduate level nurse practitioner education program accredited by a national accrediting body; and
- (3) provide documentation of certification by a national credentialing body.

History Note: Authority G.S. 90-18(c)(14); 90-18.2; 90-171.36;

Eff. August 1, 2004;

Amended Eff. September 1, 2012; November 1, 2008; December 1, 2006.

21 NCAC 32M .0104 PROCESS FOR APPROVAL TO PRACTICE

(a) Prior to the performance of any medical acts, a nurse practitioner shall:

- (1) meet registration requirements as specified in 21 NCAC 32M .0103;
- (2) submit an application for approval to practice;
- (3) submit any additional information necessary to evaluate the application as requested; and
- (4) have a collaborative practice agreement with a primary supervising physician.

(b) A nurse practitioner seeking approval to practice who has not practiced as a nurse practitioner in more than two years shall complete a nurse practitioner refresher course approved by the Board of Nursing in accordance with Paragraphs (o) and (p) of 21 NCAC 36 .0220 and consisting of common conditions and their management directly related to the nurse practitioner's area of education and certification.

(c) The nurse practitioner shall not practice until notification of approval to practice is received from the Board of Nursing after both Boards have approved the application.

(d) The nurse practitioner's approval to practice is terminated when the nurse practitioner discontinues working within the approved nurse practitioner collaborative practice agreement or

experiences an interruption in her or his registered nurse licensure status, and the nurse practitioner shall so notify the Board of Nursing in writing. The Boards shall extend the nurse practitioner's approval to practice in cases of emergency such as sudden injury, illness or death of the primary supervising physician.

(e) Applications for approval to practice in North Carolina shall be submitted to the Board of Nursing and then approved by both Boards as follows:

- (1) the Board of Nursing shall verify compliance with Rule .0103 of this Subchapter and Paragraph (a) of this Rule; and
- (2) the Medical Board shall verify that the designated primary supervising physician holds a valid license to practice medicine in North Carolina and compliance with Paragraph (a) of this Rule.

(f) Applications for approval of changes in practice arrangements for a nurse practitioner currently approved to practice in North Carolina shall be submitted by the applicants as follows:

- (1) addition or change of primary supervising physician shall be submitted to the Board of Nursing and proceed pursuant to protocols developed by both Boards; and
- (2) request for change(s) in the scope of practice shall be submitted to the Joint Subcommittee.

(g) A registered nurse who was previously approved to practice as a nurse practitioner in this state who reapplies for approval to practice shall:

- (1) meet the nurse practitioner approval requirements as stipulated in Rule .0108(c) of this Subchapter; and
- (2) complete the appropriate application.

(h) Volunteer Approval to Practice. The North Carolina Board of Nursing shall grant approval to practice in a volunteer capacity to a nurse practitioner who has met the qualifications to practice as a nurse practitioner in North Carolina.

(i) The nurse practitioner shall pay the appropriate fee as outlined in Rule .0115 of this Subchapter.

(j) A Nurse Practitioner approved under this Subchapter shall keep proof of current licensure, registration and approval available for inspection at each practice site upon request by agents of either Board.

History Note: Authority G.S. 90-18(c)(14); 90-18.2; 90-171.20(7); 90-171.23(b); 90-171.42;

Eff. January 1, 1991;

Paragraph (b)(1) was recodified from 21 NCAC 32M .0104 Eff. January 1, 1996;

Amended Eff. December 1, 2006; May 1, 1999; January 1, 1996; Recodified from 21 NCAC 32M .0103 Eff. August 1, 2004;

Amended Eff. January 1, 2013; December 1, 2009; November 1, 2008; January 1, 2007; August 1, 2004.

21 NCAC 32M .0108 INACTIVE STATUS

(a) Any nurse practitioner who wishes to place her or his approval to practice on an inactive status shall notify the Board of Nursing in writing.

(b) A nurse practitioner with an inactive approval to practice status shall not practice as a nurse practitioner.

(c) A nurse practitioner with an inactive approval to practice status who reapplies for approval to practice shall meet the qualifications for approval to practice in Rules .0103(a)(1), .0104(a) and (b), .0107, and .0110 of this Subchapter and receive notification from the Board of Nursing of approval prior to beginning practice after the application is approved by both Boards.

(d) A nurse practitioner who has not practiced as a nurse practitioner in more than two years shall complete a nurse practitioner refresher course approved by the Board of Nursing in accordance with Paragraphs (o) and (p) of 21 NCAC 36 .0220 and consisting of common conditions and management of these conditions directly related to the nurse practitioner's area of education and certification in order to be eligible to apply for approval to practice.

History Note: Authority G.S. 90-18(c)(14); 90-18.2; 90-171.36;

Eff. January 1, 1996;

Amended Eff. January 1, 2013; December 1, 2009; December 1, 2006; August 1, 2004; May 1, 1999.

CHAPTER 36 – NURSING BOARD

21 NCAC 36 .0801 DEFINITIONS

The following definitions apply to this Section:

- (1) "Approval to Practice" means authorization by the Medical Board and the Board of Nursing for a nurse practitioner to perform medical acts within her or his area of educational preparation and certification under a collaborative practice agreement (CPA) with a licensed physician in accordance with this Section.
- (2) "Back-up Supervising Physician" means the licensed physician who, by signing an agreement with the nurse practitioner and the primary supervising physician(s) shall provide supervision, collaboration, consultation and evaluation of medical acts by the nurse practitioner in accordance with the collaborative practice agreement when the Primary Supervising Physician is not available. Back-up supervision shall be in compliance with the following:
 - (a) The signed and dated agreements for each back-up supervising physician(s) shall be maintained at each practice site.
 - (b) A physician in a graduate medical education program, whether fully licensed or holding only a resident's training license, shall not be named as a back-up supervising physician.
- (c) A fully licensed physician in a graduate medical education program who is also practicing in a non-training situation and has a signed collaborative practice agreement with the nurse practitioner and the primary supervising physician may be a back-up supervising physician for a nurse practitioner in the non-training situation.
- (3) "Board of Nursing" means the North Carolina Board of Nursing.
- (4) "Collaborative practice agreement" means the arrangement for nurse practitioner-physician continuous availability to each other for ongoing supervision, consultation, collaboration, referral and evaluation of care provided by the nurse practitioner.
- (5) "Disaster" means a state of disaster as defined in G.S. 166A-4(1a) and proclaimed by the Governor, or by the General Assembly pursuant to G.S. 166A-6.
- (6) "Joint Subcommittee" means the subcommittee composed of members of the Board of Nursing and members of the Medical Board to whom responsibility is given by G.S. 90-8.2 and G.S. 90-171.23(b)(14) to develop rules to govern the performance of medical acts by nurse practitioners in North Carolina.
- (7) "Medical Board" means the North Carolina Medical Board.
- (8) "National Credentialing Body" means one of the following credentialing bodies that offers certification and re-certification in the nurse practitioner's specialty area of practice:
 - (a) American Nurses Credentialing Center (ANCC);
 - (b) American Academy of Nurse Practitioners (AANP);
 - (c) American Association of Critical Care Nurses Certification Corporation (AACN);
 - (d) National Certification Corporation of the Obstetric Gynecologic and Neonatal Nursing Specialties (NCC); and
 - (e) the Pediatric Nursing Certification Board (PNCB).
- (9) "Nurse Practitioner" or "NP" means a currently licensed registered nurse approved to perform medical acts consistent with the nurse's area of nurse practitioner academic educational preparation and national certification under an agreement with a licensed physician for ongoing supervision, consultation, collaboration and evaluation of the medical acts performed. Such medical acts are in addition to those nursing acts performed by virtue of registered nurse (RN) licensure.

- The NP is held accountable under the RN license for those nursing acts that he or she may perform.
- (10) "Primary Supervising Physician" means the licensed physician who shall provide ongoing supervision, collaboration, consultation and evaluation of the medical acts performed by the nurse practitioner as defined in the collaborative practice agreement. Supervision shall be in compliance with the following:
- (a) The primary supervising physician shall assure both Boards that the nurse practitioner is qualified to perform those medical acts described in the collaborative practice agreement.
 - (b) A physician in a graduate medical education program, whether fully licensed or holding only a resident's training license, shall not be named as a primary supervising physician.
 - (c) A fully licensed physician in a graduate medical education program who is also practicing in a non-training situation may supervise a nurse practitioner in the non-training situation.
- (11) "Registration" means authorization by the Medical Board and the Board of Nursing for a registered nurse to use the title nurse practitioner in accordance with this Section.
- (12) "Supervision" means the physician's function of overseeing medical acts performed by the nurse practitioner.
- (13) "Volunteer Approval" means approval to practice consistent with this rule except without expectation of direct or indirect compensation or payment (monetary, in kind or otherwise) to the nurse practitioner.

History Note: Authority G.S. 90-8.1; 90-8.2; 90-18(14); 90-18.2; 90-171.20(4); 90-171.20(7); 90-171.23(b); 90-171.83; Recodified from 21 NCAC 36 .0227(a) Eff. August 1, 2004; Amended Eff. September 1, 2012; December 1, 2009; December 1, 2006; August 1, 2004.

21 NCAC 36 .0803 NURSE PRACTITIONER REGISTRATION

- (a) The Board of Nursing shall register an applicant as a nurse practitioner who:
- (1) has an unrestricted license to practice as a registered nurse in North Carolina and, when applicable, an unrestricted approval, registration or license as a nurse practitioner in another state, territory, or possession of the United States;
 - (2) has successfully completed a nurse practitioner education program as outlined in Rule .0805 of this Section;

- (3) is certified as a nurse practitioner by a national credentialing body consistent with 21 NCAC 36 .0801(8); and
 - (4) has supplied additional information necessary to evaluate the application as requested.
- (b) Beginning January 1, 2005, new graduates of a nurse practitioner program, who are seeking first-time nurse practitioner registration in North Carolina shall:
- (1) hold a Master's or higher degree in Nursing or related field with primary focus on Nursing;
 - (2) have successfully completed a graduate level nurse practitioner education program accredited by a national accrediting body; and
 - (3) provide documentation of certification by a national credentialing body.

History Note: Authority G.S. 90-18(c)(13); 90-18.2; 90-171.20(7); 90-171.23(b); 90-171.83; Eff. August 1, 2004; Amended Eff. September 1, 2012; November 1, 2008; December 1, 2006.

21 NCAC 36 .0804 PROCESS FOR APPROVAL TO PRACTICE

- (a) Prior to the performance of any medical acts, a nurse practitioner shall:
- (1) meet registration requirements as specified in 21 NCAC 36 .0803;
 - (2) submit an application for approval to practice;
 - (3) submit any additional information necessary to evaluate the application as requested; and
 - (4) have a collaborative practice agreement with a primary supervising physician.
- (b) A nurse practitioner seeking approval to practice who has not practiced as a nurse practitioner in more than two years shall complete a nurse practitioner refresher course approved by the Board of Nursing in accordance with Paragraphs (o) and (p) of 21 NCAC 36 .0220 and consisting of common conditions and their management directly related to the nurse practitioner's area of education and certification.
- (c) The nurse practitioner shall not practice until notification of approval to practice is received from the Board of Nursing after both Boards have approved the application.
- (d) The nurse practitioner's approval to practice is terminated when the nurse practitioner discontinues working within the approved nurse practitioner collaborative practice agreement, or experiences an interruption in her or his registered nurse licensure status, and the nurse practitioner shall so notify the Board of Nursing in writing. The Boards shall extend the nurse practitioner's approval to practice in cases of emergency such as injury, sudden illness or death of the primary supervising physician.
- (e) Applications for approval to practice in North Carolina shall be submitted to the Board of Nursing and then approved by both Boards as follows:

- (1) the Board of Nursing shall verify compliance with Rule .0803 and Paragraph (a) of this Rule; and

- (2) the Medical Board shall verify that the designated primary supervising physician holds a valid license to practice medicine in North Carolina and compliance with Paragraph (a) of this Rule.
- (f) Applications for approval of changes in practice arrangements for a nurse practitioner currently approved to practice in North Carolina shall be submitted by the applicant as follows:
 - (1) addition or change of primary supervising physician shall be submitted to the Board of Nursing and processed pursuant to protocols developed by both Boards; and
 - (2) request for change(s) in the scope of practice shall be submitted to the Joint Subcommittee.
- (g) A registered nurse who was previously approved to practice as a nurse practitioner in this state who reapplies for approval to practice shall:
 - (1) meet the nurse practitioner approval requirements as stipulated in Rule .0808(c) of this Section; and
 - (2) complete the appropriate application.
- (h) Volunteer Approval to Practice. The North Carolina Board of Nursing shall grant approval to practice in a volunteer capacity to a nurse practitioner who has met the qualifications to practice as a nurse practitioner in North Carolina.
- (i) The nurse practitioner shall pay the appropriate fee as outlined in Rule .0813 of this Section.
- (j) A Nurse Practitioner approved under this Section shall keep proof of current licensure, registration and approval available for inspection at each practice site upon request by agents of either Board.

History Note: Authority G.S. 90-18(13), (14); 90-18.2; 90-171.20(7); 90-171.23(b); Recodified from 21 NCAC 36.0227(c) Eff. August 1, 2004; Amended Eff. January 1, 2013; December 1, 2009; November 1, 2008; January 1, 2007; August 1, 2004.

21 NCAC 36 .0808 INACTIVE STATUS

- (a) Any nurse practitioner who wishes to place her or his approval to practice on an inactive status shall notify the Board of Nursing in writing.
- (b) A nurse practitioner with an inactive approval to practice status shall not practice as a nurse practitioner.
- (c) A nurse practitioner with an inactive approval to practice status who reapplies for approval to practice shall meet the qualifications for approval to practice in Rules .0803(a)(1), .0804(a) and (b), .0807, and .0810 of this Section and receive notification from the Board of Nursing of approval prior to beginning practice after the application is approved by both Boards.
- (d) A nurse practitioner who has not practiced as a nurse practitioner in more than two years shall complete a nurse practitioner refresher course approved by the Board of Nursing in accordance with Paragraphs (o) and (p) of 21 NCAC 36 .0220 and consisting of common conditions and management of these conditions directly related to the nurse practitioner's area of education and certification in order to be eligible to apply for approval to practice.

History Note: Authority G.S. 90-18(13); 90-18.2; 90-171.36; 90-171.83; Recodified from 21 NCAC 36 .0227(g) Eff. August 1, 2004; Amended Eff. January 1, 2013; December 1, 2009; December 1, 2006; August 1, 2004.

RULES REVIEW COMMISSION

This Section contains information for the meeting of the Rules Review Commission on Thursday October 18, 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
Anna Baird Choi
Jeanette Doran
Garth K. Dunklin
Stephanie Simpson

COMMISSION COUNSEL

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

RULES REVIEW COMMISSION MEETING DATES

October 18, 2012 November 15, 2012
December 20, 2012 January 17, 2013

AGENDA

RULES REVIEW COMMISSION

Thursday, October 18, 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. Child Care Commission – 10A NCAC 09 .0901, .0902, .1702, .1706, .1718 (DeLuca)
 - B. Board of Podiatry Examiners – 21 NCAC 52 .0205 (DeLuca)
- IV. Review of Log of Filings (Permanent Rules) for rules filed between August 21, 2012 and September 20, 2012
- V. Review of Log of Filings (Temporary Rules) for any rule filed within 15 business days of the RRC Meeting
- VI. G.S. 150B-19.1 Certification
- VII. Commission Business
 - Next meeting: November 15, 2012

Commission Review
Log of Permanent Rule Filings
August 21, 2012 through September 20, 2012

* Approval Recommended, ** Objection Recommended, *** Other

ALCOHOLIC BEVERAGE CONTROL COMMISSION

The rules in Chapter 2 are from the Alcoholic Beverage Control Commission.

The rules in Subchapter 2S concern retail beer, wine, mixed beverages, brownbagging, advertising, and special permits. The rules include definitions and permit application procedures (.0100); general rules affecting retailers and brownbagging permittees (.0200); malt beverages and the wine retailer/wholesaler relationship (.0300); additional requirements for brownbagging permittees (.0400); additional requirements for mixed beverages permittees (.0500); special requirements for convention centers, community theatres, sports clubs, and nonprofit and political organizations (.0600); special occasions permits (.0700); culinary permits (.0800); wine and beer tastings (.0900); advertising (.1000); and effect of administrative action, fines, and offers in compromise (.1100).

<u>Guest Room Cabinets; Inventory and Records</u>	04	NCAC	02S	.0525
Amend/*				
<u>Types of Permits Required</u>	04	NCAC	02S	.0708
Amend/*				
<u>Tastings Held by Retailers for Consumers</u>	04	NCAC	02S	.0901
Amend/*				
<u>Advertising of Spirituous Liquors</u>	04	NCAC	02S	.1011
Amend/*				

The rules in Subchapter 2T concern industry members, retail/industry member relationships, ship chandlers, air carriers, and fuel alcohol including definitions and application procedures (.0100); product approvals, listing procedures and product lists (.0200); packaging and labeling of malt beverages and wine (.0300); standards of identity for wine containers (.0400); general provisions for industry members (.0500); sales and deliveries of malt beverages and wine (.0600); alcoholic beverages, retailer/industry member relationship and trade practices (.0700); ships chandler's permit (.0800); distillers and representatives (.0900); air carriers (.1000); fuel alcohol permits (.1100); and administrative action by commission (.1200).

<u>Wine Product Brand</u>	04	NCAC	02T	.0104
Amend/*				
<u>Transactions with Government and Special One-Time Permittees</u>	04	NCAC	02T	.0714
Amend/*				
<u>Tournaments</u>	04	NCAC	02T	.0715
Amend/*				

INDUSTRIAL COMMISSION

The rules in Chapter 10 are from the Industrial Commission.

The rules in Subchapter 10A concern workers' compensation rules including administration (.0100); notice of act (.0200); insurance (.0300); disability, compensation, fees (.0400); agreements (.0500); claims administration and procedures (.0600); appeals (.0700); rules of the commission (.0800); report of earnings (.0900); and preauthorization for medical treatment (.1000).

<u>Location of Offices and Hours of Business</u>	04	NCAC	10A	.0101
Amend/*				
<u>Official Forms</u>	04	NCAC	10A	.0102
Amend/*				
<u>Notice of Accident and Claim of Injury or Occupational Di...</u>	04	NCAC	10A	.0103
Amend/*				
<u>Employer's Requirement to File a Form 19</u>	04	NCAC	10A	.0104
Amend/*				
<u>Electronic Payment of Costs</u>	04	NCAC	10A	.0105
Amend/*				
<u>Filing of Annual Report Requirement</u>	04	NCAC	10A	.0106

Adopt/*					
<u>Computation of Time</u>	04	NCAC	10A	.0107	
Adopt/*					
<u>Posting Requirement for Employers</u>	04	NCAC	10A	.0201	
Amend/*					
<u>Proof of Insurance</u>	04	NCAC	10A	.0301	
Amend/*					
<u>Required Contact Information from Carriers</u>	04	NCAC	10A	.0302	
Amend/*					
<u>Calculating the Seven-Day Waiting Period</u>	04	NCAC	10A	.0401	
Amend/*					
<u>Submission of Earnings Statement Required</u>	04	NCAC	10A	.0402	
Amend/*					
<u>Manner of Payment of Compensation</u>	04	NCAC	10A	.0403	
Amend/*					
<u>Termination and Suspension of Compensation</u>	04	NCAC	10A	.0404	
Amend/*					
<u>Trial Return to Work</u>	04	NCAC	10A	.0404A	
Amend/*					
<u>Reinstatement of Compensation</u>	04	NCAC	10A	.0405	
Amend/*					
<u>Discount Rate to be Used in Determining Commuted Values</u>	04	NCAC	10A	.0406	
Amend/*					
<u>Fees for Medical Compensation</u>	04	NCAC	10A	.0407	
Repeal/*					
<u>Application for or Stipulation to Additional Medical Comp...</u>	04	NCAC	10A	.0408	
Amend/*					
<u>Claims for Death Benefits</u>	04	NCAC	10A	.0409	
Amend/*					
<u>Communication for Medical Information</u>	04	NCAC	10A	.0410	
Adopt/*					
<u>Agreements for Prompt Payment of Compensation</u>	04	NCAC	10A	.0501	
Amend/*					
<u>Compromise Settlement Agreements</u>	04	NCAC	10A	.0502	
Amend/*					
<u>Notice of Last Payment Filing Requirement</u>	04	NCAC	10A	.0503	
Amend/*					
<u>Employer's Obligations Upon Notice; Denial of Liability; ...</u>	04	NCAC	10A	.0601	
Amend/*					
<u>Request for Hearing</u>	04	NCAC	10A	.0602	
Amend/*					
<u>Responding to a Party's Request for Hearing</u>	04	NCAC	10A	.0603	
Amend/*					
<u>Appointment of Guardian Ad Litem</u>	04	NCAC	10A	.0604	
Amend/*					
<u>Discovery</u>	04	NCAC	10A	.0605	
Amend/*					
<u>Discovery - Post Hearing</u>	04	NCAC	10A	.0606	
Amend/*					
<u>Discovery of Records and Reports</u>	04	NCAC	10A	.0607	
Amend/*					
<u>Statement of Incident Leading to Claim</u>	04	NCAC	10A	.0608	

Amend/*					
<u>Motions Practice in Contested Cases</u>	04	NCAC	10A	.0609	
Amend/*					
<u>Medical Motions and Emergency Medical Motions</u>	04	NCAC	10A	.0609A	
Amend/*					
<u>Pre-Trial Agreement</u>	04	NCAC	10A	.0610	
Amend/*					
<u>Hearings Before the Commission</u>	04	NCAC	10A	.0611	
Amend/*					
<u>Depositions and Additional Hearings</u>	04	NCAC	10A	.0612	
Amend/*					
<u>Expert Witnesses and Fees</u>	04	NCAC	10A	.0613	
Amend/*					
<u>Medical Provider Fee Dispute Procedure</u>	04	NCAC	10A	.0614	
Amend/*					
<u>Cases Removed from a Hearing Calendar</u>	04	NCAC	10A	.0615	
Amend/*					
<u>Dismissals</u>	04	NCAC	10A	.0616	
Amend/*					
<u>Attorneys Retained for Proceedings</u>	04	NCAC	10A	.0617	
Amend/*					
<u>Disqualification of a Commissioner or Deputy Commissioner</u>	04	NCAC	10A	.0618	
Adopt/*					
<u>Foreign Language Interpreters</u>	04	NCAC	10A	.0619	
Adopt/*					
<u>Review by the Full Commission</u>	04	NCAC	10A	.0701	
Amend/*					
<u>Review of Administrative Decisions</u>	04	NCAC	10A	.0702	
Amend/*					
<u>Remand from the Appellate Courts</u>	04	NCAC	10A	.0702A	
Repeal/*					
<u>Appeal to the Court of Appeals</u>	04	NCAC	10A	.0703	
Amend/*					
<u>Remand from the Appellate Courts</u>	04	NCAC	10A	.0704	
Adopt/*					
<u>Suspension of Rules</u>	04	NCAC	10A	.0801	
Amend/*					
<u>Sanctions</u>	04	NCAC	10A	.0802	
Amend/*					
<u>Rulemaking</u>	04	NCAC	10A	.0803	
Repeal/*					
<u>Check Endorsement</u>	04	NCAC	10A	.0901	
Amend/*					
<u>Notice</u>	04	NCAC	10A	.0902	
Amend/*					
<u>Employee's Obligation to Report Earnings</u>	04	NCAC	10A	.0903	
Amend/*					
<u>Preauthorization for Surgery and Inpatient Treatment</u>	04	NCAC	10A	.1001	
Adopt/*					

The rules in Subchapter 10B concern tort claims rules including administration (.0100); claims procedures (.0200);

appeals to full commission (.0300); appeals to the court of appeals (.0400); and rules of the commission (.0500).

<u>Location of Offices and Hours of Business</u>	04	NCAC	10B	.0101
Amend/*				
<u>Official Forms</u>	04	NCAC	10B	.0102
Amend/*				
<u>Filing Fees</u>	04	NCAC	10B	.0103
Amend/*				
<u>Filing by Facsimile Transmission</u>	04	NCAC	10B	.0104
Amend/*				
<u>Rules of Civil Procedure</u>	04	NCAC	10B	.0201
Amend/*				
<u>Medical Malpractice Claims by Prison Inmates</u>	04	NCAC	10B	.0202
Amend/*				
<u>Infants and Incompetents</u>	04	NCAC	10B	.0203
Amend/*				
<u>Motions</u>	04	NCAC	10B	.0204
Amend/*				
<u>Mediation</u>	04	NCAC	10B	.0205
Amend/*				
<u>Hearings</u>	04	NCAC	10B	.0206
Amend/*				
<u>Hearings of Claims by Prison Inmates</u>	04	NCAC	10B	.0207
Amend/*				
<u>Hearing Costs</u>	04	NCAC	10B	.0208
Adopt/*				
<u>Scope</u>	04	NCAC	10B	.0301
Amend/*				
<u>Notice of Appeal to the Full Commission</u>	04	NCAC	10B	.0302
Amend/*				
<u>Proposed Issues on Appeal</u>	04	NCAC	10B	.0303
Amend/*				
<u>Dismissals of Appeals</u>	04	NCAC	10B	.0304
Repeal/*				
<u>Briefs to the Full Commission</u>	04	NCAC	10B	.0305
Amend/*				
<u>Motion for New Hearing</u>	04	NCAC	10B	.0306
Repeal/*				
<u>Motions Before the Full Commission</u>	04	NCAC	10B	.0307
Amend/*				
<u>Stays</u>	04	NCAC	10B	.0308
Amend/*				
<u>New Evidence</u>	04	NCAC	10B	.0309
Repeal/*				
<u>Waiver of Oral Argument</u>	04	NCAC	10B	.0310
Amend/*				
<u>Scope</u>	04	NCAC	10B	.0401
Amend/*				
<u>Stays</u>	04	NCAC	10B	.0402
Amend/*				
<u>Motions for Court of Appeals Cases</u>	04	NCAC	10B	.0403

Amend/*					
<u>Remand from Appellate Courts</u>	04	NCAC	10B	.0404	
Amend/*					
<u>Suspension of Rules</u>	04	NCAC	10B	.0501	
Amend/*					
<u>Rulemaking</u>	04	NCAC	10B	.0502	
Repeal/*					
<u>Sanctions</u>	04	NCAC	10B	.0503	
Amend/*					

The rules in Subchapter 10C concern North Carolina Industrial Commission Rules for Utilization of Rehabilitation Professionals in Workers' Compensation Claims including administration (.0100); and rules of the commission (.0200).

<u>Applicability of the Rules</u>	04	NCAC	10C	.0101	
Amend/*					
<u>Purpose of the Rules</u>	04	NCAC	10C	.0102	
Repeal/*					
<u>Definitions</u>	04	NCAC	10C	.0103	
Amend/*					
<u>Qualifications Required</u>	04	NCAC	10C	.0105	
Amend/*					
<u>Professional Responsibility of the Rehabilitation Profess...</u>	04	NCAC	10C	.0106	
Amend/*					
<u>Communication</u>	04	NCAC	10C	.0107	
Amend/*					
<u>Interaction with Physicians</u>	04	NCAC	10C	.0108	
Amend/*					
<u>Vocational Rehabilitation Services Return to Work</u>	04	NCAC	10C	.0109	
Amend/*					
<u>Change of Rehabilitation Professional</u>	04	NCAC	10C	.0110	
Amend/*					
<u>Suspension of Rules</u>	04	NCAC	10C	.0201	
Adopt/*					
<u>Sanctions</u>	04	NCAC	10C	.0202	
Adopt/*					

The rules in Subchapter 10D concern workers' compensation rules for managed care organizations.

<u>Purpose</u>	04	NCAC	10D	.0101	
Amend/*					
<u>Definitions</u>	04	NCAC	10D	.0102	
Amend/*					
<u>Qualification by the Department of Insurance</u>	04	NCAC	10D	.0103	
Repeal/*					
<u>Qualification and Revocation</u>	04	NCAC	10D	.0104	
Amend/*					
<u>Notice to Commission</u>	04	NCAC	10D	.0105	
Amend/*					
<u>Contract Provisions</u>	04	NCAC	10D	.0106	
Amend/*					
<u>Information for Employee</u>	04	NCAC	10D	.0107	
Amend/*					

<u>Inclusive Provider Panels</u> Amend/*	04	NCAC	10D	.0108
<u>Quality Assurance and Utilization Review</u> Amend/*	04	NCAC	10D	.0109
<u>Suspension of Rules</u> Amend/*	04	NCAC	10D	.0110
<u>Sanctions</u> Adopt/*	04	NCAC	10D	.0111

The rules in Subchapter 10E concern the administrative rules of the Industrial Commission including administration (.0100); fees (.0200); and rules of the Commission (.0300).

<u>Instructions for Filing a Petition for Rule-Making</u> Amend/*	04	NCAC	10E	.0101
<u>Mailing List</u> Adopt/*	04	NCAC	10E	.0102
<u>Document and Record Fees</u> Adopt/*	04	NCAC	10E	.0201
<u>Hearing Costs or Fees</u> Adopt/*	04	NCAC	10E	.0202
<u>Fees Set by the Commission</u> Adopt/*	04	NCAC	10E	.0203
<u>Accident Prevention and Safety Educational Program Fees</u> Adopt/*	04	NCAC	10E	.0204
<u>Suspension of Rules</u> Adopt/*	04	NCAC	10E	.0301
<u>Sanctions</u> Adopt/*	04	NCAC	10E	.0302

The rules in Subchapter 10F concern the administration of electronic billing rules.

<u>Electronic Medical Billing and Payment Requirement</u> Adopt/*	04	NCAC	10F	.0101
<u>Definitions</u> Amend/*	04	NCAC	10F	.0102
<u>Formats for Electronic Medical Bill Processing</u> Amend/*	04	NCAC	10F	.0103
<u>Billing Code Sets</u> Adopt/*	04	NCAC	10F	.0104
<u>Electronic Medical Billing, Reimbursement, and Documentation</u> Adopt/*	04	NCAC	10F	.0105
<u>Employer, Insurance Carrier, Managed Care Organization, o...</u> Adopt/*	04	NCAC	10F	.0106
<u>Communication Between Health Care Providers and Payers</u> Adopt/*	04	NCAC	10F	.0107
<u>Sanctions</u> Adopt/*	04	NCAC	10F	.0108
<u>Effective Date</u> Adopt/*	04	NCAC	10F	.0109

The rules in Subchapter 10G concern North Carolina Industrial Commission rules for mediated settlement and neutral

evaluation conferences.

<u>Order for Mediated Settlement Conference</u>	04	NCAC	10G	.0101
Amend/*				
<u>Selection of Mediator</u>	04	NCAC	10G	.0102
Amend/*				
<u>The Mediated Settlement Conference</u>	04	NCAC	10G	.0103
Amend/*				
<u>Duties of Parties, Representatives, and Attorneys</u>	04	NCAC	10G	.0104
Amend/*				
<u>Foreign Language Interpreters</u>	04	NCAC	10G	.0104A
Amend/*				
<u>Sanctions</u>	04	NCAC	10G	.0105
Amend/*				
<u>Authority and Duties of Mediators</u>	04	NCAC	10G	.0106
Amend/*				
<u>Compensation of the Mediator</u>	04	NCAC	10G	.0107
Amend/*				
<u>Mediator Certification and Decertification</u>	04	NCAC	10G	.0108
Amend/*				
<u>Neutral Evaluation</u>	04	NCAC	10G	.0109
Amend/*				
<u>Suspension of Rules</u>	04	NCAC	10G	.0110
Amend/*				
<u>Motions</u>	04	NCAC	10G	.0111
Amend/*				
<u>Miscellaneous</u>	04	NCAC	10G	.0112
Amend/*				

The rules in Subchapter 10H concern the administration of the rules of the Industrial Commission Relating to the Law-Enforcement Officers', Firemen's Rescue Squad Workers' and Civil Air Patrol Members' Death Benefits Act.

<u>Location of Offices and Hours of Business</u>	04	NCAC	10H	.0101
Amend/*				
<u>Determination of Claims by the Commission</u>	04	NCAC	10H	.0201
Amend/*				
<u>Hearings Before the Commission</u>	04	NCAC	10H	.0202
Amend/*				
<u>Appointment of Guardian Ad Litem</u>	04	NCAC	10H	.0203
Amend/*				
<u>Written or Recorded Statement</u>	04	NCAC	10H	.0204
Amend/*				
<u>Review by the Full Commission</u>	04	NCAC	10H	.0205
Amend/*				
<u>Suspension of Rules</u>	04	NCAC	10H	.0206
Adopt/*				
<u>Sanctions</u>	04	NCAC	10H	.0207
Adopt/*				

The rules in Subchapter 10I concern the administration of the childhood vaccine-related injury rules of the North

Carolina Industrial Commission.

<u>Locations of Office and Hours of Business</u>	04	NCAC	10I	.0101
Amend/*				
<u>Official Form</u>	04	NCAC	10I	.0102
Amend/*				
<u>Rules of Civil Procedure</u>	04	NCAC	10I	.0201
Amend/*				
<u>Procedure</u>	04	NCAC	10I	.0202
Amend/*				
<u>Attorneys' Fees</u>	04	NCAC	10I	.0203
Amend/*				
<u>Suspension of Rules</u>	04	NCAC	10I	.0204
Adopt/*				
<u>Sanctions</u>	04	NCAC	10I	.0205
Adopt/*				

The rules in Subchapter 10J concern the fees for medical compensation.

<u>Fees for Medical Compensation</u>	04	NCAC	10J	.0101
Adopt/*				

CHILD CARE COMMISSION

The rules in Chapter 9 are child care rules and include definitions (.0100); general provisions related to licensing (.0200); procedures for obtaining a license (.0300); issuance of provisional and temporary licenses (.0400); age and developmentally appropriate environments for centers (.0500); safety requirements for child care centers (.0600); health and other standards for center staff (.0700); health standards for children (.0800); nutrition standards (.0900); transportation standards (.1000); building code requirements for child care centers (.1300); space requirements (.1400); temporary care requirements (.1500); requirements for voluntary enhanced program standards (.1600); family child care home requirements (.1700); discipline (.1800); special procedures concerning abuse/neglect in child care (.1900); rulemaking and contested case procedures (.2000); religious-sponsored child care center requirements (.2100); administrative actions and civil penalties (.2200); forms (.2300); child care for mildly ill children (.2400); care for school-age children (.2500); child care for children who are medically fragile (.2600); criminal records checks (.2700); voluntary rated licenses (.2800); developmental day services (.2900); and NC pre-kindergarten services (.3000).

<u>Scope</u>	10A	NCAC	09	.3001
Adopt/*				
<u>Facility Requirements</u>	10A	NCAC	09	.3002
Adopt/*				
<u>Program Attendance Policy</u>	10A	NCAC	09	.3003
Adopt/*				
<u>Religious Activities</u>	10A	NCAC	09	.3004
Adopt/*				
<u>Child Health Assessments</u>	10A	NCAC	09	.3005
Adopt/*				
<u>Developmental Screening</u>	10A	NCAC	09	.3006
Adopt/*				
<u>Early Learning Standards and Curricula</u>	10A	NCAC	09	.3007
Adopt/*				
<u>Formative Assessments</u>	10A	NCAC	09	.3008
Adopt/*				

<u>Staff-to-Child Ratio and Class Size</u>	10A	NCAC	09	.3009
Adopt/*				
<u>Family Engagement</u>	10A	NCAC	09	.3010
Adopt/*				
<u>NC Pre-K Site-Level</u>	10A	NCAC	09	.3011
Adopt/*				
<u>NC Pre-K Teacher Education, Licensure and Credentials</u>	10A	NCAC	09	.3012
Adopt/*				
<u>NC Pre-K Teacher Assistant Education and Credentials</u>	10A	NCAC	09	.3013
Adopt/*				
<u>NC Pre-K Substitute Staff</u>	10A	NCAC	09	.3014
Adopt/*				
<u>Instructional Staff Standards</u>	10A	NCAC	09	.3015
Adopt/*				
<u>Professional Development Requirements</u>	10A	NCAC	09	.3016
Adopt/*				

MENTAL HEALTH, COMMISSION FOR

The rules in Chapter 27 concern mental health community facilities and services.

The rules in Subchapter 27G are from either the department or the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services including general information (.0100); operation and management rules (.0200); physical plant rules (.0300); facility licensing procedures (.0400); area program requirements (.0500); area authority or county program monitoring of facilities and services (.0600); accreditation of area programs and services (.0700); waivers and appeals (.0800); general rules for infants and toddlers (.0900); partial hospitalization for individuals who are mentally ill (.1100); psychological rehabilitation facilities for individuals with severe and persistent mental illness (.1200); residential treatment for children and adolescents who are emotionally disturbed or who have a mental illness (.1300); day treatment for children and adolescents with emotional or behavioral disturbances (.1400); intensive residential treatment for children and adolescents who are emotionally disturbed or who have a mental illness (.1500); residential treatment staff secure facilities for children or adolescents (.1700); psychiatric residential treatment facilities for children and adolescents (.1900); specialized community residential centers for individuals with developmental disabilities (.2100); before/after school and summer developmental day services for children with or at risk for developmental delays or disabilities, or atypical development (.2200); adult developmental and vocational programs for individuals with developmental disabilities (.2300); developmental day services for children with or at risk for developmental delays or disabilities, or atypical development (.2400); early childhood intervention services (ECIS) for children with an at risk for developmental delays or disabilities, or atypical development and their families (.2500); nonhospital medical detoxification for individuals who are substance abusers (.3100); social setting detoxification for substance abuse (.3200); outpatient detoxification for substance abuse (.3300); residential treatment/rehabilitation for individuals with substance abuse disorders (.3400); outpatient facilities for individuals with substance abuse disorders (.3500); outpatient opioid treatment (.3600); day treatment facilities for individuals with substance abuse disorders (.3700); substance abuse services for DWI offenders (.3800); drug education schools (DES) (.3900); treatment alternatives to street crimes (TASC) (.4000); substance abuse primary prevention services (.4200); therapeutic community (.4300); facility based crises services for individual of all disability groups (.5000); community respite services for individuals of all disability groups (.5100); residential therapeutic (habilitative) camps for children and adolescents of all disability groups (.5200); day activity for individuals of all disability groups (.5400); sheltered workshops for individuals of all disability groups (.5500); supervised living for individuals of all disability groups (.5600); assertive community treatment service (.5700); supportive employment for individuals of all disability groups (.5800); case management for individuals of all disability groups (.5900); inpatient hospital treatment for individuals who have mental illness or substance abuse disorders (.6000); emergency services for individuals of all disability groups (.6100); outpatient services for individuals of all disability groups (.6200); companion respite services for individuals of all disability groups (.6300); personal assistants for individuals of all disabilities groups (.6400); employment assistance programs (.6500); specialized foster care services (.6600); forensic screening and evaluation services for individuals of all disability groups (.6700); prevention services (.6800); consultation and education services (.6900); local management entity response to complaints (.7000); and target population (.7100).

Waiver of Licensure Rules
Amend/*

10A NCAC 27G .0813

ENVIRONMENTAL MANAGEMENT COMMISSION

The rules in Subchapter 2B pertain to surface water standards and monitoring including procedures for assignment of water quality standards (.0100); the standards used to classify the waters of the state (.0200); stream classifications (.0300); effluent limitations (.0400); monitoring and reporting requirements (.0500); and water quality management plans (.0600).

Roanoke River Basin
Amend/*

15A NCAC 02B .0313

The rules in Subchapter 2I concern hearings including scope, definitions and delegations (.0100); rule making hearings, notice and procedures (.0200); administrative hearings (.0300); special hearings (.0400); petitions for rulemaking (.0500); and declaratory rulings (.0600).

Form and Contents of Petition
Amend/*

15A NCAC 02I .0501

WILDLIFE RESOURCES COMMISSION

The rules in Chapter 10 are promulgated by the Wildlife Resources Commission and concern wildlife resources and water safety.

The rules in Subchapter 10B are hunting and trapping rules and cover general hunting and wildlife provisions (.0100), hunting specific animals (.0200), trapping (.0300), and tagging furs (.0400).

Open Seasons
Amend/*

15A NCAC 10B .0303

Bag Limits
Amend/*

15A NCAC 10B .0304

TRANSPORTATION, DEPARTMENT OF

The rules in Chapter 2 are from the Division of Highways.

The rules in Subchapter 2E concern miscellaneous operations including tort claims (.0100); outdoor advertising (.0200); junkyard control (.0300); general ordinances (.0400); selective vegetation removal policy (.0600); professional or specialized services (.0700); solicitation of contributions for religious purposes at rest areas (.0800); distribution of newspapers from dispensers at rest areas and welcome centers (.0900); scenic byways (.1000); tourist-oriented directional sign program (.1100); private property owners (.1200).

Revocation of Outdoor Advertising Permit
Amend/*

19A NCAC 02E .0210

Denial of Permit
Repeal/*

19A NCAC 02E .0211

Permit to Remove Vegetation
Amend/*

19A NCAC 02E .0601

Requests for Permits for a Facility
Amend/*

19A NCAC 02E .0602

Issuance or Denial of Permit for a Facility
Amend/*

19A NCAC 02E .0603

Conditions of Selective Vegetation Removal Permit for Fac...
Amend/*

19A NCAC 02E .0604

<u>Requests for Selective Vegetation Removal Permits for Out...</u> Adopt/*	19A	NCAC	02E	.0608
<u>Issuance or Denial of Selective Vegetation Removal Permit...</u> Adopt/*	19A	NCAC	02E	.0609
<u>Conditions of Selective Vegetation Removal Permit for Out...</u> Adopt/*	19A	NCAC	02E	.0610
<u>Requirements for Beautification and Replanting Conditions...</u> Adopt/*	19A	NCAC	02E	.0611

GENERAL CONTRACTORS, LICENSING BOARD FOR

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

<u>Eligibility</u> Amend/*	21	NCAC	12	.0204
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ONSITE WASTEWATER CONTRACTORS AND INSPECTORS CERTIFICATION BOARD

The rules in Chapter 39 are from the Onsite Wastewater Contractors and Inspectors Certification Board and include definitions (.0100); certification of onsite wastewater contractors or inspectors (.0200); onsite wastewater contractor or inspector fees (.0300); certification by examination (.0400); certification renewal (.0500); continuing education requirements (.0600); and procedures for disciplinary actions (.0700).

<u>Definitions</u> Amend/*	21	NCAC	39	.0101
<u>Business Succession</u> Adopt/*	21	NCAC	39	.0202
<u>Requirements</u> Amend/*	21	NCAC	39	.0601
<u>On-Site Wastewater System Components</u> Amend/*	21	NCAC	39	.1005

PHARMACY, BOARD OF

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

<u>Pharmacy Permits</u> Amend/*	21	NCAC	46	.1601
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APPRAISAL BOARD

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

<u>Qualifications for Trainee Registration and Appraiser Cer...</u> Amend/*	21	NCAC	57A	.0201
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<u>Fitness for Registration or Certification</u> Amend/*	21	NCAC	57A	.0202
<u>Registration, License and Certificate Renewal</u> Amend/*	21	NCAC	57A	.0203
<u>Continuing Education</u> Amend/*	21	NCAC	57A	.0204
<u>Applicants Certified in Another State</u> Amend/*	21	NCAC	57A	.0211
<u>Time and Place</u> Amend/*	21	NCAC	57A	.0301
<u>Subject Matter and Passing Scores</u> Amend/*	21	NCAC	57A	.0302
<u>Re-examination</u> Amend/*	21	NCAC	57A	.0303
<u>Cleaning and Related Misconduct</u> Amend/*	21	NCAC	57A	.0304
<u>Supervision of Trainees</u> Amend/*	21	NCAC	57A	.0407
<u>Appraisal Standards</u> Amend/*	21	NCAC	57A	.0501

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

<u>Registered Trainee Course Requirements</u> Amend/*	21	NCAC	57B	.0101
<u>Certified Residential Real Estate Appraiser Course Requir...</u> Amend/*	21	NCAC	57B	.0102
<u>Certified General Real Estate Appraiser Course Requirements</u> Amend/*	21	NCAC	57B	.0103
<u>Course Records</u> Amend/*	21	NCAC	57B	.0210
<u>Continuing Education Credit Hours</u> Amend/*	21	NCAC	57B	.0605
<u>Course Operational Requirements</u> Amend/*	21	NCAC	57B	.0606
<u>Certification of Course Completion</u> Amend/*	21	NCAC	57B	.0607
<u>Renewal of Approval and Fees</u> Amend/*	21	NCAC	57B	.0611

The rules in Subchapter 57D concern appraisal management companies including application for appraisal management registration (.0100); appraisal management company registration (.0200); appraisal management company procedures (.0300); and appraisal management company general practices (.0400).

<u>Filing and Fees</u> Amend/*	21	NCAC	57D	.0102
<u>Removal of an Appraiser from an Appraiser Panel</u> Amend/*	21	NCAC	57D	.0311
<u>Requesting Additional Information from an Appraiser</u>	21	NCAC	57D	.0312

Amend/*

NORTH CAROLINA HOUSING FINANCE AGENCY

The rules in Chapter 1 are from the NC Housing Finance Agency.

The rules in Subchapter 1F concern the North Carolina Appalachian housing program including general description (.0100); types of assistance (.0200); eligibility standards (.0300); approval process for assistance (.0400); and administrative requirements (.0500).

<u>Purpose of Assistance</u>	24	NCAC	01F	.0101
Repeal/*				
<u>Background of Assistance</u>	24	NCAC	01F	.0102
Repeal/*				
<u>Project Planning Loans</u>	24	NCAC	01F	.0201
Repeal/*				
<u>Site Development and Off-Site Improvements Grants</u>	24	NCAC	01F	.0202
Repeal/*				
<u>Technical Assistance Grants</u>	24	NCAC	01F	.0203
Repeal/*				
<u>Eligible Housing Programs</u>	24	NCAC	01F	.0301
Repeal/*				
<u>Eligible Counties</u>	24	NCAC	01F	.0302
Repeal/*				
<u>State Appalachian Development Plan</u>	24	NCAC	01F	.0401
Repeal/*				
<u>Identification in Annual Investment Program</u>	24	NCAC	01F	.0402
Repeal/*				
<u>Approval of Individual Projects</u>	24	NCAC	01F	.0403
Repeal/*				
<u>Duties and Functions of State Implementing Agency</u>	24	NCAC	01F	.0501
Repeal/*				
<u>Requirements for Accounting: Audits: and Reports</u>	24	NCAC	01F	.0502
Repeal/*				
<u>Reports on Disposition of Funds</u>	24	NCAC	01F	.0503
Repeal/*				
<u>Waiver of Loan Repayment</u>	24	NCAC	01F	.0504
Repeal/*				
<u>Agreement Between Agency and Sponsor</u>	24	NCAC	01F	.0505
Repeal/*				

The rules in Subchapter 1H concern the multifamily subsidized rental program including general information (.0100); requirements (.0200); selection process (.0300); project financing (.0400); and multifamily rental assistance fund and program (.0500).

<u>Objectives</u>	24	NCAC	01H	.0101
Repeal/*				
<u>Persons and Families of Lower Income</u>	24	NCAC	01H	.0102
Repeal/*				
<u>Persons and Families of Moderate Income</u>	24	NCAC	01H	.0103
Repeal/*				
<u>Method</u>	24	NCAC	01H	.0104
Repeal/*				

<u>Notice of Funds Availability</u> Repeal/*	24	NCAC	01H	.0105
<u>Eligible Projects</u> Repeal/*	24	NCAC	01H	.0201
<u>Application Procedure</u> Repeal/*	24	NCAC	01H	.0202
<u>Fair Market Rents</u> Repeal/*	24	NCAC	01H	.0203
<u>Local Government Request</u> Repeal/*	24	NCAC	01H	.0204
<u>Public Housing Agency</u> Repeal/*	24	NCAC	01H	.0205
<u>Mortgage Insurance Commitment</u> Repeal/*	24	NCAC	01H	.0206
<u>Funds Availability</u> Repeal/*	24	NCAC	01H	.0301
<u>Project Feasibility</u> Repeal/*	24	NCAC	01H	.0302
<u>Agency Approval</u> Repeal/*	24	NCAC	01H	.0303
<u>Federal Approval</u> Repeal/*	24	NCAC	01H	.0304
<u>Project Evaluation</u> Repeal/*	24	NCAC	01H	.0305
<u>Interim Financing</u> Repeal/*	24	NCAC	01H	.0401
<u>Permanent Financing</u> Repeal/*	24	NCAC	01H	.0402
<u>Mortgage Purchase Procedure</u> Repeal/*	24	NCAC	01H	.0403
<u>Mortgage Loan Servicing</u> Repeal/*	24	NCAC	01H	.0404
<u>Creation of Fund</u> Repeal/*	24	NCAC	01H	.0501
<u>Eligibility</u> Repeal/*	24	NCAC	01H	.0502
<u>Fund Operation and Administration</u> Repeal/*	24	NCAC	01H	.0503

The rules in Subchapter 1J concern the home improvement loan purchase program including general information (.0100); and contracts and forms (.0200).

<u>Objectives</u> Repeal/*	24	NCAC	01J	.0101
<u>Income Eligible Persons and Families</u> Repeal/*	24	NCAC	01J	.0102
<u>Eligible Borrower</u> Repeal/*	24	NCAC	01J	.0103
<u>Eligible Property</u> Repeal/*	24	NCAC	01J	.0104
<u>Eligible Loan</u> Repeal/*	24	NCAC	01J	.0105

<u>Compliance with Tax Act</u>	24	NCAC	01J	.0107
Repeal/*				
<u>Eligible Lender Contract Forms</u>	24	NCAC	01J	.0201
Repeal/*				
<u>Servicing Agreement</u>	24	NCAC	01J	.0202
Repeal/*				

The rules in Subchapter 1K concern the multifamily unsubsidized rental program including general information (.0100); requirements (.0200); project financing (.0300); selection process (.0400); distressed projects (.0500); and catalyst program for not-for-profit organizations (.0600).

<u>Objectives</u>	24	NCAC	01K	.0101
Repeal/*				
<u>Definitions</u>	24	NCAC	01K	.0102
Repeal/*				
<u>Method</u>	24	NCAC	01K	.0103
Repeal/*				
<u>Eligible Projects</u>	24	NCAC	01K	.0201
Repeal/*				
<u>Local Government Request</u>	24	NCAC	01K	.0202
Repeal/*				
<u>Resident Certification</u>	24	NCAC	01K	.0203
Repeal/*				
<u>Rent Requirements</u>	24	NCAC	01K	.0204
Repeal/*				
<u>Interim Financing</u>	24	NCAC	01K	.0301
Repeal/*				
<u>Financing</u>	24	NCAC	01K	.0302
Repeal/*				
<u>Mortgage Purchase Procedure</u>	24	NCAC	01K	.0303
Repeal/*				
<u>Mortgage Loan Servicing</u>	24	NCAC	01K	.0304
Repeal/*				
<u>Notification of Proposed Financing</u>	24	NCAC	01K	.0401
Repeal/*				
<u>Application Procedure</u>	24	NCAC	01K	.0402
Repeal/*				
<u>Project Feasibility</u>	24	NCAC	01K	.0403
Repeal/*				
<u>Project Evaluation</u>	24	NCAC	01K	.0404
Repeal/*				
<u>Agency Approval</u>	24	NCAC	01K	.0405
Repeal/*				
<u>Purpose</u>	24	NCAC	01K	.0501
Repeal/*				
<u>Distressed Rental Housing Project Defined</u>	24	NCAC	01K	.0502
Repeal/*				
<u>Determination by Board of Directors</u>	24	NCAC	01K	.0503
Repeal/*				
<u>Procedure</u>	24	NCAC	01K	.0504
Repeal/*				
<u>General Information</u>	24	NCAC	01K	.0601

Repeal/*			
<u>Objectives</u>	24	NCAC 01K .0602	
Repeal/*			
<u>Types of Assistance</u>	24	NCAC 01K .0603	
Repeal/*			
<u>Requirements</u>	24	NCAC 01K .0604	
Repeal/*			
<u>Procedures</u>	24	NCAC 01K .0605	
Repeal/*			

The rules in Subchapter 1L concern the rental rehabilitation program including general information (.0100); and program implementation (.0200).

<u>Objectives</u>	24	NCAC 01L .0101	
Repeal/*			
<u>Administration by the Agency</u>	24	NCAC 01L .0102	
Repeal/*			
<u>Adoption of HUD Program by Reference</u>	24	NCAC 01L .0201	
Repeal/*			
<u>Memorandum of Understanding</u>	24	NCAC 01L .0202	
Repeal/*			

The rules in Subchapter 1O concern the homelessness prevention demonstration program including general information (.0100); and administration (.0200).

<u>Purpose</u>	24	NCAC 01O .0101	
Repeal/*			
<u>Eligibility</u>	24	NCAC 01O .0102	
Repeal/*			
<u>Application Procedures</u>	24	NCAC 01O .0201	
Repeal/*			
<u>Selection Procedures</u>	24	NCAC 01O .0202	
Repeal/*			

The rules in Subchapter 1P concern the fire protection fund including general information (.0100); and administration (.0200).

<u>Purpose</u>	24	NCAC 01P .0101	
Repeal/*			
<u>Eligibility</u>	24	NCAC 01P .0102	
Repeal/*			
<u>Types of Assistance</u>	24	NCAC 01P .0103	
Repeal/*			
<u>Application Procedures</u>	24	NCAC 01P .0201	
Repeal/*			
<u>Selection Procedure</u>	24	NCAC 01P .0202	
Repeal/*			
<u>Disbursement of Funds</u>	24	NCAC 01P .0203	
Repeal/*			

ADMINISTRATIVE HEARINGS, OFFICE OF

The rules in Chapter 1 are general provisions for the Office of Administrative Hearings including petition for rule-making and declaratory rulings.

<u>Employee Insurance Committee</u>	26	NCAC	01	.0104
Repeal/*				
<u>Declaratory Rulings: Availability</u>	26	NCAC	01	.0202
Amend/*				

The rules in Chapter 3 are from the Hearings Division and cover procedure (.0100), mediated settlement conferences (.0200), and expedited hearing procedures for complex contested cases (.0300).

<u>General</u>	26	NCAC	03	.0101
Amend/*				
<u>Definitions and Construction</u>	26	NCAC	03	.0102
Amend/*				
<u>Duties of the Administrative Law Judge</u>	26	NCAC	03	.0105
Amend/*				
<u>Administrative Law Judge's Decision</u>	26	NCAC	03	.0127
Amend/*				
<u>Final Decisions in Contested Cases</u>	26	NCAC	03	.0131
Amend/*				
<u>Order Designating Complex Contested Cases</u>	26	NCAC	03	.0301
Repeal/*				
<u>Factors to be Considered</u>	26	NCAC	03	.0302
Repeal/*				
<u>Venue</u>	26	NCAC	03	.0303
Repeal/*				
<u>Expedited Hearing Procedures for Complex Contested Cases</u>	26	NCAC	03	.0304
Repeal/*				
<u>Rules and Procedures</u>	26	NCAC	03	.0305
Repeal/*				
<u>Hearing Procedures Rules</u>	26	NCAC	03	.0401
Amend/*				
<u>Expedited Hearings Procedures for Complex Contested Cases</u>	26	NCAC	03	.0403
Repeal/*				

The rules in Chapter 4 are for the civil rights division including general provisions (.0100); and political discrimination (.0200).

<u>Introduction</u>	26	NCAC	04	.0101
Amend/*				
<u>Content and Procedure</u>	26	NCAC	04	.0102
Amend/*				
<u>Notification of Investigation</u>	26	NCAC	04	.0103
Amend/*				
<u>Additional Information</u>	26	NCAC	04	.0104
Repeal/*				
<u>Investigation</u>	26	NCAC	04	.0105
Repeal/*				
<u>Investigation Report</u>	26	NCAC	04	.0106
Amend/*				
<u>Conciliation and Settlement</u>	26	NCAC	04	.0107

Amend/*

Contested Case Hearing

26 NCAC 04 .0108

Amend/*

Authority to Administer Oaths or Affirmations

26 NCAC 04 .0109

Repeal/*

CONTESTED CASE DECISIONS

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

OFFICE OF ADMINISTRATIVE HEARINGS

Chief Administrative Law Judge
JULIAN MANN, III

Senior Administrative Law Judge
FRED G. MORRISON JR.

ADMINISTRATIVE LAW JUDGES

Beecher R. Gray
Selina Brooks
Melissa Owens Lassiter
Don Overby

Randall May
A. B. Elkins II
Joe Webster

<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>DATE</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
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MISCELLANEOUS

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7-6-2012 9:00:00 AM

STATE OF NORTH CAROLINA

COUNTY OF CRAVEN

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
11 DOJ 13158

John Jay O'Neal
Petitioner

vs.

North Carolina Criminal Justice Education and
Training Standards Commission
Respondent

PROPOSAL FOR DECISION

This case came on for hearing on May 21, 2012, before Administrative Law Judge Donald W. Overby in New Bern, North Carolina. This case was heard after Respondent requested, pursuant to N.C.G.S. § 150B-40(e), designation of an Administrative Law Judge to preside at the hearing of a contested case under Article 3A, Chapter 150B of the North Carolina General Statutes.

APPEARANCES

Petitioner: John Jay O'Neal, Pro Se
105 Nunn Street
Havelock, North Carolina 28532

Respondent: Catherine F. Jordan
Assistant Attorney General
Law Enforcement Liaison Section
North Carolina Department of Justice
P.O. Box 629
Raleigh, N.C. 27602-0629

ISSUE

Did Respondent properly suspend Petitioner's law enforcement officer certification based upon Petitioner's criminal conviction of the Class B misdemeanor of Failure to Stop at the Scene of an Accident?

BASED UPON careful consideration of the sworn testimony of the witnesses presented at the hearing, the documents and exhibits received and admitted into evidence, and the entire record in this proceeding, the undersigned Administrative Law Judge makes the following

FINDINGS OF FACT.

In making the FINDINGS OF FACT, the undersigned Administrative Law Judge has weighed all the evidence and has assessed the credibility of the witnesses by taking into account the appropriate factors for judging credibility, including, but not limited to, the demeanor of the witness, any interests, bias, or prejudice the witness may have, the opportunity of the witness to see, hear, know or remember the facts or occurrences about which the witness testified, whether the testimony of the witness is reasonable, and whether the testimony is consistent with all other believable evidence in the case.

RULES

12 NCAC 09G .0504(b)(3)
12 NCAC 09G .0102(9)(vvv)
12 NCAC 09G .0102(2)
12 NCAC 09G .0505(b)(1)
N.C.G.S. § 20-166(c)

FINDINGS OF FACT

1. Both parties are properly before this Administrative Law Judge, in that jurisdiction and venue are proper, both parties received Notice of Hearing, and Petitioner received the notification of Proposed Suspension of Correctional Officer Certification through a letter mailed by Respondent on September 13, 2011. (Respondent's Exhibit 9)
2. The North Carolina Criminal Justice Education and Training Standards Commission has the authority granted under Chapter 17C of the North Carolina General Statutes and Title 12 of the North Carolina Administrative Code, Chapter 9G, to certify correctional officers and to revoke, suspend, or deny such certification.
3. On December 7, 2001, Petitioner received his probationary certification as a correctional officer through Respondent. (Respondent's exhibit 1)
4. On October 29, 2002, Petitioner received his general certification as a correctional officer through Respondent. (Respondent's exhibit 2)
5. At 13:46 on January 6, 2009, Petitioner was cited with Armed Forces Traffic Tickets for failure to reduce speed causing a traffic accident, DWI, eluding military police, and careless and reckless driving. (Respondent's exhibit 3) Officer B. J. Brandehoff issued the tickets to Petitioner on the Cherry Point Military Base.
6. On January 14, 2009, Petitioner was issued a Traffic Hearing Notification stating that he was cited on January 6, 2009 for DWI, eluding military police, careless driving, and failure to reduce speed causing an accident. (Respondent's exhibit 4) Petitioner selected to attend a full hearing before the Traffic Court Hearing Officer on January 14, 2009.

7. On January 26, 2009, Petitioner's toxicology report was generated by the Department of Defense, Armed Forces Institute of Pathology, which stated that on January 6, 2009, "[z]olpidem was detected in the urine by gas chromatography and confirmed by gas chromatography/mass spectrometry. The blood contained 0.04mg/L of zolpidem as quantitated by gas chromatography/mass spectrometry." (Respondent's exhibit 5)

8. Petitioner had a prescription for Zolpidem (Ambien) which he had received approximately two weeks prior to this incident. There is no indication that he was not taking the prescribed medication in other than the proper prescribed amount. Petitioner testified that he had taken the medication and gone to sleep. He was aroused from sleep and needed to take something to his wife who worked on the post.

9. On January 28, 2009, Respondent received notice of Petitioner's pending criminal charges of failure to reduce speed causing a traffic accident, DWI, eluding military police, and careless driving. (Respondent's exhibit 3)

10. On August 20, 2009, Special Assistant U.S. Attorney Eric A. Catto submitted an offer of a plea agreement to Petitioner. (Respondent's exhibit 6) The offer stated that Petitioner will agree to plead guilty to impaired driving and failure to stop at the scene of an accident, and that, in exchange, the Government agrees to dismiss the charges of speeding to elude arrest and reckless driving. The Government further agreed to recommend the sentence of \$350.00 fine, 1 year probation, 24 hours of community service, completion of a substance abuse assessment and completion of all recommended education or treatment, and a special assessment fee of \$10.00.

11. On September 2, 2009, Petitioner accepted the plea agreement and signed the plea agreement. (Respondent's exhibit 6)

12. On September 3, 2009, Petitioner's formal charge of plea was entered in the United States District Court, Eastern District of North Carolina. (Respondent's exhibit 7) The document stated that Petitioner agreed to accept the plea offer from the United States to the effect that in exchange for his plea of guilty as to impaired driving and failure to stop at the scene of an accident, the Government agreed to dismiss speeding to elude arrest and reckless driving. The Government further agreed to recommend the sentence of a \$350.00 fine, 1 year probation, 24 hours of community service, completion of a substance abuse assessment and completion of all recommended education or treatment, and a special assessment fee of \$10.00.

13. On October 21, 2009, Petitioner pled guilty to DWI Level 5 and failure to stop at the scene of an accident in the United States District Court, Eastern District of North Carolina, the Honorable Louise W. Flanagan, Chief U.S. District Court Judge, presiding. (Respondent's exhibit 8) The trial court ordered that Petitioner perform 24 hours of community service, surrender his North Carolina driver's license, obtain a substance abuse assessment, pay a fine of \$350.00 and a special assessment fee of \$20.00.

14. On November 13, 2009, Respondent received notice of Petitioner's toxicology report, his guilty plea, and his conviction for DWI Level 5 and failure to stop at the scene of an accident. (Respondent's exhibit 8)

15. On September 13, 2011, Respondent's Director Wayne Woodard suspended Petitioner's correctional officer certification because of Petitioner's criminal conviction of the Class B misdemeanor of failure to stop at the scene of an accident. (Respondents Exhibit 9)

16. It is noted that Petitioner's certification is being subjected to suspension only for the Class B misdemeanor and not the generally more serious offense of driving while impaired. It is further noted that Petitioner was not originally charged with failure to stop at the scene of an accident, the Class B misdemeanor. Instead, he was charged with failing to reduce speed causing an accident, an infraction. He plead guilty as result of a plea bargain wherein two Class B charges were dismissed.

17. Petitioner requested an administrative hearing.

18. Respondent's investigator Edward Zapolsky testified at the hearing that he investigates administrative rules violations for Department of Correction officers. Zapolsky testified that he collected the documents from Petitioner's criminal charges and convictions, and drafted a memorandum to be submitted to Respondent's probable cause committee. Zapolsky testified that Petitioner possessed a general certification as a correctional officer, and as a correctional officer, he was required not to commit or be convicted of Department of Corrections misdemeanors as set forth in the administrative code.

19. Gerald Pennington testified that he was employed by the United States Marine Corps, Provost Marshall's Office at Cherry Point, North Carolina. Pennington has been a police officer since 1975, he was a Connecticut State Trooper for 24 years, and he has investigated thousands of traffic accidents. Pennington testified that he had been employed in that position with the Provost Marshall's Office for four years. He had been employed as a civilian employee with the Department of Defense and is a certified officer with North Carolina. He attended the academy for the Marine Corp and completed BLET in 2003.

20. Pennington testified that on January 6, 2009, he had just been released from the Marine Corp Police Academy, and that he was working alone at the time. He was driving an unmarked white Chevrolet Impala with code lights in the visor on the front and back. A motorist flagged down Pennington and said that Petitioner's vehicle had just struck his vehicle on Roosevelt Boulevard, near the intersection of Roosevelt and C-Street. The motorist stated that he had been hit from behind and pointed to Petitioner's vehicle as the vehicle that hit his vehicle. Pennington turned on his emergency lights and sounded his siren on his vehicle to drive through the intersection in front of Petitioner's vehicle. Pennington drove his vehicle "in a 360 in the intersection" to try to get behind Petitioner's vehicle. As Pennington's vehicle came behind Petitioner's vehicle, the light at the intersection turned green and Petitioner began moving his vehicle forward. Petitioner's vehicle approached the Beaufort Road intersection, and Pennington's vehicle followed Petitioner's vehicle with its emergency lights flashing and its siren sounded. Petitioner stopped his vehicle, and Pennington stopped his vehicle behind Petitioner's vehicle. Pennington thought that Petitioner stopped his vehicle because of Pennington's flashing lights and siren, so Pennington exited his vehicle to approach Petitioner's vehicle. When Pennington walked up to his vehicle's front bumper, Petitioner began to drive

forward. Pennington returned inside his vehicle and drove his vehicle through the intersection, and followed Petitioner traveling 25 to 30 miles per hour on Beaufort Road. Petitioner made a left hand turn to approach the US Naval Clinic, and pulled into the second driveway. When he drove into the second driveway, his vehicle hit the curb, and he bounced off the curb, hit the sign behind the curb, and bounced off the sign. There was another vehicle driving out of the driveway, and the left of Petitioner's vehicle struck the left driver's side of the outbound vehicle. Petitioner's vehicle stopped, and Pennington stopped his vehicle behind Petitioner's vehicle. Petitioner was still trying to operate his vehicle when Pennington approached him. Petitioner stated that he did not need medical attention, and Pennington notified the accident investigation unit. Pennington testified that he was unsure whether any damage existed after the first accident, and any damage that existed on Petitioner's vehicle after the second accident was very minor. (Respondent's Exhibit 11)

21. Officer Pearson, formerly Officer Rosenthal, testified that she was employed with the Provost Marshall's Office, and had been employed in that position for four years. She had previously been employed at the Provost Marshalls Office for five years with the Marine Corp and two years as a civilian. She testified that on January 6, 2009, she was employed as an accident reconstructionist at Cherry Point, and she responded to the scene of Petitioner's accident. At that time, Petitioner was standing by the curb and Pennington explained the initial contact with Petitioner. Officer Pearson looked at Petitioner's vehicle for damage. Most of the damage occurred at the front portion of vehicle, after the first crash. Officer Pearson cited Petitioner for DWI, reckless driving, eluding a police officer, and failure to reduce speed to avoid a crash. Officer Pearson did not administer a field sobriety test on Petitioner because he could barely stand, he tripped over the curb, and she did not think that administering the test was safe. (Respondent's exhibit 10)

22. Petitioner testified that a prescription for Ambien (Zolpidem) was issued to him on December 23, 2008, and he did not know the effects of Ambien on January 6, 2009. He took Ambien and tried to go to sleep, and then he received a call from his wife to bring money to the Naval Clinic where she worked. He got up and felt like he could proceed. Petitioner left his residence and proceeded to drive to the military base. He approached the first stoplight and was unaware that he had bumped the individual. Petitioner testified that if had known he had struck the first vehicle, he would have exited his vehicle and assessed the vehicles for damage. He testified that he did not see Pennington, or Pennington's vehicles lights or siren. He testified that he remembered a man exiting his vehicle at the first intersection, and approaching his vehicle and that he said something to Petitioner. Petitioner testified that he did not realize the first accident happened. He testified that he was 55 years old, that he had been in the Marine Corp for 22 years, and have resided in Havelock since 1994. He testified that he had never been charged with a crime, and that the only blemish on his record with the Marine Corp was that he was a recruiter and he failed to make mission, so he had to be removed from recruiter duties.

23. There is no evidence that Petitioner has ever been charged with or convicted of any crime. There is no evidence that he has had any infractions of any sort with his employment with Department of Corrections.

24. From the testimony and evidence in this contested case, the Petitioner completed all punishment administered as a result of his pleas of guilty to the two charges, including obtaining substance abuse assessment and completing any recommended treatment.

25. Based upon the facts and circumstances of this contested case, there are sufficient mitigating factors that justify not suspending Petitioner's certification.

CONCLUSIONS OF LAW

1. The Office of Administrative Hearings has personal and subject matter jurisdiction over this contested case. The parties received proper notice of the hearing in the matter. To the extent that the Findings of Fact contain Conclusions of Law, or that the Conclusions of Law are Findings of Fact, they should be so considered without regard to the given labels.

2. The North Carolina Criminal Justice Education and Training Standards Commission has the authority granted under Chapter 17C of the North Carolina General Statutes and Title 12 of the North Carolina Administrative Code, Chapter 9G, to certify correctional officers and to revoke, suspend, or deny such certification.

3. 12 NCAC 09G .0504(b)(3) states:

(b) The Commission may, based on the evidence for each case, suspend, revoke, or deny the certification of a corrections officer when the Commission finds that the applicant for certification or the certified officer:

(3) has committed or been convicted of a misdemeanor as defined in 12 NCAC 09G .0102 after certification[.]

4. 12 NCAC 09G .0102(2) states:

The following definitions apply throughout this Subchapter only:

(2) "Convicted" or "Conviction" means and includes, for purposes of this Subchapter, the entry of:

(a) a plea of guilty;

(b) a verdict or finding of guilt by a jury, judge, magistrate, or other duly constituted, established adjudicating body, tribunal, or official, either civilian or military; or

(c) a plea of no contest, nolo contendere, or the equivalent.

5. 12 NCAC 09G .0102(9)(vvv) states:

The following definitions apply throughout this Subchapter only:

(9) "Misdemeanor" for corrections officers means those criminal offenses not classified under the laws, statutes, or ordinances as felonies. Misdemeanor offenses for corrections officers are classified by the Commission as follows:

(vvv) 20-166(c) Duty to stop in event of accident or collision

6. N.C.G.S. § 20-166(c) states:

Duty to stop in event of a crash; furnishing information or assistance to injured person, etc.; persons assisting exempt from civil liability.

(c) The driver of any vehicle, when the driver knows or reasonably should know that the vehicle which the driver is operating is involved in a crash which results:

(1) Only in damage to property; or

(2) In injury or death to any person, but only if the operator of the vehicle did not know and did not have reason to know of the death or injury;

shall immediately stop the vehicle at the scene of the crash. If the crash is a reportable crash, the driver shall remain with the vehicle at the scene of the crash until a law enforcement officer completes the investigation of the crash or authorizes the driver to leave and the vehicle to be removed, unless remaining at the scene places the driver or others at significant risk of injury.

Prior to the completion of the investigation of the crash by a law enforcement officer, or the consent of the officer to leave, the driver may not facilitate, allow, or agree to the removal of the vehicle from the scene, for any purpose other than to call for a law enforcement officer, to call for medical assistance or medical treatment, or to remove oneself or others from significant risk of injury. If the driver does leave for a reason permitted by this subsection, then the driver must return with the vehicle to the accident scene within a reasonable period of time, unless otherwise instructed by a law enforcement officer. A willful violation of this subsection is a Class 1 misdemeanor.

7. 12 NCAC 09G .0505(b)(1) states:

(b) When the Commission suspends or denies the certification of a corrections officer pursuant to 12 NCAC 09G .0504 of this Section, the period of sanction shall be not less than three years; however, the Commission may either reduce or suspend the period of sanction under

Paragraph (c) of this Rule or substitute a period of probation in lieu of suspension of certification following an administrative hearing, where the cause of sanction is:

(1) commission or conviction of a misdemeanor as defined in 12 NCAC 09G .0102[.]

8. The administrative law judge concludes that a preponderance of the evidence supports the conclusion that Petitioner was convicted of the criminal offense of failure to stop at the scene of an accident, a Class B misdemeanor.

9. The party with the burden of proof in a contested case must establish the facts required by N.C.G.S. § 150B-23(a) by a preponderance of the evidence. N.C.G.S. § 150B-29(a). The administrative law judge shall decide the case based upon the preponderance of the evidence. N.C.G.S. § 150B-34(a).

10. Respondent has the burden of proof in the case at bar.

PROPOSAL FOR DECISION


Based upon the foregoing Findings of Fact and Conclusions of Law, the undersigned Administrative Law Judge recommends that Respondent find that Petitioner committed and pled guilty to an offense for which his certification could be revoked, but that his certification should not be revoked, and that he should be given a probationary status for a period of two years.

NOTICE

The agency making the final decision in this contested case is required to give each party an opportunity to file exceptions to this Proposal for Decision, to submit proposed Findings of Fact and to present oral and written arguments to the agency. N.C.G.S. § 150B-40(e).

The agency that will make the final decision in this contested case is the North Carolina Criminal Justice Education and Training Standards Commission.

This the 6th day of July, 2012.



Donald W. Overby
Administrative Law Judge

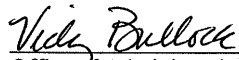
CERTIFICATE OF SERVICE

The undersigned does hereby certify that a copy of the foregoing PROPOSAL FOR DECISION has been duly served upon the Petitioner by depositing a copy of same in the United States Mail, first-class, postage prepaid, addressed as follows:

John Jay O'Neal
105 Nunn Street
Havelock, NC 28532
PETITIONER

Catherine F. Jordan
Assitant Attorney General
NC Department of Justice
9001 Mail Service Center
Raleigh, NC 27699-9001
ATTORNEY FOR RESPONDENT

This the 6th day of July, 2012.



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

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7-12-2012 12:53:00 PM

STATE OF NORTH CAROLINA
COUNTY OF LENOIR

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
11 DST 02437

Ella Joyner)	
Petitioner)	
)	
vs.)	DECISION
)	
Department of State Treasurer Retirement)	
System Division)	
Respondent)	

This contested case arises from Petitioner's filing of a petition for a contested case hearing appealing Respondent's determination that Petitioner failed to meet the requirements of N.C. Gen. Stat. § 135-1(20), that Petitioner's retirement was "null and void," and that Petitioner was required to repay Respondent \$46,865.44 in overpayment of retirement benefits.

On April 19, 2012, Administrative Law Judge Melissa Owens Lassiter heard this contested case in New Bern, North Carolina. On June 11, 2012, the parties filed their respective proposed Decisions with the Office of Administrative Hearings.

APPEARANCES

For Petitioner:	David G. Schiller, Schiller & Schiller, PLLC, Professional Park at Pleasant Valley, 5540 Munford Place, Suite 101, Raleigh, North Carolina 27612
For Respondent:	Susannah P. Holloway, Assistant Attorney General, NC Department Of Justice, PO Box 629, Raleigh, North Carolina 27602

ISSUE

Whether Respondent deprived Petitioner of property, ordered Petitioner to pay a fine or civil penalty, otherwise substantially prejudiced Petitioner's rights, exceeded its authority or jurisdiction, failed to use proper procedure, acted erroneously, acted arbitrarily or capriciously, or failed to act as required by law or rule when it determined that Petitioner's Teachers' and State Employees' Retirement System ("TSERS") service retirement benefits should cease, and Petitioner should repay retirement benefits Respondent paid to Petitioner from October 1, 2009 through January 31, 2011?

APPLICABLE STATUTES AND RULES

N.C. Gen. Stat. § 135-1 *et seq*

EXHIBITS ADMITTED INTO EVIDENCE

For Petitioner: 1, 6, 7, and 11

For Respondent: 1 - 11

WITNESSES

For Petitioner: Petitioner

For Respondent: Garry Austin

FINDINGS OF FACT

Procedural Background

1. In its February 18, 2011 Final Agency Decision, Respondent advised Petitioner that she failed to meet the requirements of N.C. Gen. Stat. § 135-1(20), and that her retirement was "null and void." Respondent informed Petitioner that she was "ineligible for benefits you have already received from October 1, 2009 through January 31, 2011, which created an overpayment in the amount of \$46,865.44."

2. On March 4, 2011, Petitioner filed a contested case petition with the Office of Administrative Hearings appealing Respondent's February 18, 2011 decision. (Petition)

Adjudicated Facts

3. From 1979 through September 30, 2009, Petitioner worked for DHHS at the Caswell Center in Kinston, North Carolina as a MRHC-II/Unit Manager. (T. p. 13) Petitioner's retirement from DHHS was effective October 1, 2009. (T. p. 13)

4. Throughout her employment with DHHS, Petitioner contributed to the Teachers and State Employees Retirement System. (T. p. 13)

5. From September 7, 1994 until February 28, 2011, Petitioner also worked at Lenoir Community College ("LCC") on a part-time basis as an Adult Basic Education

Instructor, assisting students prepare to take their GEDs in all subjects. (T. p. 15) Petitioner "never worked on the campus, but I worked at different sites that they have in the community." (T. pp. 15, 49) Judy Hill was the coordinator for the Adult Basic Education Program. (T. p. 51)

6. Throughout her employment with as Lenoir Community College employee, Petitioner was employed as a contractual employee as Petitioner had to sign a contract to teach for LCC. (T. p. 51) Petitioner was paid only for the hours she worked. (T. p. 15)

7. Lenoir Community College is a participating "employer" under the Teachers and State Employees Retirement system. N.C. Gen. Stat. § 135-1 *et seq.*

8. Petitioner did not contribute to the Teachers and State Employees Retirement System while working under contract for LCC.

9. Before retiring from the DHHS/Caswell Center, Petitioner discussed her retirement plans with Ms. Carol Harrell, a Caswell Center human resources representative. (T. 15-16) Petitioner told Ms. Harrell that she (Petitioner) was working for Lenoir Community College under a contract, and asked Ms. Harrell if continuing that employment would jeopardize her retirement benefits. Ms. Harrell told Petitioner that it would not, because Petitioner was not contributing to the Teachers and State Employees Retirement System through Lenoir Community College, and was not accumulating any leave. (T. p. 18)

10. On June 2, 2009, Ms. Harrell presented page one of Petitioner's retirement application to Petitioner, and Petitioner signed and dated that page. Petitioner did not have the second page of this retirement application. In fact, Petitioner had not seen her retirement application, other than page one, before she received such application in discovery from Respondent. (T. pp. 21-23; Pet. Ex. 1) Ms. Harrell did not give those documents [pages of her retirement application] to Petitioner. (T. p. 23) Ms. Harrell did not provide Petitioner with any paperwork that would inform Petitioner that working for Lenoir Community College would jeopardize Petitioner's retirement benefits. (T. pp. 18-20)

11. Based on her conversation with Harrell, Petitioner understood that she could still work for Lenoir Community College, and still receive retirement benefits. If Petitioner had known that continuing to work for Lenoir Community College would jeopardize her retirement benefits, she would not have continued to work at Lenoir. (T. p. 19)

12. Respondent mailed a letter dated June 17, 2009 to Petitioner's home mailing address, advising Petitioner that it had received her retirement application. Along with this letter, Respondent provided three forms for Petitioner to complete, sign, and return to Respondent. In this letter, Respondent advised that:

A summary of the return-to-work laws that apply to the System from which you retired are located in Guides H, J, and K of Form 6 (Claiming Your Monthly Retirement Benefit).

(Resp. Ex. 2) It also advised that additional information about reemployment provisions were located available online in the Retirement System's handbook. (Resp. Ex. 2)

13. Petitioner denies that she ever received Respondent's June 17, 2009 letter. She first saw the June 17, 2009 letter when she reapplied for retirement around March 2010 [sic], 2011. (T. p. 25) At hearing, Respondent did not present any proof that Petitioner actually received its June 17, 2009 letter. Respondent's Journal Comments on Petitioner's case indicated that on February 4, 2010, a 1099R tax form mailed to Petitioner was "returned to sender" (Respondent) because "attempted not known and unable to forward. . . [Petitioner's] address status was changed to valid to invalid, . . . and address updated." (Resp. Ex. 11)

14. On June 24, and 25, 2009, Petitioner signed the respective forms mentioned in Respondent's June 17, 2009 letter. On June 29, 2009, Respondent received the completed respective forms. (T. pp. 42-43; Resp. Ex. 3 - 5)

15. Petitioner began receiving retirement benefits in October 2009, and received about \$2500.00 per month in retirement benefits. When Petitioner began receiving retirement benefits, she believed that she had been approved to receive retirement benefits in compliance with the statutes and rules governing the Retirement system.

16. On October 19, 2009, Petitioner taught a class for Lenoir Community College. (Resp. Exs. 7, 9) During this timeframe, Petitioner taught language arts, social studies, science, and math to students two nights a week. She taught these classes in community centers, such as Simon Bright, Carter Courts, or Mitchell Wooten, to help students prepare to go to LCC to take their original GED. (T. pp. 50-51)

17. At that time, Petitioner worked up to six hours per week for an approximate wage of \$15.00 or \$16.00 per hour. (T. pp. 21-21) From November 2009 through January 2011, Petitioner received a check from Lenoir Community College for her part-time teaching. (Resp. Ex. 9)

18. Petitioner acknowledges that she "had an agreement with Lenoir Community College" that she would "continue to be available to work on a part-time basis for Lenoir Community College after" her retirement from the Caswell Center. (Resp. Ex. 7)

19. However, if Petitioner had known that she would have had to repay the benefits, because of her employment with Lenoir County Community College, she would not have worked there. Petitioner's pay at Lenoir was so modest, that doing so would make no economic sense. (T. pp. 20-21)

20. A preponderance of the evidence at hearing established that Petitioner received monthly retirement benefits from Respondent from October 1, 2009 until January 31, 2011 for \$46,865.44.

21. Sometime in January of 2011, Garry Austin, an employee of Respondent, contacted LCC regarding Petitioner's employment. (Resp. Ex. 9)

22. In either January or February of 2011, Mr. Austin called Petitioner, and told her that her retirement was null and void. (T. p. 28) Austin also informed Petitioner that it would also include her health benefits, which could be retroactive from October 2009 until 2010 [sic]. (T. p. 28)

23. Based on Respondent's revocation of Petitioner's retirement benefits, Petitioner also lost health insurance through the State retroactively from October 1, 2009 until November 1, 2011. (T. pp. 28-29, 30; Pet. Ex. 11) Since Petitioner had no other health insurance coverage retroactively, from October 1, 2009 to November 1, 2011, she had to pay over \$3000.00 in medical or doctor expenses out of her pocket. At the time of hearing, she continued to receive medical bills not covered by her State health insurance plan for that period when her health insurance was retroactively suspended. (T. pp. 31-32) On November 1, 2011, Petitioner's health insurance coverage under the State Health plan began again. (T. pp. 29-30; Pet. Ex. 11)

24. Sometime in February 2011, Petitioner completed a second retirement application, and "retired" again, effective March 1, 2011. Respondent agrees that Petitioner's retirement on March 1, 2011 complied with N.C. Gen. Stat. § 135.

25. Since that time, Respondent has been requiring Petitioner to repay the sum of \$46,865.44, which represents the retirement benefits Petitioner received from October 1, 2009 until January 31, 2011, by withholding \$450.00 a month from Petitioner's retirement benefits.

26. According to Respondent's interpretation of N.C. Gen. Stat. § 135-1, Petitioner did not effectively retire October 1, 2009, because she continued to work for the Lenoir Community College on a part-time basis after she retired from DHHS' Caswell Center.

27. At hearing, Mr. Austin agreed that [in October 2009], Petitioner worked for LCC on a contract basis, that Petitioner was not required to contribute to the Retirement system in that position, and that Petitioner was not forced to be a contributing member of Respondent's system. (T. p. 87) He agreed that given the language in N.C. Gen. Stat. § 135-1(10), that statutory section applies to employees, but not teachers. (T. p. 87-89) Austin also agreed that Petitioner is "not a teacher under twenty-five [under N.C. Gen. Stat. § 135-1(25)] to meet the definition to make contributions to the system." (T. p. 90)

CONCLUSIONS OF LAW

1. The parties are properly before the Office of Administrative Hearings, and the Office of Administrative Hearings has subject matter and personal jurisdiction, pursuant to chapters 135 and 150B of the North Carolina General Statutes.

2. N.C. Gen. Stat. § 135-2 establishes the retirement system for providing retirement allowances and other benefits "for teachers and State employees of the State of North Carolina."

3. N.C. Gen. Stat. § 135-3(1) provides in part that "membership in the Retirement System shall begin immediately upon the election, appointment or employment of a **'teacher or employee' as the terms are defined in this Chapter.**" (Emphasis added)

4. N.C. Gen. Stat. § 135-1 defines pertinent terms as follows:

The following words and phrases as used in this Chapter, unless a different meaning is plainly required by the context, shall have the following meanings: . . .

(20) 'Retirement' means the termination of employment and the complete separation from active service with no intent or agreement, express or implied, to return to service. A retirement allowance under the provisions of this Chapter may only be granted upon retirement of a member. In order for a member's retirement to become effective in any month, **the member must render no service**, including part-time, temporary, substitute, or contractor service, at any time during the six months immediately following the effective date of retirement. For purposes of this subdivision, service as a member of a school board or as an unpaid bona fide volunteer in a local school administrative unit shall not be considered service.

(Emphasis added)

5. N.C. Gen. Stat. § 135-1(23) defines the term "service:"

Service as a teacher or State employee as described in subdivision (10) or (25) of this section.

6. N.C. Gen. Stat. § 135-1(10) provides:

(10) 'Employee' shall mean all full-time employees, agents or officers of the State of North Carolina or any of its departments, bureaus and institutions **other than educational**, whether such employees are elected,

appointed or employed: Provided that the term 'employee' shall not include any person. . . or any part-time or temporary employee.

(Emphasis added)

7. N.C. Gen. Stat. § 135-1(25) defines that:

'Teacher' shall mean any teacher, helping teacher, teacher in a job-sharing position under G.S. 115C-326.5 except for a beneficiary in that position, librarian, principal, supervisor, superintendent of public schools or any full-time employee, city or county, superintendent of public instruction, or any full-time employee of Department of Public Instruction, president, dean or teacher, or any full-time employee in any educational institution supported by and under the control of the State: **Provided, that the term "teacher" shall not include any part-time, temporary, or substitute teacher.**

(Emphasis added)

8. Respondent first argued that Petitioner violated N.C. Gen. Stat. § 135-1(20) because she worked for a covered employer during the six month waiting period following her initial retirement.

9. Since 1915, our appellate courts have ruled that:

When construing a statute[,] the words used therein will be given their ordinary meaning, unless it appears from the context that they should be taken in a different sense.

Abernethy v. Board of Comm'rs, 169 N.C. 631, 86 S.E. 577 (1915) When the language of a statute is unclear and ambiguous, a court may interpret the language of the statute in accordance with what the court presumed the legislature intended. *Carolina Truck & Body Co. v. GMC*, 102 N.C. App. 262, 402 S.E.2d 135, cert. denied. 329 N.C. 266, 407 S.E.2d 831 (1991)

10. The preponderance of the evidence established that Petitioner taught language arts, social studies, science, and math to students two nights a week, to help students prepare to go to LCC to take their original GED. Throughout her employment at LCC, Petitioner was only employed on a contract basis, and LCC only paid Petitioner for the hours she worked. Petitioner worked up to six hours a week, and was paid an hourly wage of \$15.00 to \$16.00.

11. The General Assembly defined how the terms "teacher" and "employee" are to be used in N.C. Gen. Stat. § 135-1. Applying those definitions to Petitioner in this case, N.C. Gen. Stat. § 135-1(10) explicitly excludes educational employees from that definition. By virtue of her teaching part-time at Lenoir Community College, Petitioner

is not an "employee" under N.C. Gen. Stat. § 135-1(10). Neither is Petitioner a "teacher" as defined in N.C. Gen. Stat. § 135-1(25) as N.C. Gen. Stat. § 135-1(25) excludes part-time teachers from that definition.

12. Since Petitioner is neither a "teacher" nor an "employee," she could not have, and therefore, did not provide "service" within the meaning of N.C. Gen. Stat. § 135-1(20), when she taught students at LCC on a part-time, contractual basis after her October 1, 2009 retirement from DHHS.

13. Respondent also argued that Petitioner violated N.C. Gen. Stat. § 135-1(20) because she had an agreement with a covered employer, before her retirement, to return to work for the covered employer following her retirement.

14. A preponderance of the evidence established that Petitioner met the requirements of N.C. Gen. Stat. § 135-1(20). Petitioner had a complete separation from active service with DHHS. Petitioner did agree with LCC, before her retirement from DHHS, that she would be available to work for LCC, after her retirement from DHHS. LCC was a "participating" employer with Respondent, although not the same employer from which Petitioner had retired with 31 plus years of service. Nevertheless, since Petitioner's contract employment with LCC does not constitute "service" under N.C. Gen. Stat. § 135-1(23), Petitioner could not have had an "intent or agreement to return to service" under N.C. Gen. Stat. § 135-1(20).

15. Reading N.C. Stat. § 135-1(20) in the context of Chapter 135 clearly shows that the legislature anticipated the possibility that recipients under the Retirement System might return to active employment on behalf of the State of North Carolina. Thus, the prohibitions against receiving retirement benefits after returning to work or "service" in N.C. Gen. Stat. § 135-1(20), and the suspension of retirement benefits if a "teacher" or State "employee" returns to "service" as a "teacher" or "employee" in N.C. Gen. Stat. § 135-3(8). To use the vernacular, the legislature does not want retirees to "double dip" by receiving retirement benefits, yet still contributing to the Retirement System.

16. Here, Petitioner was not "double dipping" as she was working on a contract basis with LCC, did not contribute to the Retirement System, and did not accumulate any leave.

17. Notably, the legislature has enacted N.C. Gen. Stat. § 135-3(8)(c), **to be effective June 30, 2013**. In that section, the retirement allowance of a retired teacher or employee "shall be suspended" when that teacher or employee is reemployed by, "or otherwise engaged to perform services," for an employer participating in the Retirement System "on a part-time, . . . or on a fee for service basis, whether contractual or otherwise, **and**" if that teacher or employee earns more the reported compensation amount during the 12 months immediately after the effective date of retirement. While obviously, this new section has no effect on Petitioner's case, it is instructive as to the

legislature's intent in limiting a retired teacher or employee's ability to "double dip" after retirement from service as a teacher or State employee.

18. For the foregoing reasons, Respondent deprived Petitioner of property, otherwise substantially prejudiced Petitioner's rights, exceeded its authority or jurisdiction, acted erroneously, and failed to act as required by law or rule when it determined that Petitioner's October 1, 2009 retirement was null and void from October 1, 2009 until January 31, 2011, and began recouping \$46,865.44 in retirement monies already paid to Petitioner, by deducting \$450.00 from Petitioner's monthly TSERS service retirement benefits.

19. Petitioner is entitled to a refund of all funds which Respondent has deducted from Petitioner's monthly TSERS service retirement benefits on account of the alleged overpayment of benefits, which supposedly occurred between October 1, 2009 through January 31, 2011. Petitioner is entitled to 4% interest on the amount of the contributions being refunded to her, in accordance with N.C. Gen. Stat. § 135-5(f).

DECISION

Based on the foregoing Findings of Fact and Conclusions of Law, the undersigned hereby determines that Respondent's decision that Petitioner's October 1, 2009 retirement was null and void, and thus, Petitioner owed Respondent \$45,865.44 in overpayments, should be **REVERSED**. Respondent is to cease recovering any overpayment funds from Petitioner's retirement benefits, and shall restore to Petitioner all funds which it has previously so recovered, together with the employee contributions which were made on her behalf from October 1, 2009 through January 31, 2011, with interest on the contributions as provided in N.C. Gen. Stat. § 135-5(f).

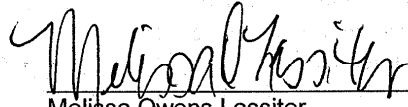
NOTICE AND ORDER

The Board of Trustees of the Teachers' and State Employees' Retirement System will make the Final Decision in this case. That Agency 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(a).

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

The Board is required by N.C. Gen. Stat. § 150B-36(b) to serve a copy of the final decision on all parties, furnish a copy to the parties' attorneys of record, and furnish a copy to the Office of Administrative Hearings.

This the 12th day of July, 2012.



Melissa Owens Lassiter
Administrative Law Judge

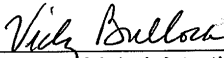
CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing **DECISION** was served upon the following persons by depositing same in the U.S. Mail, prepaid postage and addressed as follows:

David G. Schiller
Attorney at Law
5540 Munford Road, Suite 101
Raleigh, NC 27612
ATTORNEY FOR PETITIONER

Susannah P. Holloway
Assistant Attorney General
N.C. Department of Justice
9001 Mail Service Center
Raleigh, NC 27699-9001
ATTORNEY FOR RESPONDENT

This the 12th day of July, 2012.



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

STATE OF NORTH CAROLINA

COUNTY OF MARTIN

Filed

2012 JUL 18 PM 3:44

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
11 EDC 11864

Dwayne White,
Petitioner,

vs.

North Carolina Department of Public
Instruction, North Carolina State Board of
Education,
Respondent.

Office of
Administrative Hearings

DECISION

This matter came on for hearing before Administrative Law Judge Beecher R. Gray on May 25, 2012, in Williamston, North Carolina. Respondent filed a proposed decision on June 29, 2012. Petitioner filed proposed additions to that proposed decision on June 29, 2012.

APPEARANCES

For Petitioner: Joy Rhyne Webb, Esq.
Merritt Flebotte Wilson Webb and Caruso
P.O. Box 2247
Durham, NC 27702

For Respondent: Tiffany Y. Lucas, Esq.
Assistant Attorney General
North Carolina Department of Justice
9001 Mail Service Center
Raleigh, NC 27699-9001

FINDINGS OF FACT

1. The parties received notice of hearing by certified mail more than 15 days prior to the hearing, and each stipulated on the record that notice was proper.
2. Petitioner was a North Carolina-licensed teacher employed by Beaufort County Public Schools during the 2010-2011 school year. Petitioner has taught high school in North Carolina for 18 years.
3. On April 8, 2011, Respondent received notice from Beaufort County Schools concerning allegations of an inappropriate relationship between Petitioner and an 18 year-old exceptional student ("D.M.") at the high school where Petitioner taught. The student was considered an "early graduate" who had finished attending regular classes at the school on January 18, 2011, but who still had certain requirements to fulfill prior to graduating in June 2011. Furthermore, the student still was involved with certain on-campus activities at the high school, such as attending the prom. On March 15, 2011, the

student's mother contacted the administration of the high school with her concerns about Petitioner and her daughter. That same day, an interview was held with the local board attorney for Beaufort County Schools, Principal Rick Anderson, and Petitioner. At that meeting, Petitioner admitted to, among other things, texting the student messages about having sex and sending her nude pictures of himself. Immediately after the interview, Petitioner resigned his teaching position.

4. Petitioner was called in to be interviewed by the Superintendent's Ethics Committee in July 2011. The Superintendent's Ethics Committee is made up of professional educators appointed by Superintendent June Atkinson to, among other things, follow up on inquiries made concerning a teacher's fitness to teach in the State of North Carolina. Petitioner was interviewed by members of the Committee and admitted that he had exchanged sexually graphic text messages with a student; Petitioner, however, believed that the student was considered an early graduate and not a "student" as of January 18, 2011. Petitioner indicated to the Committee that his communications with her did not cross the line into sexually explicit until January 19, 2011.
5. The Ethics Committee recommended to Superintendent Atkinson that Petitioner's license be revoked because of Petitioner's unethical and lascivious conduct, including the exchange of highly sexual text messages with a student.
6. Petitioner admitted at the hearing that he continued to exchange text messages of a sexual and/or romantic nature with student D.M. even after questions arose in his mind about whether she was considered a student at the high school. He also admitted that he met student D.M. at a local retail establishment in person on two occasions after they began communicating via text and phone but before she graduated from high school.
7. Petitioner did not engage in an intimate physical relationship with student D.M. Petitioner stated that he made a mistake in allowing the relationship to continue and apologized for his actions to the State Board of Education a few days after he met with the Superintendent's Ethics Advisory Committee, as demonstrated by Respondent's Exhibit 6. Jonibel Willis, a member of the Superintendent's Ethics Advisory Committee at the time of this hearing and at the time of its meeting with Petitioner, testified that she had not seen Respondent's Exhibit 6, Petitioner's letter of apology to the Committee, until this hearing and expressed regret that the Committee did not have this letter before it when considering Petitioner's case. She found the letter to be self-reflective, expressing ownership of the conduct and accepting personal responsibility. She expressed no opinion as to what recommendation the Committee would have made had the Committee been privy to Petitioner's letter, admitted as Respondent's Exhibit 6.
8. The State Board of Education may revoke or deny a teaching license for any illegal, unethical, or lascivious conduct if there is an adverse relationship between that conduct and the continuing ability of the person to be an effective teacher. 16 N.C.A.C. 6C.0312(a)(8)

9. There is no dispute here that during the 2010- 2011 school year, Petitioner exchanged sexually explicit text messages, including pictures, with a female student he met while he was a teacher at the high school where the female student attended and was planning to (and in fact did) graduate from in June 2011. The only issue is whether such conduct bears an adverse relationship to the continuing ability of Petitioner to be an effective teacher.
10. Teachers are required in this State, both by Rule and by case law, to maintain the highest level of ethical and moral standards, and to serve as positive role models for children. 16 N.C.A.C. 6C.0602(b)(2); Faulkner v. New Bern-Craven Board of Education, 311 N.C. 42, 59, 316 S.E.2d 281, 291 (1984)
11. As our Supreme Court observed in Faulkner:

Our inquiry focuses on the intent of the legislature with specific application to teachers who are entrusted with the care of small children and adolescents. We do not hesitate to conclude that these men and women are intended by parents, citizenry, and lawmakers alike to serve as good examples for their young charges. *Their character and conduct may be expected to be above those of the average individual not working in so sensitive a relationship as that of teacher to pupil.* It is not inappropriate or unreasonable to hold our teachers to a *higher standard of personal conduct*, given the youthful ideals they are supposed to foster and elevate.

Id. (emphasis added)

12. In this case, inquiry has been made into Petitioner's fitness to hold a teaching license in light of certain illegal, unethical, and/or lascivious conduct engaged in by Petitioner. Petitioner has admitted to the conduct for which the inquiry into his fitness to hold a teaching license was based. Teachers in this State are expected to be role models for their students. Parents are entitled to have their children entrusted to individuals of the highest moral character. Persons engaged in the conduct admitted to by Petitioner simply do not meet the threshold requirement demanded by communities and parents for the school teachers we expect to be examples for our children.

CONCLUSIONS OF LAW

1. The parties properly are before the Office of Administrative Hearings. Petitioner has the burden of proof to demonstrate by a preponderance of the evidence that the State Board of Education erred in initiating revocation of his North Carolina teaching license. Peace v. Employment Sec. Comm'n, 349 N.C.315, 507 S.E.2d 272 (1988)
2. The conduct in which Petitioner admittedly engaged fails to adhere to the high standards of moral behavior demanded of teachers in this State, and there is an adverse relationship between Petitioner's conduct and his ability to perform his duties in a professionally effective manner.

3. Respondent did not act arbitrarily or capriciously in revoking Petitioner's license to teach in North Carolina.
4. Respondent has not unlawfully deprived Petitioner of any property to which he is entitled.

Based on the foregoing, the undersigned makes the following:

DECISION

Based upon the evidence, Respondent has sufficient grounds to revoke Petitioner's North Carolina teaching license. Based upon the full evidence produced in this case, including evidence in mitigation of Petitioner's actions, it is recommended that the State Board of Education consider--in its discretion--a revocation of Petitioner's teaching license with the revocation suspended for two (2) years, during which period Petitioner is required to complete to the satisfaction of the State Board--and as a condition of reinstatement of his teaching license--remedial professional ethics training and not engage in further unethical or lascivious behavior.

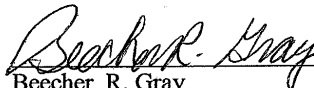
NOTICE

The Agency that will make the final decision in this contested case is the North Carolina Department of Public Instruction.

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

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

This the 18 day of July, 2012.

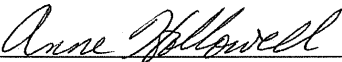

Beecher R. Gray
Administrative Law Judge

A copy of the foregoing was mailed to:

Joy Rhyne Webb
Merritt Flebotte Wilson Webb and Caruso
PO Box 2247
Durham, NC 27702
ATTORNEY FOR PETITIONER

Tiffany Y. Lucas
Assistant Attorney General
9001 Mail Service Center
Raleigh, NC 27699-9001
ATTORNEY FOR RESPONDENT

This the 19th day of July, 2012.


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

Filed

STATE OF NORTH CAROLINA

2012 JUN 29 PM 2:06

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS

COUNTY OF BRUNSWICK

11 EHR 13208

Office of
Administrative Hearings

HOLMES DEVELOPMENT & REALTY,
LLC,
and
H.L. HOLMES,
Petitioner,

DECISION

v.

N.C. DEPARTMENT OF ENVIRONMENT
& NATURAL RESOURCES- LAND
QUALITY SECTION,

(RE: LQS 11-018),
Respondent.

The contested case of Holmes Development & Realty, LLC, & H. L. Holmes, Petitioner herein, was heard before Senior Administrative Law Judge Fred G. Morrison Jr., on March 23, 2012, at the Surf City Town Hall, Council Chambers, in Surf City, North Carolina.

APPEARANCES

PETITIONER: H.L. Holmes, *pro se*
Holmes Development & Realty, LLC
P.O. Box 1216
Shallotte, NC 28459

RESPONDENT: Jane L. Oliver
Assistant Attorney General
N.C. Department of Justice
9001 Mail Service Center
Raleigh, NC 27609

ISSUE

Whether Respondent's assessment of civil penalties against Petitioner for failing to conduct a land-disturbing activity in accordance with an approved erosion and sedimentation control plan developed under the Sedimentation Pollution Control Act of 1973, (SPCA), and rules promulgated thereunder, is supported by the evidence in the record.

STATUTES AND RULES AT ISSUE

N.C.G.S. § 150B-23(a)
N.C.G.S. § 113A-50, *et seq.*
15A N.C.A.C. 04A .0105
15A N.C.A.C. 04B .0105
15A N.C.A.C. 04B .0107
15A N.C.A.C. 04B .0113
15A N.C.A.C. 04B .0124(e)
15A N.C.A.C. 04C .0106
15A N.C.A.C. 04C .0108

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

BASED UPON the foregoing and upon the preponderance or greater weight of the evidence in the whole record, the Undersigned makes the following:

FINDINGS OF FACT

1. Petitioner Holmes Development & Realty, LLC is the owner of the Rutledge subdivision near Supply, in Brunswick County, North Carolina, containing approximately 53.8 acres. (Respondent's Exhibit 3).
2. Respondent, North Carolina Department of Environment and Natural Resources (DENR), is a State agency established under N.C.G.S. Chapter 113A, Article 4, and has been vested with statutory authority to enforce certain of the State's environmental pollution laws, including laws enacted to control sedimentation damage under the Sedimentation Pollution Control Act as set forth in N.C.G.S. § 113A-50, *et seq.*, and 15A N.C.A.C., Chapter 4.
3. Pursuant to N.C.G.S. § 113A-54.1, Petitioner caused to be filed a "Financial Responsibility/Ownership Form" with Respondent, on or about March 27, 2008. (Respondent's Exhibit 3).
4. Respondent reviews submitted Sedimentation Plans to assess appropriate erosion control measures, calculations, and placements. Respondent will approve a Sedimentation Plan if there is a "reasonable chance" the plan will work.

5. According to N.C.G.S. § 113A-52(6), a “land-disturbing activity” is “any use of the land by any person in residential...development...that results in a change in the natural cover or topography and that may cause or contribute to sedimentation.”

6. Pursuant to N.C.G.S. § 113A-57, prior to conducting a land-disturbing activity of more than one acre, an “erosion and sedimentation control plan” must be submitted and approved by DENR.

7. Petitioner caused to be filed an erosion and sedimentation control plan (Sedimentation Plan) on or about March 27, 2008. The plan was approved by DENR on April 22, 2008. (Respondent’s Exhibits 2 & 4).

8. Respondent has the authority, pursuant to N.C.G.S. § 113A-61.1, to inspect areas with land-disturbing activities to assess compliance with the filed Sedimentation Plan. Routine inspections are performed by DENR staff to ensure compliance with filed Sedimentation Plans.

9. On April 19, 2011, Respondent conducted an inspection of the Rutledge subdivision to determine compliance with SPCA. Inspections also occurred on June 22, 2011, August 11, 2011, September 13, 2011, September 22, 2011, and October 19, 2011. (Respondent’s Exhibits 5, 6, 9, 12, 14, & 16).

10. Respondent has the authority, pursuant to N.C.G.S. § 113A-64, to assess civil penalties for violations of SPCA, including non-compliance with filed Sedimentation Plans. Civil penalties are not to exceed \$5,000 per day for each day of a continuing violation.

11. Pursuant to its statutory authority, Respondent has established criteria to be considered prior to assessing civil penalties for violations of SPCA under 15A N.C.A.C. 04C .0106. (Respondent’s Exhibits 17 & 18).

12. On October 3, 2011, Respondent issued a Civil Penalty Assessment for Violations of SPCA to Petitioner. (Respondent’s Exhibit 2).

13. The Civil Penalty Assessment lists “Findings of Fact” which demonstrate, in pertinent part, that Petitioner was engaged in a land-disturbing activity, that several inspections revealed that he was in violation of SPCA, and that sedimentation damage had occurred as a result of those violations.

14. The Civil Penalty Assessment alleges the existence of the following violations, totaling ninety-three (93) days, extending from June 22, 2011 through September 22, 2011, at Rutledge:

- Failure to comply with the filed Sedimentation Plan (N.C.G.S. § 113A-57(5))
- Failure to provide adequate ground cover to restrain erosion after completion of construction (N.C.G.S. § 113A-57(3); 15A N.C.A.C. 04B .0107(b))
- Failure to install sedimentation and erosion control devices sufficient to restrain sedimentation generated by land-disturbing activities (N.C.G.S. § 113A-57(3))

- Failure to take all reasonable measures to protect public and private property from damage caused by land-disturbing activities (15A N.C.A.C. 04B .0105)
- Failure to provide a proper buffer zone in proximity to a natural watercourse (N.C.G.S. § 113A-57(1); 15A N.C.A.C. 04A .0105(4))
- Failure to maintain proper angle to allow for vegetative cover or other adequate erosion control devices or structures (N.C.G.S. § 113A-57(2))
- Failure to plant or provide permanent ground cover, devices or structures sufficient to restrain erosion, within 21 days of completion of grading (N.C.G.S. § 113A57(2))
- Failure to install and maintain all erosion and sedimentation control measures pursuant to filed Sedimentation Plan and SPCA (15A N.C.A.C. 04B .0113).

15. Respondent measures the daily amount of civil penalty assessed using the following criteria:

- Number of violations
- Degree and extent of harm caused by violation
- Adherence to Sedimentation Plan/Effectiveness of corrective steps
- Prior record of violations
- Willfulness of violation
- Money saved by violations through non-compliance
- Cost of rectifying damage
- Staff investigative costs

(Respondent's Exhibits 17 & 18).

16. Respondent issued six, ten dollar (\$10) daily penalties for separate violations, a three hundred dollar (\$300) daily penalty for the degree of harm caused, a two hundred dollar (\$200) daily penalty for noncompliance with the plan, and a two hundred dollar (\$200) daily penalty for willful violation. The daily penalties totaled seven hundred sixty dollars (\$760) over a ninety-three (93) day period, for a grand total of seventy thousand, six hundred eighty dollars (\$70,680). (Respondent's Exhibit 18).

17. Francis Nevils is the Section Chief of the Land Quality Section of DENR. In that capacity, he is responsible as the final authority for determining whether to enforce civil penalty actions and for calculating the amount of daily penalty assessed for violations of SPCA.

18. Mr. Nevils testified at the March 23, 2012, hearing that he used established agency criteria to calculate the daily penalty assessed for Petitioner's SPCA violations. He levied ten dollars per day for each of six different statutory and/or rule violations. He levied three hundred dollars per day for "severe" harm caused by the violation, noting that "several inspections" had indicated that degree of damage on-site. He levied two hundred dollars per day for lack of adherence to the sedimentation plan and/or lack of effectiveness of corrective action by Petitioner. Finally, he levied two hundred dollars per day for "willful" violation of SPCA, noting that he had arrived at this figure after consultation with colleagues and that the continuing violations indicated the requisite "knowing" level of intent. (Respondent's Exhibit 18)

19. The "Findings of Fact" contained within the Civil Penalty Assessment make no findings pertaining to the severity or willfulness of Petitioner's alleged violations of SPCA. (Respondent's Exhibit 2).

20. The April 19, 2011, September 22, 2011, and October 19, 2011, Sedimentation Inspection Reports indicate a "moderate" level of sedimentation damage. (Respondent's Exhibits 5, 14, & 17).

21. The September 13, 2011, Sedimentation Inspection Report indicates that no sedimentation damage had occurred since the most recent inspection. (Respondent's Exhibit 12).

22. The June 22, 2011, and August 11, 2011, Sedimentation Inspection Reports indicate a "severe" level of sedimentation damage. (Respondent's Exhibits 6 & 12).

23. On or about August 12, 2011, Respondent notified Emily Hughes with the United States Army Corps of Engineers, via email, about Petitioner's alleged sedimentation damage into adjoining wetland areas. The Corps met with Petitioner and inspected the site on August 24, 2011. On September 9, 2011, Emily Hughes emailed Respondent and advised them that the issues were "[f]airly minor on [the Corps'] part," and that a Notice of Violation was not necessary.

24. A Sedimentation Inspection Report filed following an inspection on April 19, 2011, indicates violations of SPCA, but lacks details about specific locations, mentioning only "wetlands and natural watercourses," and the "[e]astern side of the bridge crossing." The only corrective measures indicated are that "[c]heck dams are not being maintained." There are multiple check dams listed on the Sedimentation Plan, but none are specified in the Report. (Respondent's Exhibits 4 & 5).

25. Nick Mills is an inspector for DENR. In that capacity, he conducted inspections of Petitioner's site on June 22, 2011, and August 11, 2011. During testimony, Mr. Mills indicated that he thought Petitioner had made attempts, albeit insufficient, to correct the areas found to be in violation of SPCA. Mr. Mills testified that he estimated that remediation attempts had occurred in 25 to 40 per cent of the area in violation (Respondent's Exhibits 6 & 9); (T. pp. 154, 167-8, & 180).

26. Mr. Mills' June 22, 2011, Sedimentation Inspection Report indicates numerous violations of SPCA but lists no specific areas in violation. Corrective measures are listed, but are not site-specific and merely recite the general statutory provisions enumerated by SPCA. (Respondent's Exhibit 6).

27. A Notice of Violations was issued on June 27, 2011, as a result of the June 22, 2011, inspection. The Notice lists general allegations of violations and recites the general statutory provisions of SPCA. No specific details of problem areas or corrective measures are provided. Petitioner was given approximately thirty days to correct all violations. (Respondent's Exhibit 8).

28. Mr. Mills' August 11, 2011, Sedimentation Inspection Report indicates numerous violations of SPCA, but lists no specific areas in violation. Corrective measures are listed, but are not site-specific and merely recite the general statutory provisions enumerated by SPCA. Comments were provided indicating that "some erosion control measures installed since last inspection are improperly installed and failing to retain sediment on site." Specific problem areas were not identified. (Respondent's Exhibit 9).

29. A Notice of Continuing Violations was issued on August 16, 2011, as a result of the August 11, 2011, inspection. The Notice lists general allegations of violations and recites the general statutory provisions of SPCA. No specific details of problem areas or corrective measures are provided. Petitioner was notified that the matter was being referred for enforcement of civil penalties up to \$5,000 per day. (Respondent's Exhibit 11).

30. Petitioner submitted evidence of the potential existence of beaver activity that may have contributed to continuing violations at the Rutledge site. Inspectors Lambe and Mills both acknowledged that Petitioner advised them of this potential mitigating factor. Inspector Lambe acknowledged during his testimony at the contested hearing on March 23, 2012, that beaver activity could possibly have contributed to some of the damage at the Rutledge site. Despite their knowledge, neither inspector included this information in their inspection reports. (T. pp. 58, 187, 211, & 229).

31. Mr. Nevils testified at the contested case hearing on March 23, 2012, that he was not aware of any claims of beaver damage when he calculated and assessed the penalty for Petitioner's alleged violations. (T. p. 59). Mr. Nevils further testified that beaver damage would have mitigated any assessment for a "willful" violation. (T. p. 66).

32. Photographs were taken at the June 22, 2011, and August 11, 2011, inspections which demonstrate areas of sedimentation damage and specific violations of SPCA at Rutledge. While the photographs demonstrate that Petitioner was in violation of SPCA, they do not correlate in any specific way to actual violations as listed in any Notice of Violations, or Sedimentation Inspection Report. (Respondent's Exhibits 7 & 10).

33. Brian Lambe is an inspector for DENR. In that capacity, he conducted inspections of Petitioner's site on September 13, 2011, September 22, 2011, and October 19, 2011. During testimony, Mr. Lambe indicated that he thought Petitioner was trying to make repairs to the areas found to be in violation of SPCA. Mr. Lambe further testified that Petitioner had constructed "emergency measures" not included on approved plan. (Respondent's Exhibits 12 & 14); (T. p. 11).

34. Mr. Lambe issued the September 13, 2011, September 22, 2011, and October 19, 2011, Sedimentation Inspection Reports for Petitioner's site. The Reports offer significant detail as to the specific problem areas, their locations, and how to correct the deficiencies. This level of detail is notably absent in all other Sedimentation Inspection Reports offered in the record. During testimony, Mr. Lambe noted that he understood his role was to help people and the detail provided in his Reports furthered that end. (Respondent's Exhibits 12, 14, & 16); (T. pp. 211-4).

CONCLUSIONS OF LAW

1. Pursuant to 15A N.C.A.C. 04C .0108, 15A N.C.A.C. 01B .0202 and Chapter 150B of the North Carolina General Statutes, all parties are properly before the Office of Administrative Hearings (OAH). OAH has jurisdiction both over the parties and the subject matter at issue.
2. All parties have been correctly designated and there is no question as to misjoinder or nonjoinder.
3. Petitioner is a "person" within the meaning of N.C.G.S. § 113A-52(8) and under 15A N.C.A.C. 04A .0105.
4. A land-disturbing activity over one acre in size occurred on the Rutledge site within the meaning of N.C.G.S. § 113A-52(6).
5. Respondent has demonstrated, by a preponderance of evidence, that Petitioner failed to precisely follow his approved Sedimentation Plan, in violation of N.C.G.S. § 113A-57(5) and 15A N.C.A.C. 04B .0113.
6. Respondent has demonstrated, by a preponderance of evidence, that Petitioner failed to provide adequate ground cover sufficient to restrain erosion in violation of 15A N.C.A.C. 04B .0124(e).
7. Respondent has demonstrated, by a preponderance of evidence, that Petitioner failed to install sedimentation and erosion control devices sufficient to retain sediment generated by the land-disturbing activity, in violation of N.C.G.S. § 113A-57(2) and (3).
8. Respondent has demonstrated, by a preponderance of evidence, that Petitioner failed to provide an adequate buffer zone, as defined in 15 A N.C.A.C. 04A .0105(4), in proximity to a lake or watercourse, in violation of N.C.G.S. § 113A-57(1).
9. Respondent has demonstrated, by a preponderance of evidence, that Petitioner failed to maintain properly graded slopes at an angle sufficient to support erosion restraining measures, in violation of N.C.G.S. § 113A-57(2).
10. Pursuant to 15A N.C.A.C. 04C .0107(a), Respondent is required to issue a Notice of Violation that "describes the violation with reasonable particularity..." and that it "shall specify the actions to be taken...."
- 11.. Respondent has failed to provide, with reasonable particularity, descriptions of alleged violations and has also failed to adequately specify the actions to be taken to correct the alleged violations occurring at the Rutledge Subdivision for the period beginning June 22, 2011, and ending September 22, 2011.

12. Pursuant to N.C.G.S. § 113A-64(a) and 15A N.C.A.C. 04C .0103, Respondent has the authority to assess a civil penalty against Petitioner for violations of SPCA.

13. The criteria used by Respondent in calculating the amount of daily penalty assessed to Petitioner for “severity” of sedimentation damage is not entirely supported by the record. Specifically, inconsistent internal assessments of the severity of damage, combined with an outside assessment by the U.S. Army Corps of Engineers categorizing the damage as “fairly minor,” does not support the imposition of “severe” damage actually assessed.

14. The criteria used by Respondent in calculating the amount of daily penalty assessed to Petitioner for “willfulness” of the violation is not entirely supported by the record and is arbitrary. Specifically, Respondent failed to consider evidence of Petitioner’s attempts at repair and compliance, despite an overwhelming lack of specificity with respect to actual areas in violation and corrective measures needed. Additionally, despite investigator knowledge of the potential for beaver activity as a cause of continued violations, the record does not reflect any consideration of the potential contribution of beaver activity as mitigation in determining daily penalty assessment.

15. The North Carolina Court of Appeals has held that, in the context of SPCA violations, willfulness occurs when “DENR put[s] Petitioner on notice of its violation and [gives] Petitioner the opportunity to correct the situation...[and] Petitioner fail[s] to act.” *Clark Stone Co., Inc. v. NCDENR*, 164 N.C.App. 24, 40, 594 S.E.2d 832, 842. Here, Petitioner did, in fact, take action to correct his violations, despite the lack of required specificity and particularity. Petitioner’s actions directly contradict Respondent’s assertions of willful SPCA violations.

DECISION


The evidence in the record demonstrates that Petitioner was in violation of the SPCA both when it conducted a land-disturbing activity while failing to precisely follow its approved Sedimentation Plan and when it failed to adequately maintain its erosion control measures at the Rutledge site. Respondent failed to consider all available evidence when imposing both the severity and the willfulness factors in its daily penalty assessment. The varying opinions of multiple inspectors, combined with a lack of evidence of any off-site sedimentation, or harm to the property of any other entity, indicate that the harm was “slight” to “moderate” by DENR standards. Further, the Respondent did not demonstrate the existence of any egregious factors demonstrating willfulness, and failed to consider evidence of mitigating circumstances surrounding Petitioner’s SPCA violations. Having heard the evidence, and considered all of the factors and circumstances surrounding this case, I find that Petitioner should be, and hereby is, assessed a civil penalty in the amount of three hundred sixty dollars (\$360) per day for a 91 day penalty period, for a total of thirty-two thousand, seven hundred sixty dollars (\$32,760). This penalty includes ten dollars per day for six different statutory and rule violations, one hundred dollars per day for severity of harm caused by the violations, and two hundred dollars per day for failure to adhere to the approved Sedimentation Plan.

NOTICE AND ORDER

The North Carolina Department of Environment and Natural Resources is the agency that 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 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 27th day of June, 2012.

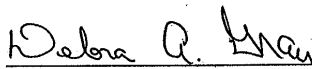

Fred G. Morrison Jr.
Senior Administrative Law Judge

A copy of the foregoing was mailed to:

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PETITIONER

Jane L. Oliver
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NC Department of Justice
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ATTORNEY FOR RESPONDENT

This the 29th day of June, 2012.


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