NORTH CAROLINA REGISTER

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Contact List for Rulemaking Questions or Concerns

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

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

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

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

Fiscal Notes & Economic Analysis and Governor's Review

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

NC Association of County Commissioners
215 North Dawson Street (919) 715-2893
Raleigh, North Carolina 27603
contact: Amy Bason amy.bason@ncacc.org

NC League of Municipalities (919) 715-4000
215 North Dawson Street
Raleigh, North Carolina 27603
contact: Erin L. Wynia ewynia@nclm.org

Legislative Process Concerning Rule-making

Joint Legislative Administrative Procedure Oversight Committee
545 Legislative Office Building
300 North Salisbury Street (919) 733-2578
Raleigh, North Carolina 27611 (919) 715-5460 FAX

contact:	Karen Cochrane-Brown, Staff Attorney	Karen.cochrane-brown@ncleg.net
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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:	270th 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

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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.

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NOTICE OF RULE MAKING PROCEEDINGS AND PUBLIC HEARING

NORTH CAROLINA BUILDING CODE COUNCIL

Notice of Rule-making Proceedings *is hereby given by NC Building Code Council in accordance with G.S. 150B-21.5(d).*

Citation to Existing Rule Affected by this Rule-Making: *North Carolina Energy Conservation, Mechanical, and Residential Codes.*

Authority for Rule-making: *G.S. 143-136; 143-138.*

Reason for Proposed Action: *To incorporate changes in the NC State Building Codes as a result of rulemaking petitions filed with the NC Building Code Council and to incorporate changes proposed by the Council.*

Public Hearing: *December 10, 2012, 9:00AM, NCSU McKimmon Center, 1101 Gorman Street, Raleigh, NC 27606. Comments on both the proposed rule and any fiscal impact will be accepted.*

Comment Procedures: *Written comments may be sent to Chris Noles, Secretary, NC Building Code Council, NC Department of Insurance, 322 Chapanoke Road, Suite 200, Raleigh, NC 27603. Comments on both the proposed rule and any fiscal impact will be accepted. Comment period expires on January 14, 2013.*

Statement of Subject Matter:

1. Request by Richard D. Sykes, with Ram Jack Foundation Repair, to amend the 2012 NC State Building Code. Add definition for Helical Pile in Chapter 2 DEFINITIONS and add new Section R404.6 Helical Piles to the 2012 NC Residential Code.

CHAPTER 2 DEFINITIONS

Helical Pile. Manufactured steel deep foundation element consisting of a central shaft and one or more helical bearing plates. A helical pile is installed by rotating it into the ground. Each helical bearing plate is formed into a screw thread with a uniform defined pitch.

CHAPTER 4 SOILS AND FOUNDATIONS

R404.6 HELICAL PILES

R404.6.1 General. Helical piles shall be analyzed, designed, detailed and installed in accordance with Sections R404.6.1 through R404.6.8

R404.6.2 Geotechnical investigation. Helical piles shall be designed and installed on the basis of a geotenical investigation as set forth in Section R401.4.1
Exception: For the residential repair of porches, stoops and slab on grade, helical test probes may be used to substitute test borings provided the following:
1. The manufacturer shall have an ICC-ES Evaluation Service Report (ESR) issued in accordance with ICC-ES AC358 that includes a correlation between final installation torque and ultimate capacity as stated in ICC-ES AC358 section 3.13.2, and
2. The shaft diameter, number of helices and diameter of helices shall be the same as the production helical piles.

404.6.3 Analysis; The analysis of helical piles for design shall be in accordance with Sections R404.6..3.1 through R404.6.3.3

R404.6.3.1 Lateral support. Any soil other than fluid soil shall be deemed to afford sufficient lateral support to prevent buckling of deep foundation elements in accordance with accepted engineering practice and the applicable provisions of this code. Where helical piles stand unbraced in air, water or fluid soils, it shall be permitted to consider them laterally supported at a point 5 feet (1524mm) into stiff soil or 10 feet (3048mm) into soft soil unless otherwise *approved* by the *building official* on the basis of geotechnical investigation by a *registered design professional.*

R404.6.3.2 Stability. Helical piles shall be braced to provide lateral stability in all directions. Three or more elements connected to a rigid cap shall be considered braced, provided that the elements are located in radial directions from the centroid of the group not less

than 60 degrees (1 rad) apart. A two-element group in a rigid cap shall be considered to be braced along the axis connecting the two elements. Methods used to brace helical piles shall be subject to the approval of the building official. Helical piles supporting walls shall be placed alternately in lines spaced at least 1 foot (305 mm) apart located symmetrically under the center of gravity of the wall load carried, unless effective measures are taken to provide for eccentricity and lateral forces, or the foundation elements are adequately braced to provide for lateral stability.
Exception: A single row of helical piles without lateral bracing is permitted for one- and two-family dwellings and lightweight construction not exceeding two stories above grade plane or 35 feet (10 668 mm) in building height, provided the centers of the elements are located within the width of the supported wall.

R404.6.3.3 Group Effects. The analysis shall include group effects on lateral behavior where the center-to-center spacing of helical piles in the direction of lateral force is less than eight times the least horizontal dimension of the element. The analysis shall include group effects on axial behavior where the center-to-center spacing of the helical piles is less than three times the least horizontal dimension of an element.

R404.6.4 Design and detailing. Helical piles shall be designed and manufactured in accordance with accepted engineering practice to resist all stresses induced by installation into the ground and service loads.

R404.6.4.1 Acceptable helical pile foundation systems shall have an ICC-ES Evaluation Service Report (ESR) issued in accordance with ICC-ES AC358.

R404.6.4.2 Allowable stresses. The allowable stresses for materials used in helical piles shall not exceed those specified in Table 4R404.6.4

TABLE R404.6.4.2
ALLOWABLE STRESSES FOR MATERIALS USED FOR HELICAL PILES

	MATERIAL TYPE AND CONDITION	MAXIMUM ALLOWABLE STRESS[a]
1	Structural steel in compression Helical piles	$0.6\,F_y \leq 0.5\,F_u$
2	Structural steel in tension Helical piles	$0.6\,F_y \leq 0.5\,F_u$

a. F_y is the specified minimum yield stress of structural steel; F_u is the specified minimum tensile stress of structural steel.

R404.6.5 Determination of allowable loads. The allowable axial load and lateral loads on a helical pile shall be determined by an *approved* formula, load tests or method of analysis.

R404.6.5.1 Allowable axial load. The allowable axial design load, Pa, of helical piles shall be determined as follows:

$P_a = 0.5\,P_u$ **(EQUATION 18-4)**

where P_u is the least value of:
1. Sum of the areas of the helical bearing plates times the ultimate bearing capacity of the soil or rock comprising the bearing stratum.
2. Ultimate capacity determined from well-documented correlations with installation torque.
3. Ultimate capacity determined from load tests.
4. Ultimate axial capacity of pile shaft.
5. Ultimate capacity of pile shaft couplings.
6. Sum of the ultimate axial capacity of helical bearing plates affixed to pile.

R404.6.5.2 Allowable lateral load. Where required by the design, the lateral load capacity of a single helical pile or a group thereof shall be determined by an approved method of analysis or by lateral load tests to at least twice the proposed design working load. The resulting allowable load shall not be more than one-half of the load that produces a gross lateral movement of 1 inch (25 mm) at the lower of the top of the foundation element and the ground surface, unless it can be shown that the predicted lateral movement shall cause neither harmful distortion of, nor instability in, the structure, nor cause any element to be loaded beyond its capacity.

R404.6.6 Dimensions of helical piles. Dimensions of the central shaft and the number, size and thickness of the helical bearing plates shall be sufficient to support the design loads.

R404.6.7 Pile Caps. Pile caps shall be of reinforced concrete, and shall include all elements to which vertical helical piles are connected, including grade beams and mats. The soil immediately below the pile cap shall not be considered as carrying any vertical load. The tops of the vertical helical piles shall be embedded not less than 3 inches (76 mm) into pile caps and the caps shall extend at least 4 inches (102 mm) beyond the edges of the elements. The tops of the elements shall be cut or chipped back to sound material before capping.

R404.6.8 Installation. Helical piles shall be installed to the specified embedment depth and torsional resistance criteria as determined by a registered design professional. The torque applied during installation shall not exceed the maximum allowable installation torque of the helical pile.

Motion – David Smith/Second – Lon McSwain/Granted. The request was granted unanimously.
Reason Given – This proposal is intended to provide prescriptive requirements for helical pile installation. This construction method is used primarily by engineers for the repair of existing residential foundations due to settlement. This proposal will provide guidance to code officials, contractors, designers and set minimum standards for system manufacturers. The proposed effective date of this rule is January 1, 2015.
Fiscal Statement – This rule is anticipated to provide equivalent compliance with no net decrease/increase in cost. This rule is not expected to either have a substantial economic impact or affect local and state funds. A fiscal note has not been prepared.

2. Request by Daniel J. Walker, PE, with the Metal Building Manufacturers Association, to amend the 2012 NC Energy Code, Tables 502.1.2, 502.2(1), and 502.2(2), and Appendix 2.2. The proposed amendment is as follows:

TABLE 502.1.2
BUILDING ENVELOPE REQUIREMENTS OPAQUE ELEMENT, MAXIMUM *U*-FACTORS

CLIMATE ZONE	3		4		5	
	All Other	Group R	All Other	Group R	All Other	Group R
Roofs						
Metal Buildings ~~(with R-5 thermal blocks[a])~~	U-0.041	U-0.041	U-0.035	U-0.035	U-0.035	U-0.035

(Portions of table not shown remain unchanged.)

TABLE 502.2(1)
BUILDING ENVELOPE REQUIREMENTS – OPAQUE ASSEMBLIES

CLIMATE ZONE	3		4		5	
	All Other	Group R	All Other	Group R	All Other	Group R
Roofs						
Metal Buildings ~~(with R-5 thermal blocks)~~[a, b]	R-10 + R-19 FC	R-10 + R-19 FC	R-19 + R-11 Ls	R-19 + R-11 Ls	R-19 + R-11 Ls	R-19 + R-11 Ls

(Portions of table not shown remain unchanged.)

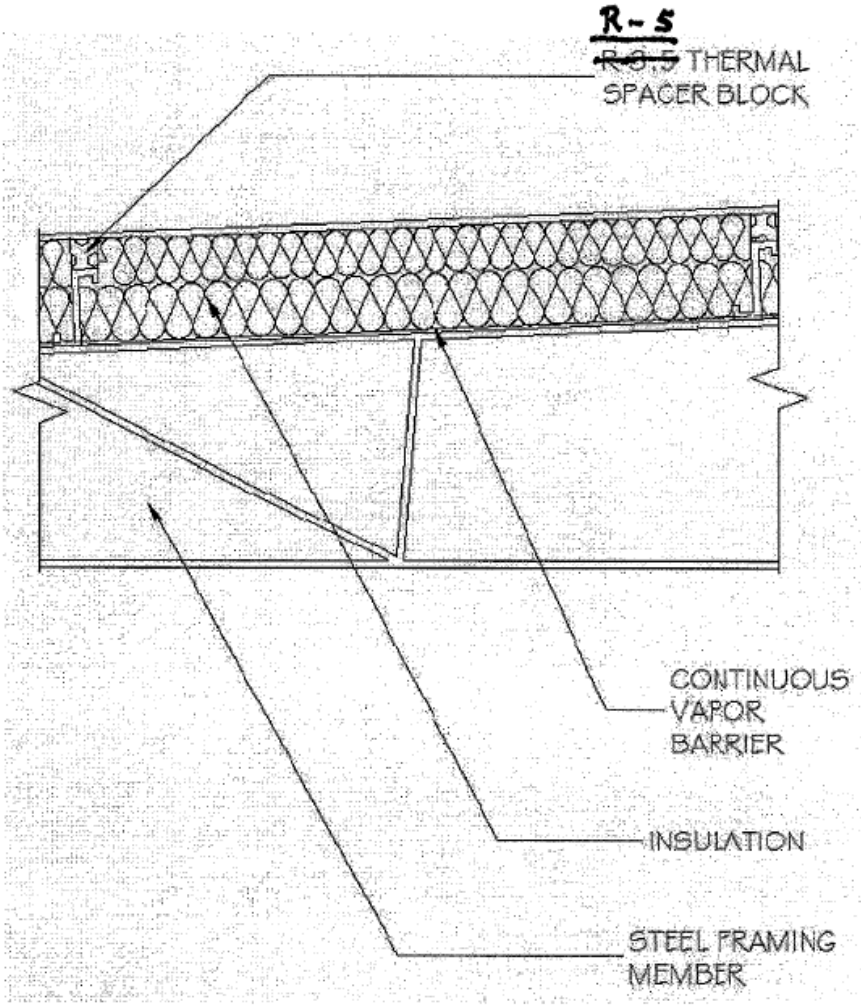
TABLE 502.2(2)
BUILDING ENVELOPE REQUIREMENTS – OPAQUE ASSEMBLIES

ROOFS	DESCRIPTION
R-~~11~~10 + R-19	Filled cavity fiberglass insulation.

FC	A continuous vapor barrier is installed below the purlins and uninterrupted by framing members. Both layers of uncompressed, unfaced fiberglass insulation rest on top of the vapor barrier and are installed parallel, between the purlins. A minimum R-~~3.~~5 thermal spacer block is placed above the purlin/batt, and the roof deck is secured to the purlins. Drawings of typical details are shown in Appendix 2.2.

(Portions of table not shown remain unchanged.)

Revise Appendix 2.2 as follows:



SECTION VIEW OF METAL FRAME ROOF: FILLED CAVITY FIBERGLASS INSULATION

Motion/Second/Granted. The request was granted unanimously.
Reason Given – This proposal strikes the specific thermal spacer block from Table 502.2(1) to be consistent with the two systems described in Table 502.2(2). This proposed prescriptive roof insulation change from R-11 to R-10 does not affect the overall building envelope requirements in Table 502.1.2. The thermal spacer block change from R-3.5 to R-5 is errata to match the adopted code text. The proposed effective date of this rule is January 1, 2015.
Fiscal Statement – This rule is anticipated to provide equivalent compliance with no net decrease/increase in cost. This rule is not expected to either have a substantial economic impact or affect local and state funds. A fiscal note has not been prepared.

3. Request by the NC Energy Efficiency Alliance, Appalachian State Department of Technology, to amend the 2012 NC Energy Conservation Code and the 2012 NC Residential Code. The proposed amendment is as follows:

The proposed amendment is posted at the following link:

http://www.ncdoi.com/OSFM/Engineering_and_Codes/Documents/BCC_Minutes/2012%2009%2010~September%2010,%202012%20(Item%20B3,%20NCECC%20Chapter%204,%20NCRC%20Chapter%2011,%20Duct%20Leakage_.pdf

Motion – David Smith/Second – Lon McSwain/Granted. The request was granted unanimously.
Reason Given – The NC Energy Conservation Code requires duct testing to be verified and identifies a single method of doing so. This proposal allows for a leakage to the outside test to be performed as an alternative to the duct leakage method. The proposed testing procedure measures duct leakage to the outside, therefore it isolates those duct leaks that are outside of the building envelope This approach is consistent with the intent of the 2012 International Energy Conservation Code and provides flexibility to those authorized to perform and report the results. The proposed effective date of this rule is January 1, 2015.
Fiscal Statement – This rule is anticipated to provide equivalent compliance with no net decrease/increase in cost. This rule is not expected to either have a substantial economic impact or affect local and state funds. A fiscal note has not been prepared.

4. Request by Robert Privott, NC Home Builders Association, to amend the 2012 NC Residential Code, Table R302.1. The proposed amendment is as follows:

Table R302.1 – Exterior Walls

EXTERIOR WALL ELEMENT		MINIMUM FIRE-RESISTANCE RATING	MINIMUM FIRE SEPARATION DISTANCE
Walls	(Fire-resistance rated)	1 hour-tested in accordance with ASTM E 119 or UL 263 with exposure to both sides	≤3 ~~5~~ Feet
	(Not fire-resistance rated)	0-Hours	≥3 ~~5~~ Feet
Projections	(Fire-resistance rated)	1-Hour on the underside	≤3 4 Feet
	(Not fire-resistance rated)	0-Hours	≥3 ~~5~~ Feet
Openings	Not Allowed	N/A	< 3 Feet
	~~25% Maximum of Wall Area~~	~~0 Hours~~	~~3 Feet~~
	Unlimited	0-Hours	3 ~~5~~ Feet
Penetrations	All	Comply with Section R317.3	≤3 ~~< 5~~ Feet
		None Required	≥3 ~~5~~ Feet

For SI: 1 foot=304.8 mm.
N/A = Not Applicable

Motion – Mack Nixon/Second – David Smith/Granted. The request was granted unanimously and was sent to the Residential/Energy Committees for review.
Reason Given – The purpose of this amendment is to revert to the fire separation distances in prior editions of the Residential Code. This proposal will allow contractors to construct either closer to adjacent property or on smaller lots for both additions and new construction. The proposed effective date of this rule is January 1, 2015.
Fiscal Statement – This rule is anticipated to have a decrease in initial cost to the contractor, however there will be an increased cost to the community due to greater fire exposure. Because of local zoning setbacks that are generally greater than these separation distances, it is not known how many structures will be able to use this amendment. This rule is not expected to either have a substantial economic impact or affect local and state funds. A fiscal note has not been prepared.

5. Request by Robert Privott, NC Home Builders Association, to amend the 2012 NC Residential Code, Section R408.2. The proposed amendment is as follows:

R408.2 Ground vapor retarder. When required by Section R408.1.1 Exception, a ~~A~~ minimum 6-mil (0 15 mm) polyethylene vapor retarder or equivalent shall be installed to nominally cover all exposed earth in the crawl space with joints lapped not less than 12 inches (305 mm). Where there is no evidence that the ground water table can rise to within 6 inches (152 mm) of the floor of the crawl

space it is acceptable to puncture the ground vapor retarder at low spots to prevent water puddles from forming on top of the vapor retarder due to condensation. The floor of the crawl space shall be graded so that it drains to one or more low spots. Install a drain to daylight or sump pump at each low spot. Crawl space drains shall be kept separate from roof gutter drain systems and foundation perimeter drains.

Motion /Second/Granted. The request was granted unanimously and was sent to the Residential/Energy Committees for review.
Reason Given – This proposal is an extension of the NCHBA/Governor's Office offset package for the 2012 NC Energy Conservation Code adoption. The April 2011 package amendment attempted to eliminate ground vapor retarders for wall vented crawl spaces. This proposal by the NCHBA further clarifies the original amendment. The proposed effective date of this rule is January 1, 2015.
Fiscal Statement – This rule is anticipated to result in a negligible decrease in cost. This rule is not expected to either have a substantial economic impact or affect local and state funds. A fiscal note has not been prepared.

6. Request by David Smith, NC BCC, to amend the 2012 NC Residential Code, Section R602.10. The proposed amendment is as follows:

R602.10 Wall bracing. Buildings shall be braced in accordance with this section. Where a building, or portion thereof, does not comply with one or more of the bracing requirements in this section, those portions shall be designed and constructed in accordance with Section R301.1.
Exceptions:

1. Detached one- and two-family *dwellings* located in Seismic Design Category C are exempt from the seismic bracing requirements of this section. Wind speed provisions for bracing shall be applicable to detached one- and two-family *dwellings*.
2. In lieu of the wall bracing requirements of Section 602.10, all stories shall be sheathed with wood structural sheathing panels. Blocking shall be installed if less than 50 percent of the wall length is sheathed. Where blocking is required, all panels shall be fastened at 3 inches (76 mm) on center along the edges and 6 inches (152 mm) on center at intermediate framing. If a wall is sheathed less than 25 percent of its length, then that wall shall be designed in accordance with accepted engineering practice. Portal openings designed and constructed in accordance with any of the following shall be acceptable:
a. Method CS-PF in accordance with Section R602.10.4.1.1, Figure R602.10.4.1.1 and the minimum panel widths in Table R602.10.4.2.
b. Method CS-G in accordance with Table R602.10.4.1 using the nailing pattern above and the minimum panel widths in Table R602.10.4.2.
c. Accepted Engineering Practice.

Motion – David Smith/Second – Lon McSwain/Adopted as further modified.
Reason Given – This proposal was adopted as a Temporary Rule effective October 1, 2012 and is a companion amendment to the rule previously approved by OSBM. The proposal provides a simple alternate method for constructing adequate wall bracing to reduce plan review time and to minimize the need for design by registered design professionals. The proposed effective date of this rule is May 1, 2012.
Fiscal Statement – The benefit of this rule change is that the wall bracing requirements will be easier to understand for both the regulated community and building inspectors making compliance and enforcement more efficient. Consequently, there is a chance that the durability of the building might increase. Both parties would incur some time savings, although it is difficult to estimate what the value of that might be given the lack of data in this respect. Since the actual requirements for wall bracing are not changing, the proposed rule is anticipated to provide equivalent compliance, or even a higher level of compliance, with no increase in cost. This rule is not expected to either have a substantial economic impact or affect local and state funds since it is aimed at single family dwellings. A fiscal note has not been prepared.

7. Request by David Smith, NC BCC, to amend the 2012 NC Mechanical Code, Table 603.4. The proposed amendment is as follows:

TABLE 603.4
DUCT CONSTRUCTION MINIMUM SHEET METAL THICKNESS FOR SINGLE DWELLING UNITS

DUCT SIZE	GALVANIZED		Appropriate Aluminum B & S Gauge ~~ALUMINUM MINIMUM THICKNESS (in.)~~
	Minimum thickness (in.)	Equivalent galvanized gauge gage no.	

Round ducts and Enclosed rectangular ducts			
14 inches or less	0.013 ~~0.0157~~	30 ~~28~~	26 ~~0.0175~~
Over 14" ~~16 and 18 inches~~	0.016 ~~0.0187~~	28 ~~26~~	24 ~~0.018~~
~~20 inches and over~~	~~0.0236~~	~~24~~	~~0.023~~
Exposed rectangular ducts			
14 inches or less	0.016 ~~0.0157~~	28	24 ~~0.0175~~
Over 14 inches[a]	0.019 ~~0.0187~~	26	22 ~~0.018~~

For SI: 1 inch = 25.4 mm~~, 1 inch water gage = 249 Pa.~~

~~a. For duct gages and reinforcement requirements at static pressure of ½ inch, 1 inch and 2 inch w.g., SMACNA *HVAC Duct Construction Standards*, Tables 2-1, 2-2, and 2-3, shall apply.~~

Motion – David Smith/Second – Lon McSwain/Granted. The effective date of this Temporary Rule is October 1, 2012.
Reason Given – This proposal was adopted as a Temporary Rule effective October 1, 2012. The proposal reduces the material thickness to match industry standards. The proposed effective date of this rule is May 1, 2012.
Fiscal Statement – This rule is anticipated to provide a negligible decrease in cost. This rule is not expected to either have a substantial economic impact or affect local and state funds. A fiscal note has not been prepared.

Criminal Justice Education and Training Standards Commission

Please note clarification below to the fiscal note information for proposed rules 12 NCAC 09E .0104 and .0105 published in the NC Register on October 15, 2012, page 817. As approved by OSBM, there is minimal impact to State Funds and minimal impact to Local Funds.

State funds affected (09E .0104, .0105) Minimal Impact
Environmental permitting of DOT affected
Analysis submitted to Board of Transportation
Local funds affected (09E .0104, .0105) Minimal Impact
Date submitted to OSBM: 9/11/12
Substantial economic impact (≥$500,000)
Approved by OSBM
No fiscal note required by G.S. 150B-21.4

Note from the Codifier: *The notices published in this Section of the NC Register include the text of proposed rules. The agency must accept comments on the proposed rule(s) for at least 60 days from the publication date, or until the public hearing, or a later date if specified in the notice by the agency. If the agency adopts a rule that differs substantially from a prior published notice, the agency must publish the text of the proposed different rule and accept comment on the proposed different rule for 60 days.*
Statutory reference: G.S. 150B-21.2.

TITLE 21 – OCCUPATIONAL LICENSING BOARDS AND COMMISSIONS

CHAPTER 46 - BOARD OF PHARMACY

Notice *is hereby given in accordance with G.S. 150B-21.2 that the NC Board of Pharmacy intends to adopt the rule cited as 21 NCAC 46 .2508 and amend the rules cited as 21 NCAC 46 .1317, .1411, .1413-.1415, .1417, 1814, .2302-.2304, .2807.*

Link to agency website pursuant to G.S. 150B-19.1(c): *www.ncbop.org/lawandrules.htm*

Proposed Effective Date: *March 1, 2013*

Public Hearing:
Date: *January 14, 2013*
Time: *5:00 p.m.*
Location: *NC Board of Pharmacy, 6015 Farrington Road, Suite 201, Chapel Hill, NC 27517*

Reason for Proposed Action:
21 NCAC 46 .1317 *– Revision clarifies and simplifies the operation of the rules by providing for a uniform definition of a "health care facility" and a "health care facility pharmacy."*
21 NCAC 46 .1411 – *Revision eliminates a specific list of required reports and inspection points in favor of allowing the development of reports and inspections tailored to particular health care facility pharmacies.*
21 NCAC 46 .1413, .1414, .1415, .1814 – *Revision to 21 NCAC 46 .1414 (a) eliminates multiple categories of auxiliary medication inventories in favor of a single category, in order to simplify deployment of systems that provide access to medications needed for urgent patient-care needs, (b) simplifies recordkeeping requirements, and (c) includes a default quantity amount for medical orders in health care facilities. The other rules have been proposed for amendment to make conforming changes.*
21 NCAC 46 .1417 – *Revision authorizes a decentralized method of remote medication order processing for health care facility pharmacies that are not open 24 hours a day, seven days a week, in order to promote pharmacy services to health care facilities.*
21 NCAC 46 .2302 – *Revision eliminates the need to create a specific record documenting appropriate drug substitutions.*
21 NCAC 46 .2303, .2304, .2508 – *21 NCAC 46 .2508 has been proposed for adoption to permit pharmacy records to be in electronic format, unless otherwise specified, removing the requirement that many documents be created and maintained in hard copy format. The other rules have been proposed for amendment to make conforming changes.*
21 NCAC 46 .2807 – *Revision eliminates a redundant requirement for specific protective apparel to be worn when preparing anti-neoplastic drugs.*

Procedure by which a person can object to the agency on a proposed rule: *Any person may object to the proposed adoption and amendments by attending the public hearing on January 14, 2013 and/or by submitting a written objection by January 14, 2013 to Jay Campbell, Executive Director, NC Board of Pharmacy, 6015 Farrington Road, Suite 201, Chapel Hill, NC 27517, fax (919) 246-1056, email jcampbell@ncbop.org. The NC Board of Pharmacy is interested in all comments pertaining to the proposed rules. All persons interested and potentially affected by the proposal are strongly encouraged to read this entire notice and make comments on the proposed rules.*

Comments may be submitted to: *Jay Campbell, 6015 Farrington Road, Suite 201, Chapel Hill, NC 27517; fax (919) 246-1056*

Comment period ends: *January 14, 2013*

Procedure for Subjecting a Proposed Rule to Legislative Review: If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-431-3000.

Fiscal impact (check all that apply).
☐ **State funds affected**
☐ **Environmental permitting of DOT affected**
Analysis submitted to Board of Transportation
☐ **Local funds affected**
Date submitted to OSBM:
☐ **Substantial economic impact (≥$500,000)**
☐ **Approved by OSBM**
☒ **No fiscal note required by G.S. 150B-21.4**

SECTION .1300 - GENERAL DEFINITIONS

21 NCAC 46 .1317 DEFINITIONS

The definitions of various terms used in this Chapter are found in G.S. 90, Article 4A, and as follows:

(1) Ambulation Assistance Equipment. Devices that aid in walking, excluding canes, crutches, and walkers.

(2) Approved School or College of Pharmacy. A school or college of pharmacy accredited by the American Council on Pharmaceutical Education, or a foreign school with a professional pharmacy degree program of at least five years approved by the Board.

(3) Auxiliary Drug Inventory. A secure, segregated, supplementary source for drugs to be used solely for the purpose of providing adequate drug availability when the pharmacy is closed or the pharmacist is unavailable.

(4) Board. As defined in G.S. 90-85.3(b).

(5) Certified technician. A technician who has passed a pharmacy technician certification board exam, or its equivalent, that has been approved by the Board according to the rules in this Chapter.

(6) Consultant Pharmacist. A licensed pharmacist who, in collaboration with the supervising physician and nurse practitioner or assistant to the physician, develops a retrospective drug utilization review program which:

(a) reviews the appropriateness of the choice of medication(s) for the patient and the patient's therapeutic regimen, including choice of medication, dose, frequency, and route of administration;

(b) identifies and resolves therapeutic duplication in the patient's medication regimen; and

(c) considers patient-specific medication contraindications.

The consultant pharmacist holds himself available for consultation in person, by telephone, or by other means of direct communication at all times when drugs are dispensed.

(7) Diagnostic equipment. Equipment used to record physiological information while a person goes about normal daily living or while asleep in order to document a disease process. Early pregnancy tests (EPTs), thermometers, glucose meters, and cholesterol equipment are not included as diagnostic equipment.

(8) Drug review or Pharmaceutical care assessment. An onsite review of a patient's or resident's record by a licensed pharmacist that involves interpretation and evaluation of the drug therapy and other pharmaceutical care services to achieve intended medication outcomes and minimize negative effects of drug therapy.

(9) Duplicate as used in G.S. 90-85.24. Any license, permit, or registration issued or reissued by the Board which is identical to a previously issued license, permit, or registration, including a permit reissued due to a change in pharmacist-manager.

(10) Emergency Drugs. Those drugs whose prompt use and immediate availability are generally regarded by physicians as essential in the proper treatment of unforeseen adverse changes in a patient's health or well-being.

(11) Employee. A person who is or would be considered an employee under the North Carolina Workers' Compensation Act. This definition applies to locations both within and outside of this State holding pharmacy or device and medical equipment permits and without regard to the number of persons employed by the permit holder.

(12) Executive Director. The Secretary-Treasurer and Executive Director of the Board.

(13) Graduate of an Approved School or College of Pharmacy. A person who has received an undergraduate professional degree in pharmacy from an approved school or college of pharmacy, or a person who has graduated from a foreign professional school of pharmacy and has successfully completed the Foreign Pharmacy Graduate Equivalency Examination offered by the National Association of Boards of Pharmacy and the Test of English as a Foreign Language.

(14) HMES. Home medical equipment supplier.

(15) Health Care Facility. Any organization whose primary purpose is to provide a physical environment for patients to obtain health care services. This shall include:

(a) a hospital;

(b) a long-term care facility;

(c) a mental health facility;

(d) a drug abuse treatment center;

(e) a penal institution; or

(f) a hospice.

~~(15)~~(16) Health Care Facility Pharmacy. A pharmacy permitted by the Board that provides services to a Health Care Facility. ~~maintained in a hospital, clinic, nursing home, rest home, sanitarium, non federal governmental institution, industrial health facility, or other like health service under the supervision of a pharmacist; or the central area in a hospital, clinic, or other health care facility where drugs are procured, stored, processed, or issued, or where pharmaceutical services are performed.~~

~~(16)~~(17) Indulgence in the Use of Drugs. The use of narcotic drugs or other drugs affecting the central nervous system or the use of intoxicating beverages to an extent as to deprive the user of reasonable self-control or

the ability to exercise such judgment as might reasonably be expected of an average prudent person.

~~(17)~~(18) Internet Pharmacy.

(a) A pharmacy that maintains an Internet web site for the purpose of selling or distributing prescription drugs; or

(b) A pharmacy that uses the internet, either itself, or through agreement with a third party, to communicate with or obtain information from patients; uses such communication or information, in whole or in part, to solicit, fill or refill prescriptions; or uses such communication or information, in whole or in part, to otherwise engage in the practice of pharmacy.

Notwithstanding Sub-items (a) and (b) above, a pharmacy shall not be deemed an Internet pharmacy if it maintains an Internet web site for the following purposes only:

(i) Mere advertisements that do not attempt to facilitate, directly or through agreement with a third party, an actual transaction involving a prescription drug;

(ii) To allow a patient to communicate a request for a refill of a legitimate prescription originally filled by the pharmacy that maintains the Internet web site;

(iii) To allow a customer to research drug interactions and clinical pharmacology information; or

(iv) To allow a patient to send an electronic mail message to a pharmacist licensed in North Carolina.

~~(18)~~(19) Limited Service Pharmacy Permit. A pharmacy permit issued by the Board to an applicant that wishes to render in an institutional setting pharmaceutical services not limited to scope and kind but to time and conditions under which such services are rendered.

~~(19)~~(20) Medication Therapy Management Services and Related Functions. Included in the practice of pharmacy as part of monitoring, recording and reporting drug therapy and device usage.

~~(20)~~(21) Medication Administration Record. A record of drugs administered to a patient.

~~(21)~~(22) Medication Order. An order for a prescription drug or other medication or a device for a patient from a person authorized by law to prescribe medications.

~~(22)~~(23) Mobility equipment. Devices that aid a person in self-movement, other than walking, including manual or power wheelchairs and scooters.

~~(23)~~(24) Oxygen and respiratory care equipment. Equipment or devices used to administer oxygen or other legend drugs, maintain viable airways or monitor cardio-respiratory conditions or events, including compressed medical gases; oxygen concentrators; liquid oxygen; nebulizers; compressors; aerosol therapy devices; portable suction machines; nasal continuous positive airway pressure (CPAP) machines; Bi-phasic positive pressure devices (BiPAP); infant monitors, such as apnea monitors and cardio-respiratory monitors; positive and negative pressure mechanical ventilators; and pulse oximeters.

~~(24)~~(25) Patient Medication Profile. A list of all prescribed medications for a patient.

~~(25)~~(26) Pharmacist. Any person within the definition set forth in G.S. 90-85.3(p), including any druggist.

~~(26)~~(27) Pharmacist-Manager. The person who accepts responsibility for the operation of a pharmacy in conformance with all statutes and rules pertinent to the practice of pharmacy and distribution of drugs by signing the permit application, its renewal or addenda thereto.

~~(27)~~(28) Pharmacy. Any place within the definition set forth in G.S. 90-85.3(q), including any apothecary or drugstore.

~~(28)~~(29) Pharmacy Intern. Any person who is registered with the Board under the internship program of the Board to acquire pharmacy experience or enrolled in approved academic internship programs. A pharmacy intern working under a pharmacist preceptor or supervising pharmacist may, while under supervision, perform all acts constituting the practice of pharmacy.

~~(29)~~(30) Place of residence. Any place used as an individual's temporary or permanent home.

~~(30)~~(31) President. The President of the Board.

~~(31)~~(32) Rehabilitation environmental control equipment. Equipment or devices which permit a person with disabilities to control his or her immediate surroundings.

~~(32)~~(33) Rehabilitation Services. Services and equipment required to maintain or improve functional status and general health as prescribed by the physician which are uniquely specified for each individual's lifestyle. The people involved in this process include the patient, caregiver, physician, therapist,

rehabilitation equipment supplier and others who impact on the individual's life style and endeavors.

~~(33)~~(34) Signature. A written or electronic signature or computerized identification code.

~~(34)~~(35) Two Years College Work. Attendance at a college accredited by an accrediting agency recognized by the United States Department of Education for two academic years of not less than eight and one-half months each and the completion of work for credit leading to a baccalaureate degree or its equivalent and that would permit the student to advance to the next class.

~~(35)~~(36) Undergraduate Professional Degree in Pharmacy. A B.S. or Pharm. D. degree.

~~(36)~~(37) Vice-President. The Vice-President of the Board.

Authority G.S. 90-85.3; 90-85.6; 90-85.8; 90-85.13; 90-85.14; 90-85.15; 90-85.21; 90-85.38; 90-85.40.

SECTION .1400 - HOSPITALS: OTHER HEALTH FACILITIES

21 NCAC 46 .1411 RESPONSIBILITIES OF THE PHARMACIST-MANAGER

(a) The pharmacist-manager shall establish written procedures for the safe and effective distribution of pharmaceutical products. Procedures shall be periodically reviewed to assure they reflect current practice in the facility. A copy of such procedures shall be available in the pharmacy.

(b) The pharmacist-manager shall be responsible for the safe and effective distribution, control, and accountability for drugs, including intravenous and irrigation solutions. The pharmacist-manager may delegate responsibilities to other health care facility staff for ordering, distributing, and accounting for pharmaceutical materials to achieve this purpose. Whenever there is a deviation from this Section, the facility's pharmacy permit is subject to action by the Board. In addition to the requirements of ~~Rule~~ 21 NCAC 46 .2502, ~~46.2502,~~ the pharmacist-manager shall, at a minimum, be responsible for:

(1) the development of policies and procedures for the compounding, admixture, labeling, and dispensing of parenteral medications in the health care facility, including relevant education and training of all pharmacy and nursing personnel involved in the preparation of parenteral medications;

(2) the establishment of specifications or use of compendia specifications for procurement of all pharmaceuticals, including drugs, chemicals, and biologicals used in direct patient care, subject to approval of the appropriate committee of the health care facility;

(3) participation in development and maintenance of a drug formulary when required by the health care facility;

(4) participation in those aspects of pharmaceutical care that affect drug distribution and control;

(5) preparing, packaging, compounding and labeling all drugs;

(6) assuring that drugs are dispensed only by a pharmacist or other persons allowed by law to dispense; supportive pharmacy personnel are properly directed and supervised;

(7) the development and implementation of policies and procedures to ensure that discontinued drugs; outdated drugs; drugs recalled; containers with worn, illegible, or missing labels; or products that are otherwise unusable are returned to the pharmacy for proper disposition in a timely manner;

(8) maintaining records and reports as are required by law to ensure patient health, safety and welfare; ~~welfare. These records and reports shall include, at a minimum:~~

~~(A) access to medication administration records;~~

~~(B) reports of suspected adverse drug reactions and medication variances;~~

~~(C) list of contents of ancillary drug cabinets where allowed and emergency kits/crash carts;~~

~~(D) the current formulary of drugs where a formulary is required;~~

~~(E) a biennial controlled substances inventory;~~

~~(F) alcohol and flammable material reports as required by law when such material is procured by the pharmacy; and~~

~~(G) such other records and reports as may be required by law and rules of the Board of Pharmacy;~~

(9) developing and implementing policies and procedures that effectively address the safeguarding and handling of all drugs and devices, as defined in G.S. 90-85.3(e), throughout the health care facility, or other locations where legend drug products are transferred, including medications that originate from a source outside the facility. When discrepancies in controlled substance counts are identified:

(A) they shall be reviewed, and a report of this action, including steps taken to prevent recurrence, where possible, shall be provided to the pharmacist-manager within 24 hours of occurrence. This report shall be maintained by the pharmacist-manager; and

(B) recurring losses or mishandling of significant quantities of controlled substances shall be immediately

reported to the Board and the Drug Enforcement Administration;

(10) developing and implementing~~maintaining~~ policies and procedures to ensure that auxiliary medication inventories are regularly inspected; ~~which require at least monthly inspections of patient care units or other areas of the health care facility where medications are dispensed, administered, or stored. For long-term care facilities and adult care homes, quarterly inspections are permitted, as defined by state licensure regulations. A record of such inspections shall be maintained to verify that:~~

~~(A) antiseptics, other drugs for external use, and disinfectants are stored separately from internal and injectable medications;~~

~~(B) drugs requiring special conditions for storage to assure stability are properly stored;~~

~~(C) all necessary and required security and storage standards are met;~~

~~(D) outdated or otherwise unusable drugs are identified, their distribution and administration prevented, and such are returned to the pharmacy for proper disposition;~~

~~(E) the distribution and administration of controlled drugs are adequately documented by pharmacy, nursing, and other involved services or personnel and are in accordance with applicable law;~~

~~(F) any investigational drugs in use are properly stored, distributed, and controlled;~~

~~(G) emergency drugs, as approved by the medical staff, are in adequate and proper supply in the pharmacy or other designated areas of the health care facility; and~~

~~(H) metric apothecaries' weight and measure conversion tables and charts are available;~~

(11) all drugs and devices dispensed by the pharmacy as defined in G.S. 90-85.3(e) which are ordered for and used within the health care facility; and

(12) maintaining policies and procedures regarding drug samples and patient's personal medications.

Authority G.S. 90-85.6; 90-85.21; 90-85.32.

21 NCAC 46 .1413 ABSENCE OF PHARMACIST

(a) When a health care facility pharmacy is not open 24 hours a day, seven days a week, arrangements shall be made in advance by the pharmacist-manager for provision of drugs and pharmaceutical care to the medical staff, other authorized personnel, and patients of the health care facility after normal working hours by use of an "on call" pharmacist accessible to the facility during all absences, and ~~an ancillary drug cabinet~~ auxiliary medical inventories as described in Rule .1414(d) ~~.1414(g)~~ of this Section. ~~section.~~ In addition, one or both of the options in Subparagraphs (a)(1) and (2) may be authorized by the pharmacist-manager to assure access to drugs and pharmaceutical care in the absence of a pharmacist:

(1) a contractual arrangement with another health care facility, pharmacy, or pharmacist; or

(2) a nurse trained and authorized by the pharmacist-manager to remove drugs or devices from the pharmacy after hours. Entry into the pharmacy after hours shall occur only if the drug needed is not in the auxiliary medication inventory. ~~ancillary drug cabinet.~~ The pharmacist-manager shall maintain a current list of authorized persons and document the initial orientation, continuing education, and quality control processes on an ongoing basis. The pharmacist-manager shall maintain a list of restricted medications that cannot be taken from the pharmacy and can only be removed after contacting the "on call" pharmacist to verify the appropriateness and accuracy of the medication order and medication removed from the pharmacy at the time of removal. For medications not on the restricted list, an "on call" pharmacist must be accessible for questions by the authorized nurse. Within 24 hours, a pharmacist shall verify the accuracy and appropriateness of the medication order and the medication removed from the pharmacy.

(b) A suitable record of drugs or devices removed from auxiliary medication inventories ~~ancillary drug cabinets~~ or from pharmacy inventory shall be maintained for three years in the health care facility. The pharmacist-manager shall at least quarterly verify the accuracy of the records.

(c) Supportive personnel approved by the pharmacist-manager may be present in the pharmacy at other than regular service hours to perform certain clerical, repackaging and distributive functions according to written policies and procedures if the drugs so handled are not permitted to leave the pharmacy until all work performed has been checked and certified as being correct by the pharmacist.

(d) Only drugs in unit-of-use packaging shall be removed from the auxiliary medication inventory ~~ancillary drug supply~~ or from the pharmacy; they shall be used for administration to a specific patient only, in amounts sufficient to meet the needs for immediate therapeutic requirements. Controlled substances may be stocked and removed from auxiliary medication inventories; ~~an ancillary drug cabinet;~~ controlled substances may not be removed from the pharmacy in the absence of a pharmacist. Drugs shall be pre-labeled by the pharmacist with drug name, strength, lot number and expiration date. A copy of written orders for new medications shall be provided to the pharmacy.

Authority G.S. 90-85.6; 90-85.21; 90-85.32; 90-85.33; 90-85.34.

21 NCAC 46 .1414 DRUG DISTRIBUTION AND CONTROL

(a) MEDICATION ORDERS.

(1) Pharmacists shall dispense medications from a health care facility pharmacy only upon receipt of a medication order. A mechanism shall be in place to verify the authenticity of the medication order. Oral orders shall be recorded ~~put in writing~~ immediately and signed within the time frame established by regulatory agencies and health care facility policies and procedures.

(2) All medication orders shall be received and reviewed by a pharmacist and, at a minimum, shall contain the:

(A) patient's name, location and other necessary identifying information such as history or medical records number;

(B) medication name, strength, dosage form, route of and directions for administration. In the absence of a facility policy on interpretation of routes of administration, the route of administration must be specified;

(C) discernible quantity to be dispensed. Medical orders issued from a health care facility shall, in the absence of a different indicated quantity or facility policy, be deemed to authorize dispensing of a 30-day supply;

~~(C)~~(D) date the order was written; and

~~(D)~~(E) prescriber's signature as set out in Subparagraph (a)(1) of this Rule (may include electronic signature or verification).

(3) The health care facility pharmacy and the pharmacist-manager shall ensure that medication orders for patients requiring continuous drug therapy shall be entered into a patient medication profile, either manual or automated. The medication profile shall, at a minimum, contain the:

(A) patient's name, ~~location~~ location, and important clinical data such as age, height, weight, sex, and allergies;

(B) medication name, strength, dosage form, route of, ~~of~~ and directions for administration;

(C) medication start date;

(D) medication discontinuance date; and

(E) identification of pharmacist responsible for or verifying technician entry of the medication order.

(4) Abbreviations used in medication orders shall be agreed to, jointly adopted, and published by the medical, nursing, pharmacy, and medical records staff of the health care facility.

(5) ~~Medication orders shall be reviewed and discontinued or suspended, if appropriate, when the patient is transferred to the delivery room, operating room, or is admitted from another facility.~~ A method to protect the health care facility patients ~~patient~~ from indefinite, open-ended ~~drug~~ medication orders must be provided. The prescriber shall be notified in a timely manner that the order shall be stopped before such action takes place by one or more of the following:

(A) the routine monitoring of patient's drug therapy by a pharmacist;

(B) a health care facility-approved, drug class-specific, automatic stop order policy covering those drug orders not specifying a number of doses or duration of therapy; or

(C) a health care facility-approved automatic cancellation of all ~~drug~~ medication orders after a predetermined time interval unless rewritten by the prescriber.

(6) Health care facilities ~~which~~ that credential practitioners for prescribing privileges within the facility shall provide the health care facility pharmacy with credentialing information annually or immediately upon discharge or when privileges are suspended or terminated.

~~(b) DEVICES. Devices shall be dispensed in accordance with Section .2600 of this Chapter.~~

~~(c)~~(b) DISPENSING. In health care facilities with 24 hour pharmacy services, all dispensing shall be done by a pharmacist. In health care facilities without 24 hour pharmacy services, ~~Rule~~ Rules .1413 and .1417 of this Section shall apply in the absence of a pharmacist.

~~(d)~~(c) LABELING.

(1) The health care facility pharmacy and the pharmacist dispensing the drug shall ensure that all drugs dispensed from within a health care facility pharmacy are labeled and identified up to the point of administration;

(2) ~~Whenever~~ When a drug is added to a parenteral admixture, it shall be labeled with a distinctive supplementary label indicating the name and amount of the drug added, expiration date, and expiration time, if applicable. For admixtures prepared outside the health care facility pharmacy, the pharmacist-manager shall develop policies and procedures for preparation and labeling.

~~(e) PARENTERAL MEDICATIONS. The dispensing of parenteral medications shall be done in accordance with Section .2800 of this Chapter - Sterile Parenteral Pharmaceuticals.~~

~~(f)~~(d) ~~PATIENT CARE UNIT~~ AUXILIARY MEDICATION INVENTORIES. ~~This Paragraph does not apply to nursing facilities, assisted living facilities, and adult care homes.~~

(1) The pharmacist-manager of the health care facility pharmacy shall, in consultation with appropriate medical staff, develop a list of drugs and devices that may be stocked in auxiliary medication inventories – which may include patient care unit medication inventories, ancillary drug cabinet inventories, and emergency kits – located at the health care facility. This list shall include those drugs and devices that may be required to meet the immediate therapeutic needs of patients, but that are not reasonably available from the health care facility pharmacy in sufficient time to prevent prolonged discomfort or risk of harm to the health care facility's patients.

(2) The pharmacist-manager of the health care facility pharmacy shall develop, implement, and monitor compliance with policies and procedures that ensure auxiliary medication inventories are accessed only in appropriate circumstances and only by licensed health-care professionals or those authorized by North Carolina law to administer medications. If an auxiliary medication inventory is accessed in an unauthorized manner, the health care facility pharmacy's pharmacist-manager shall be notified.

(3) An auxiliary medication inventory shall contain drugs and devices only in amounts sufficient to meet immediate therapeutic needs of patients.

(4) Drugs and devices contained in an auxiliary medication inventory shall be labeled with the name, strength, lot number, manufacturer, and expiration date. A listing of the drugs and devices contained within an auxiliary medication inventory, including the name, strength, and quantity of each, shall be attached.

(5) When an auxiliary medication inventory is accessed, a copy of both the record of withdrawal and patient medication order shall be provided to the health care facility pharmacy. The record of withdrawal shall contain:

(A) the date of the removal;

(B) the name, strength, dosage form, and quantity of drug or device removed;

(C) the name of the patient for whom the drug or device was ordered; and

(D) the name or other identification of the authorized person who removed the drug or device.

(6) Auxiliary medication inventories shall be regularly reviewed to ensure the purity, potency, and integrity of drugs and devices contained within;

(7) An auxiliary medication inventory containing controlled substances must comply with 10A NCAC 26E .0408.

~~(1) The pharmacist manager shall develop an approved drug list for each health care facility location. Non-controlled drugs may be stocked on a health care facility patient care unit in quantities limited to not more than five dosage units per drug when immediate availability is deemed essential to the patient's health and well being. Drugs shall be stored in a manner that prevents unauthorized access and shall only be administered to a patient of the health care facility pursuant to a medication order.~~

~~(2) All controlled substances stocked within a health care facility that are not located within the facility's pharmacy or automated dispensing device must be accompanied by a disposition form issued from the pharmacy. This document shall at a minimum contain:~~

~~(A) the product name, strength, dosage form, and quantity supplied;~~

~~(B) the date transferred to the patient care unit by the pharmacy;~~

~~(C) the name of the pharmacy representative supplying, and the patient care unit representative receiving the drug;~~

~~(D) the date, time, and amount of the drug removed from the patient care unit stock for administration; and~~

~~(E) the patient name and identification of the person acquiring the product.~~

~~(3) Exceptions to this Paragraph shall be made for use of automated dispensing devices provided that these devices meet all applicable rules for controlled substances contained therein.~~

~~(4) When a dose of a controlled substance has been prepared for a patient but not used (i.e., refused, order canceled, or contaminated), it may be destroyed at the patient care unit. The destruction must be witnessed by a health care provider, such as a pharmacist, registered nurse, or licensed practical nurse. The pharmacist manager shall ensure that details of the event, along with the identification of the two who effected and witnessed the destruction, are documented. If such record is separate from the disposition form, it shall be maintained uniformly with the corresponding disposition form.~~

~~(g) ANCILLARY DRUG CABINET INVENTORIES. (This Paragraph does not apply to nursing facilities, assisted living facilities, and adult care homes.) Drugs that are routinely prescribed by the medical staff in a health care facility shall be maintained in quantities limited to not more than five dosage units per drug as a supplementary inventory for use only when the pharmacy is closed. The pharmacist manager shall, in~~

connection with the appropriate committee of the health care facility, develop listings of those drugs to be included in such inventories. The pharmacist-manager shall, at a minimum, assure that:

(1) access to such drug inventories is by locked cabinet(s) or other enclosure(s) constructed and secured to deny access to unauthorized persons;

(2) only authorized personnel, as indicated by written policies and procedures, shall obtain access to the drug inventories;

(3) only pre-packaged drugs are available therein, in amounts sufficient for immediate therapeutic requirements. Drugs shall be properly labeled, with drug name, strength, lot number and expiration date. Whenever access to such inventory is gained, a copy of the record of withdrawal and a copy of the written order for new drug orders shall be provided to the pharmacy. The record of withdrawal shall contain the following:

(A) the date of removal of the drug;

(B) the name, strength, dosage form, and quantity of drug removed;

(C) the name of the patient for whom the drug was ordered;

(D) the name or identification code of the authorized personnel removing the drug from inventory;

(4) all drugs are reviewed no less often than quarterly to ensure their purity, potency, and integrity; and

(5) written policies and procedures are established to implement the requirements of this Rule.

(h) AUTOMATED DISPENSING OR DRUG SUPPLY DEVICES. Automated Dispensing or Drug Supply Devices such as but not limited to Pyxis machines may be utilized in health care facility pharmacies and where a pharmacy permit exists in accordance with 21 NCAC 46 .1814.

(i) EMERGENCY KITS. (This Paragraph does not apply to adult care homes or assisted living facilities) Drugs and devices may be provided in emergency kits for use by authorized personnel provided the pharmacist manager, in conjunction with the medical staff of the health care facility, develop and implement written policies and procedures to ensure compliance with the following provisions:

(1) the pharmacist manager, or designee, and the medical staff of the health care facility jointly determine the drugs and devices, by identity and quantity, to be included in the kit. Drugs and devices included in the kit shall be limited to those for emergency use only and are not to be used for any other purpose.

(2) the emergency kit contains those drugs and devices which may be required to meet the immediate therapeutic needs of patients and which are not available from any other authorized source in sufficient time to prevent prolonged discomfort or risk of harm to patients;

(3) the emergency kit shall be stored in a secure, readily available location under the supervision of the nursing staff and sealed with a non-reusable, removable seal to prevent unauthorized access, and to ensure a proper environment for preservation of the drugs and devices within them. Policies and procedures shall be established to ensure the integrity of the kit at all times;

(4) the exterior of the emergency kit shall be labeled so as to clearly and unmistakably indicate that it is an emergency drug kit and is for use in emergencies only. In addition, a listing of the drugs and devices contained therein, including name, strength, and quantity of each drug or device shall be attached. Each emergency kit shall be inspected by a pharmacist or his designee every 30 days (90 days for long-term care facilities) to check for expiration dates and the integrity of the seal;

(5) all drugs and devices contained within the emergency kit shall be labeled, if applicable, with, at a minimum, the name, strength, lot number, manufacturer, and expiration date;

(6) drugs and devices shall be removed from the emergency kit for administration to a patient only pursuant to a valid physician's order, by personnel authorized by the facility;

(7) whenever an emergency kit is opened, the pharmacy shall be notified. The pharmacist-manager or designee shall re-stock, re-seal, and return the kit to the unit within a reasonable length of time in order to prevent risk of harm to patients. The emergency drug kits shall be checked by an authorized person in accordance with written policies and procedures of the health care facility. In the event the kit is opened in an unauthorized manner, the pharmacy and other personnel designated by the pharmacist-manager of the facility shall be notified; and

(8) Emergency drugs that are controlled substances must be stored in compliance with 10A NCAC 26E .0408.

(e) RESERVED.

(f) RESERVED.

(g) RESERVED.

(h) RESERVED.

(i) RESERVED.

(j) RECORDS.

(1) The pharmacist-manager shall, in addition to the requirements for preserving prescription orders as set forth in G.S. 90-85.26, develop a system of daily accountability for medication compounding and dispensing that shall permit the identification of the responsible pharmacists and pharmacy technicians.

Readily retrievable records of accountability shall be maintained for at least 30 days. At a minimum, this system shall identify all personnel who perform these activities and the pharmacist responsible for:

(A) interpretation and appropriateness of new medication orders;

(B) profile entry of new medication orders;

(C) dispensing of new medication orders including stat doses;

(D) daily cart fills;

(E) intravenous admixtures;

(F) compounded medications; and

(G) periodically assessing the quality of pharmacy procedures for preparation and release of drugs and devices for replenishment of ~~floor stock, ancillary drug supplies,~~ auxiliary medication inventories and automated dispensing devices in locations outside the pharmacy.

(2) Upon notification of medication errors resulting from the administration of an incorrect medication or dose, the pharmacist-manager shall document such medication error. Documentation shall include pertinent chronological information and include documentation on health care facility forms. These documents shall be archived in a readily retrievable manner, open for inspection, for a period of three years.

(3) Upon notification of information that reasonably suggests that there is a probability a prescription drug or device dispensed from a location holding a permit has caused or contributed to the death of a patient (see 21 NCAC 46 .2502(k)), ~~46 .2502(k) RESPONSIBILITY OF PHARMACIST-MANAGER),~~ the pharmacist-manager shall retain all documents, labels, vial, supplies, ~~substances~~ substances, and internal investigative reports relating to the event. All such items shall be maintained by the health care facility, accessible to the pharmacist-manager, and open to the Board of Pharmacy.

(4) The pharmacist-manager shall maintain records of ordering, receiving, ~~dispensing~~ dispensing, or transfer of controlled substances. These records shall include, but are not limited to the following:

(A) Invoices or other such documents verifying the ordering and receipt of controlled substances;

(B) Perpetual inventories of controlled substances transferred to auxiliary medication inventories and automated dispensing devices. ~~patient care units and other sites as allowed by this Rule (i.e., automated dispensing devices, emergency kits, etc.).~~ These inventories shall record the transfer date; location transferred to; the identity of the drug; strength, dosage form, and quantity transferred; transferring pharmacist's name; and

(C) Records of disposition of a controlled substance prepared for a patient but not used, including documentation of the details of the destruction or other disposition and identification of the individuals involved in that destruction or other disposition; ~~Disposition records required by Paragraph (f)(4) of this Rule;~~

(D) A record of controlled substances dispensed directly to the patient to include the patient's name; date dispensed; dispensing pharmacist's name; name, strength, dosage form, and quantity of the drug dispensed. The records shall also document drugs returned and credited; and

(E) A perpetual inventory shall be maintained on all controlled substances awaiting destruction or return to a vendor.

(5) Automated systems may be used to collect and store information required by Subparagraph (j)(4) of this Rule provided such system allows for the immediate retrieval ~~(via CRT display and hard-copy printout)~~ of original medication order information and dispensing history consistent with criteria cited in 21 CFR .1306.

(6) With the exception of Subparagraph (j)(l) of this Rule, all records required by this Section shall be maintained for a period of three years. Such records shall be archived in a uniform manner, retrievable to the pharmacy within 48 hours, and open for review, copying, or seizure by a member or designated employee of the Board.

Authority G.S. 90-85.6; 90-85.21; 90-85.32; 90-85.33; 90-85.34.

21 NCAC 46 .1415 MEDICATION IN HEALTH CARE FACILITY EMERGENCY DEPARTMENTS

(a) In those health care facilities having 24 hour outpatient pharmacy service, all drugs dispensed to outpatients including emergency department patients must be dispensed by a pharmacist.

(b) When drugs are not otherwise available from a pharmacist, drugs may be dispensed for use outside the emergency department by the physician, registered nurse under physician supervision, or a person authorized to prescribe and dispense drugs pursuant to G.S. 90-18.1 or 90-18.2 subject to the following:

(1) Drugs shall only be dispensed to a registered patient of the emergency department;

(2) The pharmacist-manager shall develop and supervise a system of control and accountability of all drugs administered in, or dispensed from the emergency department;

(3) The pharmacist-manager, in conjunction with the appropriate committee responsible for policy in the emergency department, shall develop an emergency department formulary which may be dispensed from the emergency department for patients receiving care in that department. This formulary shall consist of drugs of the nature and type to meet the immediate needs of emergency department patients, and quantities in each container shall be limited to not more than a 24 hour supply or the smallest commercially-available quantity;

(4) Such drugs shall be prepackaged in safety closure containers and shall be appropriately pre-labeled by the pharmacist to comply with Rule .1414(d)(4) of this Section. ~~21 NCAC 46.1414(i)(5) of this Chapter.~~ Prior to dispensing, the following information shall be placed on the label:

(A) name, address, and telephone number of the health care facility pharmacy;

(B) dispensing date;

(C) full name of patient;

(D) generic or trade name, or in the absence of a brand name, the established name of the product dispensed;

(E) directions for use to the patient;

(F) name of physician prescribing and dispensing the product; and

(G) required precautionary or further accessory cautionary information as may be desirable for proper use and safety to the patient;

(5) A perpetual record of dispensing of all drugs, including drug samples and starter packages, shall be maintained as part of the pharmacy's records for three years. The pharmacist-manager or designee shall verify the accuracy of these records at least once a month. Such record shall, at a minimum, contain the following:

(A) date dispensed;

(B) patient's name;

(C) physician's name; and

(D) name of drug dispensed, strength, dosage form, quantity dispensed, and dose.

(6) The physician shall sign all orders for medication within the time frame established by regulatory agencies and health care facility policies and procedures.

(c) The physician, registered nurse under physician supervision, or person who is authorized to prescribe and dispense drugs pursuant to G.S. 90-18.1 or 90-18.2 shall comply with all regulations governing the dispensing of medications including patient counseling as defined in 21 NCAC 46 .2504. ~~46 .2504 Patient Counseling.~~

Authority G.S. 90-85.6; 90-18.1; 90-18.2; 90-85.21; 90-85.32; 90-85.33.

21 NCAC 46 .1417 REMOTE MEDICATION ORDER PROCESSING SERVICES

(a) Purpose. The purpose of this Section is to set out requirements ~~for~~ under which health care facility pharmacies that are not open 24 hours a day, seven days a week, may contract for the provision of ~~providing~~ remote medication order processing services after normal working hours. ~~and facilities contracting with remote medication order processing services.~~

(b) ~~Definition. Medication~~ Definitions.

(1) "Remote medication order processing services" ~~does not include the dispensing of a prescription drug but includes any~~ consists of the following:

~~(1)~~(A) receiving, interpreting, or clarifying medication orders;

~~(2)~~(B) data entry and transferring of medication order information;

~~(3)~~(C) performing drug regimen review;

~~(4)~~(D) interpreting clinical data;

~~(5)~~(E) performing therapeutic interventions; and

~~(6)~~(F) providing drug information concerning medication orders or drugs.

(2) "Remote medication order processing pharmacy" is a pharmacy permitted by the Board that provides remote medication order processing services.

(3) "Remote site" is a site located within the United States that is electronically linked to a health care facility licensed by the State of North Carolina for the purpose of providing remote medication order processing services.

(c) Outsourcing. A health care facility pharmacy may outsource medication order processing services to ~~another~~ remote medication order processing pharmacy provided the pharmacies have the same owner or the pharmacy has entered into a written contract or agreement with a remote medication order processing pharmacy ~~an outsourcing company~~ that outlines the services to be provided and the responsibilities and accountabilities of each pharmacy in compliance with federal and state laws and regulations. The pharmacy providing the remote processing of medication orders must notify the Board of Pharmacy prior to providing such services.

(d) Training. A pharmacy providing remote medication order processing must ensure that all pharmacists providing such services have been trained on each pharmacy's policies and procedures relating to medication order processing. The training of each pharmacist shall be documented by the pharmacist-

manager to ensure competency and to ensure that performance is at least at the same level of performance as pharmacists in the outsourcing pharmacy. Such training shall include policies on drug and food allergy documentation, abbreviations, administration times, automatic stop orders, substitution, and formulary compliance. The pharmacies shall jointly develop a procedure to communicate changes in the formulary and changes in policies and procedures related to medication order processing.

(e) Access.

(1) The pharmacies must share common electronic files or have appropriate technology to allow secure access to the pharmacy's information system and to provide the remote pharmacy with access to the information necessary or required to process a medication order.

(2) Pharmacists employed by or otherwise acting as an agent for a remote medication order processing pharmacy may provide such services from a remote site. Both the pharmacist providing such services from a remote site and the remote medication order processing pharmacy on whose behalf the pharmacist is providing such services shall be responsible for compliance with all statutes, rules, policies, and procedures governing the provision of remote mediation order processing services.

(f) Communication. The pharmacies must jointly define the procedures for resolving problems detected during the medication order review and communicating these problems to the prescriber and the nursing staff providing direct care.

(g) Recordkeeping. A pharmacy using remote order entry processing services is responsible for maintaining records of all orders entered into their information system including orders entered from a remote location. The system shall have the ability to audit the activities of the individuals remotely processing medication orders.

(h) Licensure. All remote medication order processing pharmacies ~~providing remote order processing services~~ must be permitted by the Board. An out-of-state remote medication order processing pharmacy ~~providing remote order processing services~~ must be registered with the Board as an out-of-state pharmacy. All pharmacists located in this State or employed by an out-of-state remote medication order processing pharmacy providing ~~remote order processing~~ services ~~to health care facilities~~ in this State ~~State,~~ shall be licensed by the Board.

(i) Policy and Procedure Manual. All remote medication order processing pharmacies ~~involved in remote order processing~~ shall maintain a policy and procedure manual. Each remote medication order processing pharmacy, remote site, and health care facility pharmacy is required to maintain those portions of the policy and procedure manual that relate to that pharmacy's or site's operations. The manual shall:

(1) outline the responsibilities of each of the pharmacies;

(2) include a list of the name, address, telephone numbers, and all license/registration numbers of the pharmacies involved in remote order processing; and

(3) include policies and procedures for:

(A) protecting the confidentiality and integrity of patient information;

(B) maintaining appropriate records to identify the name(s), initials, or identification code(s) and specific activity(ies) of each pharmacist who performed any processing;

(C) complying with federal and state laws and regulations;

(D) operating a continuous quality improvement program for pharmacy services designed to objectively and systematically monitor and evaluate the quality and appropriateness of patient care, pursue opportunities to improve patient care, and resolve identified problems;

(E) annually reviewing the written policies and procedures and documenting such review; and

(F) annually reviewing the competencies of pharmacists providing the remote order review service.

(j) Nothing in this Rule shall be construed to relieve a health care facility pharmacy of the need to provide on-site pharmacy services required for licensure as specified in the Pharmacy Practice Act and rules promulgated thereunder.

Authority G.S. 90-85.6; 90-85.21; 90-85.21A; 90-85.26; 90-85.32; 90-85.34.

SECTION .1800 - PRESCRIPTIONS

21 NCAC 46 .1814 AUTOMATED DISPENSING OR DRUG SUPPLY DEVICES

(a) Automated dispensing or drug supply devices may be used in health care facility pharmacies and where a pharmacy permit exists ~~exists, for maintaining patient care unit medication inventories or~~ for a patient profile dispensing system, provided the utilization of such devices is under the supervision of a pharmacist. The pharmacist-manager shall develop and implement procedures to assure safe and effective use of medications, and, at a minimum, shall assure that:

(1) only authorized personnel, as indicated by written policies and procedures, may obtain access to the drug inventories;

~~(2) all drugs therein are reviewed no less than monthly;~~

~~(3)~~(2) a system of accountability must exist for all drugs contained therein; the purity, potency, and integrity of the drugs shall be preserved;

~~(4) the device provides records required by this Section and other applicable laws and rules;~~

~~(5)~~(3) requirements for controlled substances security are met; and

~~(6)~~(4) prior to the drug being released for access by the nurse, the pharmacist enters the medication order into a computerized pharmacy profile that is interfaced to the automated dispensing unit, so that drug allergy screening, therapeutic duplication, and appropriate dose verification is done prior to the drug being administered.

(b) Notwithstanding the provisions of ~~Rule~~ 21 NCAC 46 .2501, a pharmacist is required to supervise only the following activities pursuant to this Rule:

(1) The packaging and labeling of drugs to be placed in the dispensing devices. Such packaging and labeling shall conform to all requirements pertaining to containers and label contents;

(2) The placing of previously packaged and labeled drug units into the dispensing device; and

(3) The restocking of automated dispensing devices.

(c) Only persons authorized by the pharmacist-manager may remove drugs from the dispensing devices and only in the quantity of doses needed to satisfy immediate patient needs. Should a violation of the foregoing occur, the pharmacist-manager shall conduct an investigation and report any violations to the entity having jurisdiction over these issues.

(d) Bar code scanning of drug packaging and storage units may be utilized as a quality control mechanism if this technology is available in the automated dispensing system.

(e) An automated dispensing or drug supply device that is used solely as an Auxiliary Medication Inventory as defined in 21 NCAC 46 .1414(d) shall be governed by the requirements of that Rule.

Authority G.S. 90-85.6; 90-85.32; 90-85.33.

SECTION .2300 - PRESCRIPTION INFORMATION AND RECORDS

21 NCAC 46 .2302 RECORDS OF DISPENSING

(a) Records of dispensing for original and refill prescriptions are to be made and kept by pharmacies for three years and shall include, but are not limited to:

(1) quantity dispensed, if quantity of refill is different than quantity of original;

(2) date of dispensing;

(3) serial number (or equivalent in an institution);

(4) the identification of the pharmacist responsible for dispensing; and

(5) records of refills to date. ~~date;~~

~~(6) documentation of satisfaction of state requirements for drug selection.~~

(b) Records in institutional pharmacies may be made and kept as part of the patient's medical record.

Authority G.S. 90-85.6(a); 90-85.26; 90-85.30; 90-85.35; 90-106(h).

21 NCAC 46 .2303 RECORDS OF PRESCRIPTION FILLING AND REFILLING

In a pharmacy with a manual system, the dispensing pharmacist shall indicate by date and initial the filling or refilling of a prescription on the document. In a pharmacy with a computer or data system, a designation of the dispensing pharmacist ~~accompanied by the daily signature of the pharmacist~~ filling or refilling each prescription is required as ~~noted~~ provided in Rule .2304 of this Section. ~~.2304(3)(a) or (3)(b).~~ Information must be kept for three years. This does not preclude the use of unlicensed personnel entering information in a data system provided that supervision is maintained pursuant to Board rules.

Authority G.S. 90-85.6(a); 90-85.26; 90-85.32.

21 NCAC 46 .2304 AUTOMATED DATA PROCESSING SYSTEMS

An automated data processing system may be employed as a record-keeping system if the following conditions are met:

(1) The system shall have the capability of producing sight-readable documents of all original and refilled prescription information. The term "sight-readable" means that a regulatory agent shall be able to examine the record and read the information. In the case of administrative proceedings before the Board, records must be provided in a readable paper printout form.

(2) Such information shall include, but not be limited to the prescription requirements and records of dispensing as indicated in Rules .2301 and .2302 of this Section.

(3) The individual pharmacist responsible for completeness and accuracy of the entries to the system must provide documentation of the fact that prescription information entered into the computer is correct. ~~In documenting this information, the pharmacist shall have the option of either:~~

~~(a) providing a printout of each day's prescription information. That printout shall be dated and the individual pharmacist shall verify that the information indicated is correct and sign the printout in the same manner as a check or legal document (e.g. J.H. Smith, or John H. Smith). Such printout must be maintained three years from the date of last dispensing; or~~

~~(b) maintaining a log book, or separate file, in which each individual pharmacist involved in such dispensing shall sign a statement each day attesting to the fact that the prescription information entered into the computer that day has been reviewed and is correct as shown. Such a book or file must be~~

~~maintained at the pharmacy employing such a system for a period of three years after the date of last dispensing.~~

(4) Documentation in Paragraph (3) of this Rule must be provided in the pharmacy within 72 hours of date of dispensing.

(5) An auxiliary recordkeeping system shall be established for the documentation of refills if the automated data processing system is inoperative for any reason. When the automated data processing system is restored to operation, the information regarding prescriptions filled, refilled or transferred during the inoperative period shall be entered into the automated data processing system within the time equal to the number of inoperative days times three; for example, if the system were inoperative for five days then all interim data shall be entered within 15 days of the last inoperative day. However, nothing in this Paragraph shall preclude the pharmacist from using professional judgment for the benefit of a patient's health and safety. The auxiliary record keeping system shall be backed up at least weekly.

(6) A pharmacy shall make arrangements with the supplier of data processing services or materials to assure that the pharmacy continues to have adequate and complete prescription and dispensing records if the relationship with such supplier is terminated for any reason. A pharmacy shall assure continuity in the maintenance of records.

(7) A current version of drug interactions software shall be used and policies and procedures shall be established to address overriding the interactions prompt.

Authority G.S. 90-85.6(a); 90-85.26; 90-85.32; 90-107.

SECTION .2500 - MISCELLANEOUS PROVISIONS

21 NCAC 46 .2508 ELECTRONIC RECORDS

Unless otherwise specified in these Rules or other applicable law, any documentation required by these Rules may be electronically created and maintained, provided that the system that creates and maintains such electronic record:

(1) is capable of printing the documentation so that the pharmacist-manager can provide it to the Board within 48 hours of a request;

(2) contains security features to prevent unauthorized access to such records; and

(3) contains daily back-up functionality to protect against record loss.

Authority G.S. 90-85.6; 90-85.26; 90-85.30; 90-85.32; 90-85.33; 90-85.35; 90-85.36; 90-85.47; 90-106; 90-107.

SECTION .2800 - STERILE PHARMACEUTICALS

21 NCAC 46 .2807 ANTI-NEOPLASTIC AGENTS

The following additional requirements are necessary for those permit-holders who prepare anti-neoplastic drugs:

(1) All anti-neoplastic drugs shall be compounded in a vertical flow, Class II, biological safety cabinet, or similar appropriate preparation area. There must be strict adherence to the hood-cleaning procedures before preparing a product in the hood not classified as an anti-neoplastic agent.

(2) Protective apparel shall be worn by personnel compounding anti-neoplastic drugs. ~~This shall include disposable gloves and gowns with tight cuffs.~~

(3) Appropriate safety and containment techniques for compounding anti-neoplastic drugs shall be used in conjunction with the aseptic techniques required for preparing sterile parenteral products.

(4) Disposal of anti-neoplastic waste shall comply with all applicable local, state, and federal requirements.

(5) Written procedures for handling both major and minor spills of anti-neoplastic agents must be developed and must be included in the policy and procedural manual for the permit-holder.

(6) Prepared doses of anti-neoplastic drugs must be dispensed, labeled with proper precautions inside and outside, and shipped in a manner to minimize the risk of accidental rupture of the primary container.

Authority G.S. 90-85.6.

*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 September 20, 2012.

		REGISTER CITATION TO THE NOTICE OF TEXT
HEALTH AND HUMAN SERVICES, DEPARTMENT OF		
Scope and Definitions	10A NCAC 14D .0101	26:24 NCR
Definitions	10A NCAC 14D .0102*	26:24 NCR
Submission of Information to the Division of Health Servi...	10A NCAC 14D .0201*	26:24 NCR
Capacity	10A NCAC 14D .0202	26:24 NCR
Design and Construction	10A NCAC 14D .0203*	26:24 NCR
Location	10A NCAC 14D .0204	26:24 NCR
Living Arrangement	10A NCAC 14D .0205	26:24 NCR
Living Room	10A NCAC 14D .0206	26:24 NCR
Dining Room	10A NCAC 14D .0207	26:24 NCR
Kitchen	10A NCAC 14D .0208*	26:24 NCR
Bedrooms	10A NCAC 14D .0209*	26:24 NCR
Bathroom	10A NCAC 14D .0210*	26:24 NCR
Storage Areas	10A NCAC 14D .0211*	26:24 NCR
Corridor	10A NCAC 14D .0212*	26:24 NCR
Outdoor Entrance and Exits	10A NCAC 14D .0213*	26:24 NCR
Laundry Room	10A NCAC 14D .0214	26:24 NCR
Floors	10A NCAC 14D .0215	26:24 NCR
Housekeeping and Furnishings	10A NCAC 14D .0216*	26:24 NCR
Fire Safety and Disaster Plan	10A NCAC 14D .0217*	26:24 NCR
Building Service Equipment	10A NCAC 14D .0218	26:24 NCR
Outside Premises	10A NCAC 14D .0219	26:24 NCR
Planning Program Activities	10A NCAC 14D .0301*	26:24 NCR
Administrator	10A NCAC 14D .0302*	26:24 NCR
Supervisor in Charge	10A NCAC 14D .0303	26:24 NCR
Enrollment of Residents	10A NCAC 14D .0401	26:24 NCR
Planning Services for Individual Residents	10A NCAC 14D .0402*	26:24 NCR
Staffing	10A NCAC 14D .0501*	26:24 NCR
Staff	10A NCAC 14D .0502	26:24 NCR
Medication Administration	10A NCAC 14D .0601	26:24 NCR
Medication Administration Competency Evaluation	10A NCAC 14D .0602*	26:24 NCR
Medication Administration Policies and Procedures	10A NCAC 14D .0603	26:24 NCR
Food Procurement and Safety	10A NCAC 14D .0701*	26:24 NCR
Food Preparation and Services	10A NCAC 14D .0702	26:24 NCR
Menus	10A NCAC 14D .0703*	26:24 NCR
Food Requirements	10A NCAC 14D .0704	26:24 NCR
Therapeutic Diets	10A NCAC 14D .0705*	26:24 NCR
Feeding Assistance	10A NCAC 14D .0706	26:24 NCR

Accommodation of Resident Needs and Preferences	10A	NCAC	14D	.0707	26:24 NCR
Activities Program	10A	NCAC	14D	.0801	26:24 NCR
PUBLIC HEALTH, COMMISSION FOR					
Reporting of Healthcare Associated Infections	10A	NCAC	41A	.0106*	26:20 NCR
Incorporation by Reference: 7 C.F.R. Part 225	10A	NCAC	43I	.0101*	n/a G.S. 150B-21.5(a)
Incorporation by Reference: 7 C.F.R. Part 226	10A	NCAC	43J	.0101*	n/a G.S. 150B-21.5(a)
CRIMINAL JUSTICE EDUCATION AND TRAINING STANDARDS COMMISSION					
Required Annual In-Service Training Topics	12	NCAC	09E	.0102*	26:15 NCR
ENVIRONMENT AND NATURAL RESOURCES, DEPARTMENT OF					
How to Contact the Department	15A	NCAC	01A	.0102*	n/a G.S. 150B-21.5(a)(4)
PUBLIC HEALTH, COMMISSION FOR					
Fences	15A	NCAC	18A	.2528*	26:20 NCR
ARCHITECTURE, BOARD OF					
Definitions	21	NCAC	02	.0109*	26:23 NCR
Definitions	21	NCAC	02	.0902	26:23 NCR
Requirements	21	NCAC	02	.0903*	26:23 NCR
Determination of Credit	21	NCAC	02	.0904*	26:23 NCR
Record Keeping	21	NCAC	02	.0905	26:23 NCR
Exceptions	21	NCAC	02	.0906*	26:23 NCR
Forms	21	NCAC	02	.0909*	26:23 NCR
Non-Compliance	21	NCAC	02	.0910	26:23 NCR
COSMETIC ART EXAMINERS, BOARD OF					
Definitions	21	NCAC	14A	.0101*	26:23 NCR
Duplicate Licenses	21	NCAC	14A	.0402*	26:23 NCR
Additional Salon Chairs	21	NCAC	14A	.0403	26:23 NCR
Natural Hair Care Schools	21	NCAC	14T	.0205	26:23 NCR
Equipment for Esthetics Schools	21	NCAC	14T	.0303	26:23 NCR
Equipment for Manicuring Schools	21	NCAC	14T	.0304	26:23 NCR
Equipment for Natural Hair Care Styling Schools	21	NCAC	14T	.0305	26:23 NCR
Cosmetology Curriculum	21	NCAC	14T	.0602	26:22 NCR
Instruction Guidelines	21	NCAC	14T	.0612*	26:23 NCR
Uniforms and Identification	21	NCAC	14T	.0613	26:23 NCR
School Operations/Licensure Maintenance	21	NCAC	14T	.0701*	26:23 NCR
PODIATRY EXAMINERS, BOARD OF					
Continuing Education	21	NCAC	52	.0208*	n/a G.S. 150B-21.5(a)(4)
Payment of Fees	21	NCAC	52	.0612*	26:23 NCR
SOCIAL WORK CERTIFICATION AND LICENSURE BOARD					
Definitions	21	NCAC	63	.0102*	n/a G.S. 150B-21.5(a)(2)

Provisional Licenses	21	NCAC 63	.0210*	n/a G.S. 150B-21.5(a)(2)
Work Experience	21	NCAC 63	.0211	n/a G.S. 150B-21.5(a)(2)

TITLE 10A – DEPARTMENT OF HEALTH AND HUMAN SERVICES

10A NCAC 14D .0101 SCOPE

This Subchapter sets forth rules for certified adult day care programs offering overnight respite services pursuant to S.L. 2011-104. These Rules expire June 1, 2015.

History Note: Authority S.L. 2011-104; Temporary Adoption Eff. January 1, 2012; Eff. October 1, 2012.

10A NCAC 14D .0102 DEFINITIONS

The following definitions apply throughout this Subchapter:

(1) "Adult day care program" means a facility certified by the Department of Health and Human Services, Division of Aging and Adult Services pursuant to G.S. 131D-6.

(2) "Overnight respite services" means services that consist of 24-hour supervision and personal care services provided for persons on a temporary basis for caregiver relief, not to exceed 14 consecutive days or more than 60 total calendar days per individual resident in a 365-day period, and is provided by an adult day care program.

(3) "Personal care" means tasks such as assistance with personal hygiene and grooming, feeding, ambulation and other health care needs.

(4) "Resident" means the recipient of the overnight respite services.

(5) "Supervision" means visual monitoring of residents to determine the need for assistance.

History Note: Authority S.L. 2011-104; Temporary Adoption Eff. January 1, 2012; Eff. October 1, 2012.

10A NCAC 14D .0201 SUBMISSION OF INFORMATION TO THE DIVISION OF HEALTH SERVICE REGULATION CONSTRUCTION SECTION

(a) Prior to operation, an applicant for overnight respite services shall submit the following forms and reports to the Division of Health Service Regulation (DHSR) Construction Section:

(1) an approval letter from the local zoning jurisdiction for the proposed location;

(2) a photograph of each side of the existing structure and at least one of each of the interior spaces if an existing structure; and

(3) a set of blueprints of each level indicating:

(A) the layout of all rooms;

(B) room dimensions (including closets);

(C) door widths (exterior, bedroom, bathroom and kitchen doors);

(D) window sizes and window sill heights;

(E) type of construction; and

(F) the proposed resident bedroom locations including the number of occupants in each bedroom.

(b) The Construction Section shall review the information and notify the applicant by letter of changes that must be made to the building to meet the rules of this Section and the North Carolina State Building Code. The letter shall also contain a list of final documentation required from the local jurisdiction that must be submitted upon completion of any required changes to the building or completion of construction.

(c) Any changes made during construction that were not proposed during the initial review require the approval of the Construction Section to assure physical plant rule requirements are met.

(d) Upon receipt of the required final documentation from the local jurisdiction, the Construction Section shall review the information and may either make an on-site visit or approve the overnight respite services for construction by documentation. If all items are met, the Construction Section shall notify the DHSR Adult Care Licensure Section of its recommendation for approval.

(e) Following review of the application, references, all forms and the Construction Section's recommendation for use, a pre-approval visit shall be made by a consultant of the DHSR Adult Care Licensure Section. The consultant shall report findings and recommendations to the Adult Care Licensure Section which shall notify, in writing, the Division of Aging and Adult Services and the applicant of the decision to approve or deny overnight respite services as a part of the adult day care program that is planning to provide the services.

History Note: Authority S.L. 2011-104; Temporary Adoption Eff. January 1, 2012; Eff. October 1, 2012.

10A NCAC 14D .0202 CAPACITY

(a) The Department shall not approve a capacity for an overnight respite service of more than six residents.

(b) The total number of residents shall not exceed the capacity approved by the Construction Section.

(c) A request for an increase in capacity by adding rooms, remodeling or without any building modifications shall be submitted to the Construction Section, accompanied by two copies of blueprints or floor plans. One of the plans shall show the existing building with the current use of rooms and the second plan shall indicate the addition, remodeling or change in use of spaces showing the use of each room. If new construction, plans shall show how the addition will be tied into the existing building and all proposed changes in the structure.

(d) When the overnight respite services program increases its designed capacity by the addition to or remodeling of the

existing physical plant, the entire program shall meet all current fire safety regulations.

History Note: Authority S.L. 2011-104; Temporary Adoption Eff. January 1, 2012; Eff. October 1, 2012.

10A NCAC 14D .0203 DESIGN AND CONSTRUCTION

(a) Any adult day care program intending to provide overnight respite services for the first time shall meet the applicable requirements of the North Carolina State Building Code. All new construction, additions and renovations to existing buildings shall meet the requirements of the North Carolina State Building Code. All applicable volumes of The North Carolina State Building Code, which is incorporated by reference, including all subsequent amendments, may be purchased from the North Carolina Department of Insurance Engineering Division for six hundred fifty-three dollars and twenty five cents ($653.25).

(b) Each facility in which overnight respite services is provided shall be constructed, equipped and maintained to provide the services offered.

(c) Any existing building converted from another use that the adult day care program intends to use for overnight respite services shall meet all the requirements contained in this subchapter and the requirements for a certified adult day care program as specified in 10A NCAC 06R.

(d) For any overnight respite care services program that was terminated by DHSR pursuant to Section 1(c) of S.L. 2011-104, if the space remains terminated for at least 60 days, the space shall meet all applicable requirements for a new service facility prior to again being allowed to offer services.

(e) Any existing adult day care program intending to offer overnight respite care services that is planning new construction, remodeling or physical changes done to the facility shall have drawings submitted by the owner or his or her appointed representative to the Construction Section for review and approval prior to commencement of the work.

(f) If the building to be used for overnight respite care services is two stories in height, it shall meet the following requirements:

(1) Construction shall not exceed the allowable area for occupancy in the North Carolina State Building Code;
(2) Residents shall not be housed on any floor above or below grade level; and
(3) Required resident facilities shall not be located on any floor above or below grade level.

(g) The basement and the attic shall not to be used for storage or sleeping.

(h) The ceiling shall be at least seven and one-half feet from the floor.

(i) Steps between levels are not permitted.

(j) The door width shall be a minimum of two feet and six inches in the kitchen, dining room, living room, bedrooms and bathrooms.

(k) All windows shall be maintained operable.

(l) The local code enforcement official shall be consulted before starting any construction or renovations for information on required permits and construction requirements.

(m) The building shall meet sanitation requirements as determined by rules adopted by the Commission for Public Health.

(n) The building shall have current sanitation and fire and building safety inspection reports that are maintained in the facility and available for review.

(o) A complete fire alarm system with pull stations on each floor and sounding devices that are audible throughout the building shall be provided. The fire alarm system shall be able to transmit an automatic signal to the local emergency fire department dispatch center, either directly or through a central station monitoring company connection. The fire alarm system shall be installed in accordance with National Fire Protection Association (NFPA) 72, which is incorporated by reference with all subsequent amendments and can be obtained from the National Fire Protection Association, 1 Batterymarch Park, Quincy, MA 02269 at the cost of seventy-nine dollars ($79.00).

(p) The facility shall be equipped with a wet pipe sprinkler system in accordance with NFPA 13, which is incorporated by reference with all subsequent amendments and can be obtained from the National Fire Protection Association, 1 Batterymarch Park, Quincy, MA 02269 at the cost of seventy-nine dollars ($79.00).

History Note: Authority S.L. 2011-104; Temporary Adoption Eff. January 1, 2012; Eff. October 1, 2012.

10A NCAC 14D .0204 LOCATION

(a) An adult day care program offering overnight respite care services shall be in a location approved by local zoning boards.

(b) The facility shall be located so that hazards will not threaten the health, safety and welfare of the residents and staff.

(c) The site where overnight respite care services are to be provided shall:

(1) be accessible by streets, roads and highways and be maintained for motor vehicles and emergency vehicle access;
(2) be accessible to fire fighting and other emergency services;
(3) have a water supply, sewage disposal system, garbage disposal system and trash disposal system approved by the local health department having jurisdiction;
(4) meet all local ordinances; and
(5) be free from exposure to waste material that contaminates the air, soil or water known to the applicant or licensee.

History Note: Authority S.L. 2011-104; Temporary Adoption Eff. January 1, 2012; Eff. October 1, 2012.

10A NCAC 14D .0205 LIVING ARRANGEMENT

An adult day care program offering overnight respite care services shall provide living arrangements to meet the individual needs of the residents.

History Note: Authority S.L. 2011-104;

Temporary Adoption Eff. January 1, 2012;
Eff. October 1, 2012.

10A NCAC 14D .0206 LIVING ROOM

(a) An adult day care program offering overnight respite care services shall have a living area of at least 40 square feet per person. This area may be shared with the adult day care program activities and craft areas if the adult day care program requirements are met.
(b) All living rooms shall have operable windows to meet the North Carolina State Building Code and be lighted to provide 30 foot candles of light at floor level.

History Note: Authority S.L. 2011-104;
Temporary Adoption Eff. January 1, 2012;
Eff. October 1, 2012.

10A NCAC 14D .0207 DINING ROOM

(a) An adult day care program offering overnight respite care services shall have a dining room or area of at least 20 square feet per person. The dining room may be used for other activities during the day. This area may be shared with the adult day care program activities and craft areas if the adult day care program requirements are met.
(b) When the dining area is used in combination with a kitchen, an area five feet wide shall be allowed as work space in front of the kitchen work areas. The work space shall not be used as the dining area.
(c) The dining room shall have operable windows and be lighted to provide 30 foot candles of light at floor level.

History Note: Authority S.L. 2011-104;
Temporary Adoption Eff. January 1, 2012;
Eff. October 1, 2012.

10A NCAC 14D .0208 KITCHEN

(a) The kitchen shall be large enough to provide for the preparation and preservation of food and the washing of dishes. The kitchen may be shared with the adult day care program.
(b) The cooking unit shall be mechanically ventilated to the outside or be an unvented recirculation fan provided with any filter as required by manufacturers' instructions for ventless use.
(c) The kitchen floor shall have a non-slippery water-resistant covering.

History Note: Authority S.L. 2011-104;
Temporary Adoption Eff. January 1, 2012;
Eff. October 1, 2012.

10A NCAC 14D .0209 BEDROOMS

(a) There shall be bedrooms sufficient in number and size to meet the individual needs according to age and sex of the residents.
(b) Only rooms authorized by the Construction Section as bedrooms shall be used for bedrooms.
(c) A room where access is only through a bathroom, kitchen or another bedroom shall not be approved for a resident's bedroom.
(d) There shall be a minimum area of 100 square feet, including vestibule, closet or wardrobe space, in rooms occupied by one person and a minimum area of 160 square feet, including vestibule, closet or wardrobe space, in rooms occupied by two persons.
(e) The total number of residents assigned to a bedroom shall not exceed the number authorized by the Construction Section for that particular bedroom.
(f) A bedroom shall not be occupied by more than two residents.
(g) Each resident bedroom must have one or more operable windows and be lighted to provide 30 foot candles of light at floor level. The window area shall be equal to at least eight percent of the floor space. The windows shall have a maximum of 44 inch sill height.
(h) Bedroom closets or wardrobes shall be large enough to provide each resident with a minimum of 22 cubic feet of clothing storage of which at least one-half shall be for hanging clothes with an adjustable height hanging bar.

History Note: Authority S.L. 2011-104;
Temporary Adoption Eff. January 1, 2012;
Eff. October 1, 2012.

10A NCAC 14D .0210 BATHROOM

(a) An adult day care program offering overnight respite care services shall have one bathroom for each six or fewer respite persons. The bathroom may be shared with the adult day care program if the adult day care program requirements are met.
(b) The bathrooms shall be designed to provide privacy. A bathroom with two or more commodes shall have privacy partitions or curtains for each water closet. Each tub or shower shall have privacy partitions or curtains.
(c) Entrance to the bathroom shall not be through a kitchen, another person's bedroom, or another bathroom.
(d) The required residents' bathrooms shall be located so that there is no more than 40 feet from any residents' bedroom door to a resident use bathroom door.
(e) Hand grips shall be installed at all commodes, tubs and showers used by the residents.
(f) Nonskid surfacing or strips must be installed in showers and bath areas.
(g) The bathrooms shall be lighted to provide 30 foot candles of light at floor level and have mechanical ventilation at the rate of two cubic feet per minute for each square foot of floor area. These vents shall be vented directly to the outdoors.
(h) The bathroom floor shall have a non-slippery water-resistant covering.
History Note: Authority S.L. 2011-104;
Temporary Adoption Eff. January 1, 2012;
Eff. October 1, 2012.

10A NCAC 14D .0211 STORAGE AREAS

(a) Storage areas shall be adequate in size and number for separate storage of clean linens, soiled linens, food and food service supplies, and household supplies and equipment.
(b) There shall be separate locked areas for storing cleaning agents, bleaches, pesticides, and other substances that may be hazardous if ingested, inhaled or handled.

History Note: Authority S.L. 2011-104;
Temporary Adoption Eff. January 1, 2012;

Eff. October 1, 2012.

10A NCAC 14D .0212 CORRIDOR

(a) Corridors shall be lighted with night lights providing one foot-candle power at the floor.

(b) Corridors shall be free of all equipment and other obstructions.

(c) Corridors shall be equipped with smoke detectors that are connected to the building fire alarm system. Heat detectors are required in attics and basements and connected to the fire alarm system.

History Note: Authority S.L. 2011-104;
Temporary Adoption Eff. January 1, 2012;
Eff. October 1, 2012.

10A NCAC 14D .0213 OUTSIDE ENTRANCE AND EXITS

(a) An adult day care program offering overnight respite care services shall have at least two exits on all floor levels. If there are only two, the exit or exit access doors shall be located and constructed to minimize the possibility that both may be blocked by any one fire or other emergency condition.

(b) At least one entrance and one exit door shall have a minimum width of three feet and another shall be a minimum width of two feet and eight inches.

(c) At least one principal outside entrance and exit for the residents' use shall be at grade level or accessible by ramp with a one inch rise for each 12 inches of length of the ramp. For the purposes of this Rule, a principal outside entrance and exit is one that is most often used by residents for vehicular access. If the program serves any resident who must have physical assistance with evacuation, the building shall have two outside entrances and exits at grade level or accessible by a ramp.

(d) All exit door locks shall be easily operable, by a single hand motion, from the inside all times without keys. Existing deadbolts or turn buttons on the inside of exit doors shall be removed or disabled.

(e) All entrances and exits shall be free of all obstructions or impediments to allow for full instant use in case of fire or other emergency.

(f) All steps, porches, stoops and ramps shall be provided with handrails and guardrails.

(g) In adult day care programs offering overnight respite care services with at least one resident who is determined by a physician or is otherwise known to be disoriented or a wanderer, each exit door for resident use shall be equipped with a sounding device that is activated when the door is opened. The sound shall be of sufficient volume that it can be heard by staff. If a central system of remote sounding devices is provided, the control panel for the system shall be located in the office area or in a location accessible only to staff authorized by the administrator to operate the control panel.

History Note: Authority S.L. 2011-104;
Temporary Adoption Eff. January 1, 2012;
Eff. October 1, 2012.

10A NCAC 14D .0214 LAUNDRY ROOM

If the facility uses laundry equipment, the equipment shall be located out of the living, dining, and bedroom areas.

History Note: Authority S.L. 2011-104;
Temporary Adoption Eff. January 1, 2012;
Eff. October 1, 2012.

10A NCAC 14D .0215 FLOORS

(a) All floors shall be of smooth, non-skid material and so constructed as to be cleanable.

(b) Scatter or throw rugs shall not be used.

(c) All floors shall be kept in good repair.

History Note: Authority S.L. 2011-104;
Temporary Adoption Eff. January 1, 2012;
Eff. October 1, 2012.

10A NCAC 14D .0216 HOUSEKEEPING AND FURNISHINGS

(a) Each adult day care program offering overnight respite care services shall:

(1) have walls, ceilings, and floors or floor coverings kept clean and in good repair;

(2) have no lingering unpleasant odors;

(3) have furniture clean and in good repair;

(4) have a North Carolina Division of Public Health approved sanitation classification at all times;

(5) be maintained in an uncluttered, clean and orderly manner, free of all obstructions and hazards;

(6) have a supply of bath soap, clean towels, washcloths, sheets, pillow cases, blankets, and additional coverings adequate for resident use on hand at all times;

(7) make available the following items as needed through any means other than charge to the resident's personal funds:

(A) protective sheets and clean, absorbent, soft and smooth pads;

(B) bedpans, urinals, hot water bottles, and ice caps; and

(C) bedside commodes, walkers, and wheelchairs;

(8) have a television and radio, each in good working order;

(9) have curtains, draperies or blinds at windows in resident use areas to provide for resident privacy;

(10) have recreational equipment, supplies for games, books, magazines and a current newspaper available for residents;

(11) have a clock that has numbers at least 1½ inches tall in an area commonly used by the residents; and

(12) have at least one telephone that does not depend on electricity or cellular service to operate.

(b) Each bedroom shall have the following furnishings in good repair and clean for each resident:

(1) beds equipped with box springs and mattress or solid link springs and no-sag innerspring or foam mattress. A hospital bed shall be arranged for as needed. A water bed is allowed if requested by a resident and permitted by the program. Each bed shall have the following:
  (A) at least one pillow with clean pillow case;
  (B) clean top and bottom sheets on the bed, with bed changed as often as necessary but at least once a week; and
  (C) clean bedspread and other clean coverings as needed;
(2) a bedside type table;
(3) a chest of drawers or bureau when not provided as built-ins, or a double chest of drawers or double dresser for two residents;
(4) a wall or dresser mirror that can be used by each resident;
(5) a minimum of one comfortable chair (rocker or straight, arm or without arms, as preferred by resident), high enough from the floor for easy rising;
(6) additional chairs available, as needed, for use by visitors;
(7) individual clean towel, wash cloth, and towel bar within the bedroom or adjoining bathroom; and
(8) a light overhead of bed with a switch within reach of a person lying on the bed or a lamp. The light shall provide a minimum of 30 foot-candle power of illumination for reading.

(c) The living room shall have functional living room furnishings for the comfort of residents with coverings that are easily cleanable.

(d) The dining room shall have the following furnishings:

(1) tables and chairs to seat all residents eating in the dining room; and
(2) chairs that are sturdy, non-folding, without rollers unless retractable or on front legs only, and designed to minimize tilting.

History Note: Authority S.L. 2011-104; Temporary Adoption Eff. January 1, 2012; Eff. October 1, 2012.

10A NCAC 14D .0217 FIRE SAFETY AND DISASTER PLAN

(a) Fire extinguishers shall be provided which meet these requirements:

(1) one five pound or larger (net charge) "A-B-C" type centrally located;
(2) one five pound or larger "A-B-C" or CO/2 type located in the kitchen; and
(3) at any other location as determined by the code enforcement official.

(b) The building shall be provided with smoke detectors as required by the North Carolina State Building Code and Underwriters Laboratory (U.L.) listed heat detectors connected to a dedicated sounding device located in the attic and basement. These detectors shall be interconnected and be provided with battery backup.

(c) Any fire safety requirements required by city ordinances or county building inspectors shall be met.

(d) A written fire evacuation plan (including a diagrammed drawing) that has the approval of the local code enforcement official shall be prepared and posted in a central location on each floor. The plan shall be reviewed with each resident on enrollment and shall be a part of the orientation for all new staff.

(e) There shall be at least four rehearsals of the fire evacuation plan each year. Records of rehearsals shall be maintained. The records shall include the date and time of the rehearsals, staff members present, and a description of what the rehearsal involved.

(f) A written disaster plan that has the written approval of, or has been documented as submitted to, the local emergency management agency and the local agency designated to coordinate special needs sheltering during disasters, shall be prepared and updated at least annually and shall be maintained in the adult day care programs offering overnight respite care services. This written disaster plan requirement applies to new and existing programs.

History Note: Authority S.L. 2011-104; Temporary Adoption Eff. January 1, 2012; Eff. October 1, 2012.

10A NCAC 14D .0218 BUILDING SERVICE EQUIPMENT

(a) The building and all fire safety, electrical, mechanical and plumbing equipment shall be maintained in a safe and operating condition.

(b) There shall be a central heating system sufficient to maintain 75 degrees F (24 degrees C) under winter design conditions. Built-in electric heaters, if used, shall be installed or protected so as to avoid hazards to residents and room furnishings. Unvented fuel burning room heaters and portable electric heaters are prohibited.

(c) Air conditioning shall provide conditions not to exceed 81 degrees F (27 degrees C).

(d) The hot water tank shall be of such size to provide as much hot water as is needed by the kitchen, bathrooms, and laundry. The hot water temperature at all fixtures used by residents shall be maintained at a minimum of 100 degrees F (38 degrees C) and shall not exceed 116 degrees F (46.7 degrees C).

(e) All resident areas shall be well lighted for the safety and comfort of the residents. The minimum lighting required is:

(1) 30 foot-candle power for reading;
(2) 10 foot-candle power for general lighting; and
(3) one foot-candle power at the floor for corridors at night.

(f) Fireplaces, fireplace inserts and wood stoves shall be designed or installed so as to avoid a burn hazard to residents. Fireplace inserts and wood stoves must be U.L. listed.

(g) Gas logs may be installed if they are of the vented type, installed according to the manufacturers' installation instructions, approved through the local building department and protected by a guard or screen to prevent residents and furnishings from burns.
(h) Alternate methods, procedures, design criteria and functional variations from the requirements of this Rule or other rules in this Section, shall be approved by the Construction Section when the facility can effectively demonstrate to the Section's satisfaction that the intent of the requirements are met and that the variation does not reduce the safety or operational effectiveness of the facility.

History Note: Authority S.L. 2011-104;
Temporary Adoption Eff. January 1, 2012;
Eff. October 1, 2012.

10A NCAC 14D .0219 OUTSIDE PREMISES
(a) The outside grounds of any adult day care program offering overnight respite care services shall be maintained in a clean and safe condition.
(b) If the facility has a fence around the premises, the fence shall not prevent residents from exiting or entering freely or be hazardous.
(c) Outdoor stairways and ramps shall be illuminated by no less than five foot candles of light at grade level.

History Note: Authority S.L. 2011-104;
Temporary Adoption Eff. January 1, 2012;
Eff. October 1, 2012.

10A NCAC 14D .0301 PLANNING PROGRAM ACTIVITIES
(a) Each adult day care program offering overnight respite care services shall have enrollment policies. Enrollment policies shall be in writing as a part of the program policies and shall define the population served. These policies shall serve as the basis for determining who will be accepted into the program and for planning activities appropriate for the residents. The policies shall prevent enrolling people whose needs cannot be met by the planned activities and shall provide for discharge of residents whose needs can no longer be met or who can no longer be cared for safely. If an adult day care program offering overnight respite care services serves semi-ambulatory or non-ambulatory persons, it shall be stated in the enrollment criteria.
(b) Prior to enrollment, the applicant, family members or other caregiver shall have a personal interview with a program staff member. During the interview, the staff shall complete initial documentation identifying the following:

(1) social and medical care needs;
(2) any designated spiritual, religious or cultural needs; and
(3) whether the program can meet the individual's expressed needs.

The staff person doing the interviewing shall sign the determination of needs and the applicant, family member or other caregiver shall sign the application for enrollment. These signed documents shall be obtained before the individual's first day of attendance as a resident in the program.
(c) A medical examination report signed by a physician, nurse practitioner or physician's assistant, completed within the prior three months, shall be obtained by the program at the time of enrollment. The report must be updated annually no later than the anniversary date of the initial report.
(d) At enrollment or in the initial interview, the program policies shall be discussed with the applicant, family member or other caregiver and a copy of the program policies shall be provided.
(e) Documentation of receipt of and agreement to abide by the program policies by the applicant, family member or other caregiver shall be obtained by the program and kept in the resident's file.
(f) The program policies shall contain:

(1) a discharge policy outlining:
  (A) the criteria for discharge;
  (B) notification procedures for discharge;
  (C) the timeframe and procedures for notifying the applicant, family member or other caregiver of discharge; and
  (D) referral or follow-up procedures;
(2) a medication policy as specified in Section .0600 of this Subchapter;
(3) a description of resident's rights;
(4) grievance policies and procedures for families;
(5) the advance directives policy;
(6) non-discrimination policies;
(7) the procedure to maintain confidentiality;
(8) the policy on reporting suspected abuse or neglect;
(9) the policy on reporting of resident accidents or incidents to family members or medical providers;
(10) the policy on infection control and universal precautions;
(11) a description of the geographical area served by the program; and
(12) inclement weather policies.

History Note: Authority S.L. 2011-104;
Temporary Adoption Eff. January 1, 2012;
Eff. October 1, 2012.

10A NCAC 14D .0302 ADMINISTRATOR
(a) An administrator shall be responsible for the total operations of the adult day care program offering overnight respite care services.
(b) At all times, there shall be one administrator or supervisor-in-charge who is directly responsible for assuring that all required duties are carried out and for assuring that a staff member is present on-site and available to the program participants.
(c) The administrator must:

(1) be at least 18 years old;
(2) be at least a high school graduate or certified under the General Educational Development (GED) Program;

(3) work with bona fide inspectors and DHSR consultants;
(4) be free of tuberculosis disease that poses a direct threat to the health or safety of others;
(5) have no substantiated findings listed on the North Carolina Health Care Personnel Registry;
(6) have documented evidence of managing or supervising personal care to others, for at least 6 months, from a previous employer; and
(7) be able to apply all accident, fire safety and emergency procedures for the protection of the recipients of the respite care services.

History Note: Authority S.L. 2011-104; Temporary Adoption Eff. January 1, 2012; Eff. October 1, 2012.

10A NCAC 14D .0303 SUPERVISOR IN CHARGE

(a) The supervisor-in-charge is responsible to the administrator for carrying out the overnight respite care program in the absence of the administrator.
(b) The supervisor-in-charge must meet the same requirements as the administrator.

History Note: Authority S.L. 2011-104; Temporary Adoption Eff. January 1, 2012; Eff. October 1, 2012.

10A NCAC 14D .0401 ENROLLMENT OF RESIDENTS

(a) Any adult (18 years of age or over) who, because of a physical condition or mental disability, needs a substitute home for purpose of respite for the caregiver may be enrolled for overnight respite services when, in the opinion of the caregiver, family, resident, physician, or social worker and the administrator, the services and accommodations of the facility will meet the respite needs of the resident.
(b) Individuals shall not be admitted:
(1) for treatment of mental illness, or alcohol or drug abuse;
(2) for maternity care;
(3) for professional nursing care under continuous medical supervision;
(4) for lodging, when the personal assistance and supervision offered for the resident are not needed; or
(5) who pose a direct threat to the health or safety of others.

History Note: Authority S.L. 2011-104; Temporary Adoption Eff. January 1, 2012; Eff. October 1, 2012.

10A NCAC 14D .0402 PLANNING SERVICES FOR INDIVIDUAL RESIDENTS

(a) At enrollment of a new resident, the program shall perform an assessment and written service plan for the individual. The assessment shall address the individual's ability to perform activities of daily living while in the program. The mental and physical health status of the individual shall also be assessed. The service plan shall be signed and dated by the administrator or designee. The health component of the service plan shall be written and signed by a registered nurse.
(b) In developing the written service plan, the program shall include input from the enrollee, family members, or other caregiver and other agency professionals with knowledge of the individual's needs. The service plan shall be based on strengths, needs and abilities identified in the assessment. The assessment and service plan shall be reviewed to assure continued accuracy at each enrollment. The service plan shall include:
(1) the needs and strengths of the resident;
(2) the interests of the resident;
(3) the measurable service goals and objectives of care for the resident while in the overnight respite program;
(4) the type of interventions to be provided by the program in order to reach desired outcomes;
(5) the services to be provided by the program to achieve the goals and objectives;
(6) the roles of the resident, family, caregiver, volunteers and program staff; and
(7) the time limit for the plan, with provision for review and renewal.
(c) Progress notes in the resident's record shall be updated every 24 hours while in the program.
(d) The resident, caregiver, and other service providers may contribute to the development, implementation and evaluation of the service plan.
(e) Any unusual behavior, change in mood, change in attitude or need for help or services shall be reported by the program staff. The report shall be made to the resident's family, caregiver, or responsible party. A note shall be made in the resident's record of action taken.
(f) The resident or the responsible party may choose the days and number of days the resident will attend, with the administrator's approval.
(g) The reason for any unscheduled resident absence shall be determined by the program staff and documented on the day it occurs. The program shall attempt to contact the absent resident or the responsible party.
(h) The overnight respite care program is responsible for the resident while the resident is enrolled. A resident leaving the program for part of a day shall sign out relieving the staff of further responsibility. If a resident has emotional or mental impairment that requires supervision and that person needs or wants to leave the program during the day, the social worker, family, caregiver, friend, or responsible party shall sign the person out.

History Note: Authority S.L. 2011-104; Temporary Adoption Eff. January 1, 2012; Eff. October 1, 2012.

10A NCAC 14D .0501 STAFFING

(a) The staffing pattern shall be adequate to meet the needs of each overnight respite services program resident, with at least one staff present at all times.

(b) Services required beyond personal care and supervision shall be provided by a licensed professional if required by law.

History Note: Authority S.L. 2011-104; Temporary Adoption Eff. January 1, 2012; Eff. October 1, 2012.

10A NCAC 14D .0502 STAFF

(a) Each staff person must:

(1) have a job description that reflects actual duties and responsibilities and is signed by the administrator and the employee;

(2) be able to apply all of the home's accident, fire safety and emergency procedures for the protection of the residents;

(3) be informed of the confidential nature of resident information and protect and preserve the information from unauthorized use and disclosure;

(4) not hinder or interfere with the exercise of the rights as defined by program policy;

(5) have no substantiated findings listed on the North Carolina Health Care Personnel Registry according to G.S. 131E-256;

(6) have a criminal background check in accordance with G.S. 114-19.10 and G.S. 131D-40; and

(7) work with bona fide inspectors and the monitoring and licensing agencies toward meeting and maintaining the rules of this Subchapter.

(b) Any staff member left in charge of the care of residents shall be 18 years or older.

History Note: Authority S.L. 2011-104; Temporary Adoption Eff. January 1, 2012; Eff. October 1, 2012.

10A NCAC 14D .0601 MEDICATION ADMINISTRATION

(a) All adult day care programs offering overnight respite services shall develop and implement policies and procedures on resident medication use, medication administration, order changes and medication disposal.

(b) Medications shall be administered according to the resident's medication schedule. The medication schedule shall list all medications with dosages and times medications are to be administered.

(c) A record of all medications given to each participant shall be updated as needed and shall document the following:

(1) the resident's name;

(2) the name, dosage, quantity and route of the medication;

(3) instructions for giving medication;

(4) the date and time medication is administered; and

(5) the name or initials of person giving the medication. If initials are used, a signature equivalent to those initials shall be entered on this record.

(d) Medications shall be kept in the original pharmacy containers in which they were dispensed. The containers shall be labeled with the resident's full name, the name and strength of the medicine, and dosage and instructions for administration. Medicines shall be kept in a locked location.

(e) Only adult day health or adult day care and day health combination programs shall enroll or serve residents who require intravenous, intramuscular or subcutaneous medications while attending the program.

History Note: Authority S.L. 2011-104; Temporary Adoption Eff. January 1, 2012; Eff. October 1, 2012.

10A NCAC 14D .0602 MEDICATION ADMINISTRATION COMPETENCY EVALUATION

(a) Validation of each staff person's competency to administer medications must be completed prior to administering medications.

(b) The competency evaluation for medication administration shall include the staff person having passed the standardized written exam established by the Department and a clinical skills validation by a registered nurse or registered pharmacist consistent with the North Carolina occupational licensing laws.

(c) In lieu of meeting (a) and (b) of this rule, the staff may demonstrate completion of the medication aide requirements established by G.S. 131E-114.2 and applicable rules.

(d) A licensed health professional must be available for consultation with staff if needed and the availability shall be documented.

History Note: Authority S.L. 2011-104; Temporary Adoption Eff. January 1, 2012; Eff. October 1, 2012.

10A NCAC 14D .0603 MEDICATION ADMINISTRATION POLICIES AND PROCEDURES

An adult day care program offering overnight respite care services must develop and implement written policies and procedures regarding processes used for:

(1) written directions provided for staff administering medications;

(2) documentation of medication administration;

(3) maintenance of documentation;

(4) documentation and reporting of medication errors; and

(5) medication disposition.

History Note: Authority S.L. 2011-104; Temporary Adoption Eff. January 1, 2012; Eff. October 1, 2012.

10A NCAC 14D .0701 FOOD PROCUREMENT AND SAFETY

(a) The kitchen, dining and food storage areas shall be clean, orderly and protected from contamination.

(b) All food and beverage being procured, stored, prepared or served by the facility shall be protected from contamination.
(c) All meat served to residents shall have been processed at a United States Department of Agriculture (USDA) approved processing plant.
(d) There shall be at least a three-day supply of perishable food and a five-day supply of non-perishable food in the facility based on the menus, for both regular and therapeutic diets.

History Note: Authority S.L. 2011-104;
Eff. October 1, 2012.

10A NCAC 14D .0702 FOOD PREPARATION AND SERVICE
(a) Sufficient staff, space and equipment shall be provided for safe and sanitary food storage, preparation and service.
(b) Table service shall include a napkin and non-disposable place setting consisting of at least a knife, fork, spoon, plate and beverage containers. Exceptions may be made on an individual basis and shall be based on documented needs or preferences of the resident.
(c) If residents require feeding assistance, food shall be maintained at serving temperature until assistance is provided.

History Note: Authority S.L. 2011-104;
Eff. October 1, 2012.

10A NCAC 14D .0703 MENUS
(a) Menus shall be prepared according to the USDA Dietary Guidelines for Americans which is incorporated by reference with all subsequent amendments and is available at no cost on the internet website, http://www.health.gov/dietaryguidelines.
(b) Menus shall be maintained in the kitchen and identified as to the current menu day and cycle for any given day for guidance of food service staff.
(c) Any substitutions made in the menu shall be of equal nutritional value, appropriate for therapeutic diets and documented to indicate the foods actually served to residents.
(d) Menus shall be planned to take into account the food preferences and customs of the residents.
(e) All menus including all therapeutic diets shall be planned or reviewed by a licensed dietitian/nutritionist as required by G.S. 90, Article 25. The facility shall maintain verification of the dietitian's approval of the therapeutic diets including an original signature by the dietitian and the licensure number of the dietitian.
(f) The facility shall have a matching therapeutic diet menu for all physician-ordered therapeutic diets for guidance of food service staff.

History Note: Authority S.L. 2011-104;
Eff. October 1, 2012.

10A NCAC 14D .0704 FOOD REQUIREMENTS
(a) Each adult day care program offering overnight respite care services shall be served a minimum of three meals a day at regular hours with at least 10 hours between the breakfast and evening meals.
(b) Foods and beverages that are appropriate to overnight respite residents' diets shall be offered or made available to overnight respite residents as snacks between each meal for a total of three snacks per day and shown on the menu as snacks.

History Note: Authority S.L. 2011-104;
Eff. October 1, 2012.

10A NCAC 14D .0705 THERAPEUTIC DIETS
(a) All therapeutic diet orders including thickened liquids shall be in writing from the resident's physician.
(b) Where applicable, the therapeutic diet order shall be specific to calorie, gram or consistency, such as for calorie controlled American Diabetic Association diets, low sodium diets or thickened liquids, unless there are written orders that include the definition of any therapeutic diet identified in the facility's therapeutic menu approved by a licensed dietitian/nutritionist.
(c) The facility shall maintain an accurate and current listing of overnight respite residents with physician-ordered therapeutic diets for guidance of food service staff.

History Note: Authority S.L. 2011-104;
Eff. October 1, 2012.

10A NCAC 14D .0706 FEEDING ASSISTANCE
(a) Sufficient staff shall be available for individual feeding assistance as needed.
(b) Residents needing help in eating shall be assisted upon receipt of the meal and the assistance shall be unhurried and in a manner that maintains or enhances each resident's dignity and respect.

History Note: Authority S.L. 2011-104;
Eff. October 1, 2012.

10A NCAC 14D .0707 ACCOMMODATION OF RESIDENT NEEDS AND PREFERENCES
Variations from the required three meals or time intervals between meals to meet individualized needs or preferences of residents shall be documented in the overnight respite resident's record.

History Note: Authority S.L. 2011-104;
Eff. October 1, 2012.

10A NCAC 14D .0801 ACTIVITIES PROGRAM
(a) Each adult day care program offering overnight respite care services shall develop a program of activities designed to promote the residents' active involvement with each other, their families, and the community.
(b) If there is a question about a resident's ability to participate in an activity, the resident, the resident's physician, family or responsible party shall be consulted to obtain a statement regarding the resident's capabilities.

History Note: Authority S.L. 2011-104;
Temporary Adoption Eff. January 1, 2012;
Eff. October 1, 2012.

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10A NCAC 41A .0106 REPORTING OF HEALTH CARE-ASSOCIATED INFECTIONS

(a) The following definitions apply throughout this Rule:

(1) "Hospital" means any facility designated as such in G.S. 131E-76(3).

(2) "National Healthcare Safety Network" is an internet-based surveillance system managed by the Centers for Disease Control and Prevention. This system is designed to be used for the direct, standardized reporting of healthcare quality information, including health care-associated infections, by health care facilities to public health entities.

(3) "Health care-associated infection" means a localized or systemic condition in the patient resulting from an adverse reaction to the presence of an infectious agent(s) or its toxin(s) with no evidence that the infection was present or incubating when the patient was admitted to the health care setting.

(4) "Denominator or summary data" refers to referent or baseline data required to generate meaningful statistics for communicating health care-associated infection rates.

(5) "The Centers for Medicaid and Medicare Services - Inpatient Prospective Payment System (CMS – IPPS) rules" are regulations promulgated for the disbursement of operating costs by the Centers for Medicare and Medicaid Services for acute care hospital stays under Medicare Part A based on prospectively set rates for care.

(b) Hospitals shall electronically report all health care-associated infections required by Paragraph (c) of this Rule through the National Healthcare Safety Network and shall make the data available to the Department. Hospitals also shall:

(1) Report all specified health care-associated infections within 30 days following the end of every calendar month during which the infection was identified;

(2) Report all required health care-associated infection denominator or summary data for healthcare-associated infections within 30 days following the end of every calendar month; and,

(3) Comply with all reporting requirements for general participation in the National Healthcare Safety Network.

(c) Except as provided in rules of this Section, hospitals shall report the healthcare-associated infections required by the Centers for Medicare and Medicaid Services listed in the CMS-IPPS rules beginning on the dates specified therein. A summary of the HAI reporting requirements from the current copy of the CMS-IPPS rules may be obtained through the CMS QualityNet site at http://www.qualitynet.org/dcs/ContentServer?c=Page&pagename=QnetPublic%2FPage%2FQnetTier2&cid=1228760487021 The CMS IPPS rules themselves can be obtained from the CMS IPPS website at http://www.cms.gov/AcuteInpatientPPS/IPPS2011/list.asp#TopOfPage and http://www.cms.gov/AcuteInpatientPPS/FR2012/list.asp#TopOfPage. A copy of the current CMS-IPPS rules, applicable to this section, is available for inspection in the Division of Public Health, 225 N. McDowell Street, Raleigh NC 27601.

(d) Beginning October 1, 2012 and quarterly thereafter, the Department shall release reports to the public on health care-associated infection(s) in North Carolina.

History Note: Authority G.S. 130A-150;
Temporary Adoption Eff. November 30, 2011;
Eff. October 1, 2012.

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10A NCAC 43I .0101 INCORPORATION BY REFERENCE: 7 C.F.R. PART 225

Title 7, Code of Federal Regulations, Part 225 is hereby incorporated by reference along with all subsequent amendments and editions. A copy of 7 C.F.R. Part 225 is available for inspection at the Department of Health and Human Services, Division of Public Health, Women's and Children's Health Section, Nutrition Services Branch, 5601 Six Forks Road, Raleigh, North Carolina. Copies of 7 C.F.R. Part 225 may be downloaded and printed from the Internet at http://www.fns.usda.gov/cnd/summer/Administration/Regulations/CFR225.pdf.

History Note: Authority G.S. 130A-29; 130A-361; S.L. 1995, c. 324, s. 17.11; 42 U.S.C. 1761;
Temporary Adoption Eff. July 8, 1996;
Eff. August 1, 1998;
Amended Eff. October 1, 2012.

10A NCAC 43J .0101 INCORPORATION BY REFERENCE: 7 C.F.R. PART 226

Title 7, Code of Federal Regulations, Part 226 is hereby incorporated by reference along with all subsequent amendments and editions. A copy of 7 C.F.R. Part 226 is available for inspection at the Department of Health and Human Services, Division of Public Health, Women's and Children's Health Section, Nutrition Services Branch, 5601 Six Forks Road, Raleigh, North Carolina. Copies of 7 C.F.R. Part 226 may be downloaded and printed from the Internet at http://www.fns.usda.gov/cnd/Care/Regs-Policy/CFR226.pdf.

History Note: Authority G.S. 130A-29; 130A-361; S.L. 1995, c. 324, s. 17.11; 42 U.S.C. 1766;
Temporary Adoption Eff. July 8, 1996;
Eff. August 1, 1998;
Amended Eff. October 1, 2012.

TITLE 12 – DEPARTMENT OF JUSTICE

12 NCAC 09E .0102 REQUIRED ANNUAL IN-SERVICE TRAINING TOPICS (EFFECTIVE UNTIL FEBRUARY 1, 2013)

The following topical areas are hereby established as minimum topics and hours to be included in the law enforcement officers' annual in-service training program:

(1) Firearms Training and Qualification (4);
(2) Legal Update (4);
(3) Career Survival: Leadership and Mentoring (4);
(4) Juvenile Minority Sensitivity Training: Interactions, Communications and Understanding (2);
(5) Domestic Violence: Lesbian, Gay, Bi-Sexual and Transgender (LGBT) Relationships (2); and
(6) Department Topics of Choice (8).

History Note: Authority G.S. 17C-6; 17C-10;
Eff. July 1, 1989;
Amended Eff. January 1, 2005;
Temporary Amendment Eff. January 1, 2005;
Amended Eff. February 1, 2011; January 1, 2010; April 1, 2009; April 1, 2008; February 1, 2007; January 1, 2006.

12 NCAC 09E .0102 REQUIRED ANNUAL IN-SERVICE TRAINING TOPICS (EFFECTIVE FEBRUARY 1, 2013)

History Note: Authority G.S. 17C-6; 17C-10;
Eff. July 1, 1989;
Amended Eff. January 1, 2005;
Temporary Amendment Eff. January 1, 2005;
Amended Eff. February 1, 2011; January 1, 2010; April 1, 2009; April 1, 2008; February 1, 2007; January 1, 2006;
Repealed Eff. February 1, 2013.

TITLE 15A – DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

15A NCAC 01A .0102 HOW TO CONTACT THE DEPARTMENT

(a) The Headquarters of the Department is located in the Environment and Natural Resources Building, Raleigh, North Carolina. The mailing address of the Department is 1601 Mail Service Center, Raleigh, North Carolina 27699-1601. The toll free telephone number is (877)623-6748. All citizens wishing to contact the Department are urged to make initial contact through the regional manager at the nearest regional office. Information regarding the location of the regional offices is available through the following website: http://portal.ncdenr.org/web/guest/contacts.

History Note: Authority G.S. 143B-10(b);
Eff. February 1, 1976;
Amended Eff. October 1, 1984; February 23, 1979;
Transferred from T15.01A .0004 Eff. November 1, 1989;
Amended Eff. October 1, 2012; March 1, 1990.

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15A NCAC 18A .2528 FENCES

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

(1) The top of the barrier shall be at least 48 inches above grade measured on the side of the barrier that faces away from the swimming pool. The maximum vertical clearance between grade and the bottom of the barrier shall be two inches measured on the side of the barrier that faces away from the swimming pool;
(2) Openings in the barrier shall not allow passage of a four-inch-diameter sphere and shall provide no external handholds or footholds. Solid barriers that do not have openings shall not contain indentations or protrusions except for normal construction tolerances and tooled masonry joints;
(3) Where the barrier is composed of horizontal and vertical members and the distance between the tops of the horizontal members is 45 inches or more, spacing between the vertical members shall not exceed four inches. Where there are decorative cutouts within the vertical members, spacing within the cutouts shall not exceed 1.75 inches in width;
(4) Where the barrier is composed of horizontal and vertical members and the distance between the tops of the horizontal members is less than 45 inches, the horizontal members shall be located on the swimming pool side of the fence. Spacing between the vertical members shall not exceed 1.75 inches in width. Where there are decorative cutouts within the vertical members, spacing within the cutouts shall not exceed 1.75 inches in width;
(5) Maximum mesh size for chain link fences shall be a 2.25 inch square unless the fence is provided with slats fastened at the top or the bottom that reduce the openings to no more than 1.75 inches;
(6) Where the barrier is composed of diagonal members, the maximum opening formed by the diagonal members shall be no more than 1.75 inches;
(7) Access gates shall comply with the dimensional requirements for fences and shall be equipped to accommodate a locking device. Effective April 1, 2011, pedestrian access gates shall open outward away from the pool and shall be self-closing and have a self-latching device except where a gate attendant and lifeguard are on duty. Gates other than pedestrian access gates shall have a self-latching device. Where the release mechanism

of the self-latching device is located less than 54 inches from the bottom of the gate, the release mechanism shall require the use of a key, combination or card reader to open or shall be located on the pool side of the gate at least three inches below the top of the gate, and the gate and barrier shall have no openings greater than 0.5 inch within 18 inches of the release mechanism; and

(8) Ground level doors and windows opening from occupied buildings to inside the pool enclosure shall be self-closing or child protected by means of a barrier or audible alarm.

(b) Public swimming pool fences constructed prior to May 1, 2010 may vary from the provisions of Paragraph (a) of this Rule as follows:

(1) the maximum vertical clearance between grade and the bottom of the barrier may exceed two inches, but shall not exceed four inches;

(2) where the barrier is composed of vertical and horizontal members and the space between vertical members exceeds 1.75 inches, the distance between the tops of the bottom horizontal member and the next higher horizontal member may be less than 45 inches, but shall not be less than 30 inches;

(3) gates other than pedestrian access gates are not required to have self-latching devices if the gates are kept locked; and

(4) gates may swing towards a pool where natural topography, landscape position or emergency egress requirements prevent gates from swinging away from the pool.

(c) Public swimming pools permitted prior to April 1, 2010 with existing fences that do not comply with the dimensional requirements of Subparagraphs (a)(1) through (a)(6) and (b)(1) through (b)(2) shall not be denied an operation permit solely due to the preexisting non-compliance. Operation permits shall be denied to an owner or operator who fails to comply with Subparagraphs (a)(1) through (a)(6) and (b)(1) through (b)(2) of this Rule when:

(1) at least fifty percent (50%) of the fence has been damaged or destroyed; or

(2) the owner or operator elects to replace the fence.

History Note: Authority G.S. 130A-282;
Eff. May 1, 1991;
Amended Eff. May 1, 2010; February 1, 2004; April 1, 1999; January 1, 1996; July 1, 1992;
Temporary Amendment Eff. November 30, 2011;
Amended Eff. October 1, 2012.

TITLE 21 – OCCUPATIONAL LICENSING BOARDS AND COMMISSIONS

CHAPTER 02 - BOARD OF ARCHITECTURE

21 NCAC 02 .0109 DEFINITIONS

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

(1) "Delinquent" is the status of a license registration that has not been renewed in accordance with 21 NCAC 02 .0213(b) for individuals and 21 NCAC 02 .0214(d) for firms.

(2) "Licensed" means holding a license to practice architecture in the State of North Carolina as defined by North Carolina General Statute Chapter 83A. "Registered" has the same meaning as licensed.

(3) "Fictitious name" is any assumed name, style or designation other than the proper name of the entity using such name. The surname of a person, standing alone or coupled with words that describe the business, is not a fictitious business name. The inclusion of words that suggest additional owners, such as "Company," "& Company," "& Sons," "& Associates," makes the name an assumed or fictitious name. For partnerships, the last name of all partners must be listed or the fictitious name definition applies.

(4) "Responsible control" has the meaning described in Rule .0206(d).

(5) "Firm" or "Architectural Firm" means any Professional Corporation or Professional Limited Liability Company approved by the Board and engaged in the practice of architecture.

(6) "Procurement" means purchasing or pricing of materials to construct a building or structure.

(7) Direct Supervision as used in North Carolina General Statute 83A means responsible control.

(8) "Continuing Competency" as used in North Carolina General Statute 83A-6(a)(5) means continuing education obtained post licensure that enables a registered architect to increase or update knowledge of and competence in technical and professional subjects related to the practice of architecture to safeguard the public's health, safety and welfare.

(9) "Health, safety and welfare" (HSW) as used in North Carolina General Statute 83A-6 (a)(5) means technical and professional subjects that according to these rules safeguard the public and that are necessary for the proper evaluation, design, construction and utilization of buildings and the built environment.

History Note: Authority G.S. 83A-6;
Eff. November 1, 2010;
Amended Eff. October 1, 2012.

21 NCAC 02 .0902 DEFINITIONS

History Note: Authority G.S. 83A-6(a)(4); 83A-6(a)(5); 83A-11;
Eff. July 1, 1998;
Repealed Eff. October 1, 2012.

21 NCAC 02 .0903 REQUIREMENTS

(a) Every registrant shall obtain 12 contact hours for each calendar year. "Contact Hour" means a minimum of 50 minutes contact.

(b) The contact hours shall be obtained in structured educational activities intended to increase or update the architect's knowledge and competence in technical and professional architectural subjects directly related to safeguarding public health, safety and welfare("HSW"). "Structured educational activities" are activities in which at least 75 percent of an activity's content and instructional time is devoted to HSW subjects related to the practice of architecture, including courses of study or other activities under the areas identified as HSW by individuals or organizations, whether delivered by direct contact or distance learning methods.

(c) Registrants shall not carry forward any contact hours into the subsequent period.

(d) Registrants shall certify completion of the contact hours for the previous calendar year with annual registration renewal.

History Note: Authority G.S. 83A-6(a)(4); 83A-6(a)(5); 83A-11;
Eff. July 1, 1998;
Amended Eff. October 1, 2012.

21 NCAC 02 .0904 DETERMINATION OF CREDIT

(a) The Board has final authority with respect to approval of courses, programs, and contact hours.

(b) The Board may randomly audit the compliance of individual registrants and require proof in the form of records maintained pursuant to Rule .0905 of this Section of participation in courses or programs that conform with the content and contact hours calculation requirements contained in G.S. 83A-6(a) and these Rules.

History Note: Authority G.S. 83A-6(a)(4); 83A-6(a)(5); 83A-11;
Eff. July 1, 1998;
Amended Eff. October 1, 2012; July 1, 2006.

21 NCAC 02 .0905 RECORD KEEPING

(a) The registrant shall maintain records to support credits claimed. Records required include:

(1) A log showing the type of activity claimed, sponsoring organization, location, duration, the name of the instructor or speaker and contact hours earned; or
(2) Attendance certificates or other evidence of participation; or
(3) Records maintained by the American Institute of Architects Continuing Education System(AIA/CES).

(b) Records shall be retained by the registrant for a period of six years after the credit is claimed and provided to the Board upon request.

History Note: Authority G.S. 83A-6(a)(4); 83A-6(a)(5); 83A-11;
Eff. July 1, 1998;
Amended Eff. October 1, 2012.

21 NCAC 02 .0906 EXCEPTIONS

A registrant shall be exempt from the continuing education requirements for any of the following reasons:

(1) New registrants by way of examination or reciprocity for the calendar year in which they become licensed;
(2) A registrant serving on temporary active duty in the armed forces of the United States for a period of time exceeding 90 consecutive days in a year or as provided by statute, whichever is greater;
(3) Registrants experiencing physical disability or illness if supporting documentation is approved by the Board. Such documentation shall be in the form of a statement by the registrant, a statement from a physician, or medical records which show that the disability or illness prevented registrant's participation in a course which the registrant had enrolled, or prevented registrant's participation in the continuing education program for at least 90 consecutive days in a year; and
(4) Registrants who receive emeritus status from the Board. In order to return to active practice, registrants shall complete continuing education requirements for each exempted year not to exceed two years.

History Note: Authority G.S. 83A-6(a)(4); 83A-6(a)(5); 83A-11;
Eff. July 1, 1998;
Amended Eff. October 1, 2012; July 1, 2006.

21 NCAC 02 .0909 FORMS

All renewal applications shall require the completion of a continuing education certification provided by the Board documenting the contact hours claimed for the renewal period. The registrant shall supply sufficient detail to permit audit verification and shall certify and sign the continuing education certification with the renewal application and fee.

History Note: Authority G.S. 83A-6(a)(4); 83A-6(a)(5); 83A-11;
Eff. July 1, 1998;
Amended Eff. October 1, 2012.

21 NCAC 02 .0910 NON-COMPLIANCE

(a) If any credits are disallowed by the Board, then the registrant shall have 60 calendar days after notification to substantiate the original claim or obtain other contact hours to meet the minimum requirements.

(b) Licensees who fail to complete the continuing education requirement by the end of the previous calendar year shall have his or her license placed on probation and shall complete the outstanding continuing education by December 31st of the current calendar year. If the licensee fails to complete the outstanding continuing education requirements his or her license shall be suspended for 60 days or until such time as compliance is demonstrated if prior to 60 days. If the licensee fails to complete the outstanding continuing education within the 60 days suspension period his or her license shall be revoked.

History Note: Authority G.S. 83A-6(a)(4); 83A-6(a)(5); 83A-11; 83A-15;
Eff. July 1, 1998;
Amended Eff. October 1, 2012; July 1, 2006.

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CHAPTER 14 – BOARD OF COSMETIC ART EXAMINERS

21 NCAC 14A .0101 DEFINITIONS
The following definitions apply in this Chapter:

(1) "Beauty Establishment" refers to both cosmetic art schools and cosmetic art shops.
(2) "Cosmetology School" is any cosmetic art school that teaches cosmetic art as defined by G.S. 88B-2(5), but is not solely a manicurist or an esthetics school.
(3) "Cosmetology Student" is a student in any cosmetic art school whose study is the full curriculum.
(4) "Manicurist School" is a cosmetic art school that teaches only the cosmetic art of manicuring.
(5) "Manicurist Student" is a student in any cosmetic art school whose study is limited to the manicurist curriculum set forth in 21 NCAC 14K .0102.
(6) "Successful Completion" is the completion of an approved cosmetic art curriculum with a minimum grade of "C" or 70 %, whichever is deemed as passing by the cosmetic art school.
(7) "Esthetician School" is any cosmetic art school that teaches only the cosmetic art of skin care.
(8) "Esthetician Student" is a student in any cosmetic art school whose study is limited to the esthetician curriculum set forth in 21 NCAC 14O .0102.
(9) "Licensing cycle" for cosmetologists is a three-year period beginning on the first day of October and ending on the third following first day of October and continuing thereafter in three year intervals. For estheticians, natural hair care specialists and manicurists, the licensing cycle is one year in length beginning on the first day of October and ending on the next first day of October. For teachers, the licensing cycle is a two-year period beginning on the first day of October of an even-numbered year and ending on the next first day of October of the next even-numbered year.
(10) "Renewal period" for individual licensees is a three-month period beginning on the first day of July and ending on the first day of October of a renewal year. The "renewal period" for salon licensees is a two-month period beginning on the first day of December and ending on the first day of February of a renewal year.

History Note: Authority G.S. 88B-2; 88B-4;
Eff. February 1, 1976;
Amended Eff. June 1, 1993; October 1, 1991; May 1, 1991; January 1, 1989;
Temporary Amendment Eff. January 1, 1999;
Amended Eff. October 1, 2012; July 1, 2010; December 1, 2008; May 1, 2005; December 1, 2004; May 1, 2004; February 1, 2004; April 1, 2001; August 1, 2000.

21 NCAC 14A .0402 DUPLICATE LICENSES
(a) A licensee may request a duplicate license by submitting written application and a duplicate license fee to the Board.
(b) All overpayments will be returned to the submitting applicant or licensee.

History Note: Authority G.S. 88B-20;
Eff. October 1, 2012.

21 NCAC 14A .0403 ADDITIONAL SALON CHAIRS
Salon owners may request additional salon chair licensure by submitting written application and additional chair fees to the Board.

History Note: Authority G.S. 88B-20;
Eff. October 1, 2012.

21 NCAC 14T .0205 NATURAL HAIR CARE SCHOOLS
Natural Hair Care Styling Schools must have the following physical departments: Advanced Department - a minimum clinic floor of 600 square feet which shall accommodate a maximum of 16 enrolled advanced students. Schools must provide an additional 7.5 square feet on the clinic floor for each enrolled advanced student over 16.

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

21 NCAC 14T .0303 EQUIPMENT FOR ESTHETICS SCHOOLS
(a) The beginner department in an esthetics school must be equipped with the following equipment:

(1) One mannequin practice table/stand to accommodate each student enrolled in the beginner department;
(2) One sink with hot and cold running water.

(b) The advanced department in an esthetics school shall be equipped with the following equipment for 1-20 students:

(1) Ten facial treatment chairs or treatment tables;
(2) Ten esthetician's stools and waste container at each station;
(3) One facial vaporizer;
(4) One galvanic current apparatus;
(5) One infra-red lamp;
(6) One woods lamp;
(7) One magnifying lamp;
(8) One hair removal wax system;
(9) One thermal wax system;
(10) One suction machine;
(11) One exfoliation machine with brushes; and
(12) One hand washing sink with hot and cold running water, separate from restrooms.

(c) The advanced department in an esthetics school must be equipped with the following equipment if there are more than 20 enrolled advanced students:

(1) One station for each additional two students: a station shall include one facial treatment table or chair and one stool; and
(2) Two hand washing sinks with hot and cold running water, separate from restrooms.

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

21 NCAC 14T .0304 EQUIPMENT FOR MANICURING SCHOOLS

(a) The beginner department in a manicuring school must be equipped with the following equipment:

(1) One mannequin practice table/stand to accommodate each student enrolled in the beginner department; and
(2) One hand washing sink with hot and cold running water, separate from restrooms.

(b) The advanced department in a manicuring school must be equipped with the following equipment:

(1) Two hand washing sinks with hot and cold running water, separate from restrooms, located in or adjacent to the clinic area;
(2) Ten work tables with two chairs per table;
(3) Ten pedicure chairs and basins;
(4) A waste container at each station; and
(5) A covered container for soiled or disposable towels located in the clinic area.

(c) The advanced department in a manicuring school must be equipped with the following equipment if there are more than 20 enrolled advanced students:

(1) One station for each additional two students a station shall include one work table and two chairs; and
(2) Two hand washing sinks with hot and cold running water, separate from restrooms

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

21 NCAC 14T .0305 EQUIPMENT FOR NATURAL HAIR CARE STYLING SCHOOLS

(a) The beginner department in a natural hair care styling school must be equipped with the following:

(1) One shampoo bowl and chair. Each side approach shampoo bowl must be at least 40 inches apart, center of bowl to center of bowl; free standing shampoo bowls must be at least 31 inches apart, center of bowl to center of bowl;
(2) Styling equipment for the purpose of natural hair care;
(3) Visual aids;
(4) One mannequin practice table/stand to accommodate each student.

(b) The advanced department in a natural hair care styling school must be equipped with the following:

(1) Two shampoo bowls and chairs. Each side approach shampoo bowl must be 40 inches apart center of bowl to center of bowl; free standing shampoo bowls must be 31 inches apart center of bowl to center of bowl;
(2) Eight stations. A station shall include one mirror and one hydraulic chair;
(3) Two hooded floor type dryers; and
(4) Styling equipment for the purpose of natural hair care.

(c) The advanced department in a natural hair care styling school must be equipped with the following if there are more than 16 enrolled advanced students:

(1) One station for each additional two students; a station shall include one mirror and one hydraulic chair;
(2) One hooded dryer for each additional 10 students; and
(3) One shampoo bowl for each additional 10 students.

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

21 NCAC 14T .0602 COSMETOLOGY CURRICULUM

(a) To meet the approval of the Board, a cosmetologist training course must consist of at least 1500 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	1200		
Performance Requirements		**Mannequin**	**Live Model**
Scalp and hair treatments			10
Fullhead fingerwave and style		5 or	5
Fullhead pincurl and style		5 or	5
Hair styling – sets, blowdrying, thermal press/flat iron, and artificial hair		70	100
Haircuts		10	75
Chemical reformation or permanent waving and relaxers		25	10
Temporary color			2
Color application – semi, demi, permanent color and hair lightening		10	30
Multidimensional color – low/high lighting, cap, bleach		10	15
Lash and brow color			2
Nail care – manicures and pedicures			15
Artificial nails sets		5 or	5
Facials with surface manipulations			10
Makeup application			2
Hair removal			5

(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. October 1, 2012.

21 NCAC 14T .0612 INSTRUCTION GUIDELINES
(a) The hours earned in the advanced department must be devoted to study and performance completions.
(b) Work in the advanced department may be done on the public. Cosmetology and apprentice students with less than 300 hours, esthetician students with less than 75 hours, and manicurist and natural hair care students with less than 60 hours must not work in this department and are not allowed to work on the public except shampoo and scalp manipulations.
(c) All work done by students on the public must be checked by the cosmetic art teacher as the work is being performed and after the service has been completed so that the teacher may point out errors to the student in order that they may be corrected.
(d) Cosmetic art students shall receive training and passing scores on examinations on theory prior to performing services.
(e) Theory work shall include lectures on theory subjects as well as demonstrations, questions and answers on textbooks, written examinations, and in-class practice of procedures and methods.
(f) Cosmetic art teacher trainees must be enrolled in school to earn hours.

(g) Cosmetic art schools must supply each student with a copy of An Act to Regulate Cosmetic Art, Board rules, and the student handbook.
(h) All of the work outlined in the Beginners' Department and the Advanced Department shall be given to the students through practical demonstrations and lectures, questions and answers on textbooks, and written exam.
(i) A minimum of 10 percent of scheduled attendance time per week shall be dedicated to theory instruction, questions and answers on textbooks, and written exam shall be given to full time students per week.
(j) All papers shall be graded and returned to the students in order that the students may see their errors.
(k) Cosmetic art students may receive training and practice only in the discipline in which they are enrolled.
(l) All live model performances must be done in the advanced department. Mannequin performances and live model performances on other students may be performed in the

advanced department or in an advanced department classroom or room within the school with the required space and equipment for practice.
(m) Textbooks shall not be used more than five years after original publication date.
(n) Schools must provide text books and supplementary educational materials and equipment to students.

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

21 NCAC 14T .0613 UNIFORMS AND IDENTIFICATION

(a) Each cosmetic arts school must define what constitutes a uniform for students and acceptable attire for teachers. Students and teachers shall wear the uniform or acceptable attire as defined by the school so that Board members or agents of the Board can identify by sight students and teachers.
(b) Each school's definition of acceptable attire cannot change more than once per year.
(c) Students must wear a name tag identifying student name, cosmetic art discipline and academic status. At no time shall a student fail to wear a name tag.
(d) Each cosmetic art school may permit students to be out of uniform a maximum of four days per year. Notice to the Board must be submitted prior to any day uniforms will not be worn.

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

21 NCAC 14T .0701 SCHOOL OPERATIONS/LICENSURE MAINTENANCE

(a) No individual shall be given credit for any hours earned in a cosmetic art school before the date the school is granted a license, before the student is enrolled or after graduation or withdrawal without a new enrollment.
(b) All Cosmetic Art schools must submit hours of operation per cosmetic art discipline to the Board. Any changes to the hours of operation must be submitted to the Board. A school will be considered open by the Board when cosmetic art instruction, services or performances are provided.
(c) Students can be required to clean and disinfect work areas, reception areas, implements and the dispensary. Students cannot be required to perform regular maintenance.
(d) All cosmetic art schools must adhere to all Board sanitation regulations.
(e) Cosmetic art schools may permit students to leave the cosmetic art school to visit on campus libraries and other educational resource rooms such as computer labs for research and study under the supervision of a cosmetic art instructor.
(f) Cosmetic art schools must use the following grading scale as a minimum for passing grades:

Grade A	100-90
Grade B	80-89
Grade C	70-79
Grade F (Fail)	0-69

(g) Cosmetic art schools shall not graduate any student who has not met the minimum school and Board requirements for graduation.
(h) Examinations shall be administered in all subjects of the cosmetic art curriculum. Students must pass examinations in all curriculum subjects.
(i) Students present at school must be supervised by a cosmetic art teacher at all times. If a guest lecturer is leading a class, at least one cosmetic art teacher must be present in the lecture.
(j) All cosmetic art schools shall provide:
(1) One teacher for every 25 students enrolled in the beginner department.
(2) During student practical work on live models, in the advanced department a ratio of one teacher for every 20 students.
(3) Cosmetic art teachers at a ratio of 1:25 teacher to teacher trainees; or
(A) one teacher and up to 25 beginner cosmetic art students and 5 teacher trainees; or
(B) one teacher and up to 20 cosmetic art students in practice on the clinic floor and 5 teacher trainees.
(k) In theory classes the teacher student ratio may exceed the ratios established in this Rule.
(l) The teacher student ratios established in this Rule shall be adhered to when schools are in operation.
(m) A teacher shall not administer instruction to students enrolled in beginner and advanced departments at the same time.
(n) At no time can any one teacher be simultaneously responsible for students in a theory class and students in practice on the clinic floor.
(o) The Board must be notified of changes in teaching staff by written correspondence prior to instruction by the new teacher.
(1) A change in teaching staff includes any substitution for the regularly scheduled teacher and any change, scheduled or otherwise, in the list of teachers last given to the Board.

(2) All courses in a cosmetic art school must be taught by a licensed cosmetology teacher, except that manicuring courses may be taught by either a licensed cosmetology teacher or a licensed manicurist teacher, natural hair care courses may be taught by either a licensed cosmetology teacher or a licensed natural hair care teacher, and esthetics courses may be taught by either a licensed cosmetology teacher or a licensed esthetician teacher. A licensed cosmetologist not licensed as a cosmetology teacher may substitute for a cosmetology, esthetician, natural hair care or manicurist teacher; a licensed manicurist not licensed as a manicurist teacher may substitute for a manicurist teacher; a licensed natural hair care specialist not licensed as a natural hair care teacher may substitute for a natural hair care teacher; and a licensed esthetician not licensed as an esthetician teacher may substitute for an esthetician teacher.

(p) In no event may any cosmetic art licensee substitution last for more than 15 consecutive working days per year per teacher. If any teacher substitution is 16 consecutive days or longer, the school must provide a new cosmetic art teacher.

(q) Enrolled students may earn a maximum of 10 hours per day per discipline of cosmetic art and a maximum of 48 hours per week per discipline. A student enrolled in more than one cosmetic art discipline may not earn hours or performances concurrently.

(r) A cosmetic art student must complete at least 1/3 of the minimum required hours in the cosmetic art school certifying his or her application for the state board examination.

(s) Upon written petition by the student and the school, the Board shall make an exception to the requirements set forth in Paragraph (r) of this Rule if the student shows that circumstances beyond the student's control prohibited him or her from completing a minimum of 1/3 hours at the school that certifies his or her application.

(t) The Board shall certify student hours for any North Carolina cosmetic art school that is closed. The Board shall not certify student hours between any North Carolina open cosmetic art schools. The Board shall certify student hours earned at North Carolina cosmetic art schools to other state boards and schools open outside of the state of North Carolina.

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

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CHAPTER 52 - BOARD OF PODIATRY EXAMINERS

21 NCAC 52 .0208 CONTINUING EDUCATION

(a) An additional requirement for issuance of the annual renewal certificate shall be certification to the board of proof of having complied with the continuing education provisions of the General Statutes. The board shall notify all podiatrists that 25 hours are required annually.

(b) General CME policy – Minimum of 25 hours / year

(1) Completion of 25 hours of Continuing Medical Education (CME) is required per year (July 1-June 30) for renewal of licensure. CME credits cannot be carried over from the previous licensure year.

(2) It shall be the responsibility of the individual podiatrist to ascertain in advance that the courses which he or she attends have received proper approval of the certifying organizations. The Board shall respond in writing or by email with approval or denial to individuals requesting approval of CME courses and credit hours. Decisions by the Board are the final agency decision and may be appealed as set out in G.S. 150B-23.

(3) Certificates of completion of courses other than that sponsored by the NC Foot and Ankle Society (NCF&AS) must be submitted to the Board along with the podiatrist's annual license renewal documents. Completion certificates must contain the following information:

(A) Podiatrist's name;
(B) Course name, location, and date;
(C) Number of hours CME completed;
(D) Signature of seminar chairperson; and
(E) Name of certifying or sponsoring agency.

Handwritten certificates are not acceptable. It is the podiatrist's responsibility to contact the seminar organizer to secure a printed certificate before submitting to the Board for approval along with a renewal.

(4) In the case of a licensed podiatrist participating in the second or third year of a medical residency, a letter signed by the podiatric residency director indicating podiatrist's name and the dates the podiatrist has been in residency will substitute for the 25-credit hour requirement and a CME certificate.

(5) A podiatrist may submit his CME certificate(s) to the Board in facsimile, electronic, or hard copy format at any time during the renewal year.

(6) The Board shall retain CME documentation along with the individual podiatrist's license renewal information.

(c) Category 1: Minimum requirement 20 hours per year, as follows:

(1) Continuing medical education (CME) credit shall be allowed for attendance at educational seminars offered by the North Carolina Foot and Ankle Society (NCF&AS). The number of qualifying hours of continuing education shall be determined and approved by the Board in

advance based on the standards in 90-202.11. NCF&AS shall provide the Board directly with a listing of individuals attending its CME events and credits earned.

(2) Continuing medical education credit shall be recognized for attendance at educational seminars offered by other national, state and podiatric education providers, as certified by the Council on Podiatric Medical Education (CPME) of the American Podiatric Medical Association (APMA). The number of qualifying hours of continuing education shall be determined and approved by the Council on Podiatric Medical Education.

(3) Lecturers may receive one hour of credit for each hour of CPME- or APMA- approved lectures given, but such credit shall be limited to one hour for each discrete topic. A brief summary of the content of each lecture must be submitted for approval.

(4) Category 1 is limited to educational seminars either offered by NCF&AS or by sponsors pre-approved by CPME:
http://www.cpme.org (CPME 700: "Approved Sponsors of Continuing Education in Podiatry").
(N.B.: APMA- or CPME- approved online or journal courses are considered Category 2.)

(d) Category 2: A maximum of only 5 of the total 25 CME hours per year will be allowed as follows:

(1) Continuing medical education (CME) credit shall be allowed for educational programs approved for Category 1 credit by the American Medical Association (AMA) and the American Osteopathic Association (AOA) or their affiliated organizations.

(2) Continuing medical education (CME) credit shall be allowed for courses approved by North Carolina Area Health Education Center (AHEC).

(3) Online or medical journal courses approved by CPME are permitted.

(4) For courses not pre-approved by AHEC, AOA, or AMA, all requests for CME approval must contain a timeline and course description.

(e) Waiver for Certified Illness, Medical Condition, Natural Disaster, or Undue Hardship

Since continuing education is one of the methods whereby a podiatrist keeps his medical knowledge and skills up-to-date, in the case of an unexpected, certified illness or medical condition of the licensee or immediate family member (as certified by a letter from a licensed physician) or undue hardship (e.g., active military service or natural disaster) which precludes a licensed podiatrist from completing his continuing education requirement within the 18-month timeframe from July 1 of the year of last license or renewal issuance through December 31 of the following year, the Board may waive the continuing education requirement for license renewal by issuing the podiatrist a conditional license predicated on the licensee acquiring all of the required continuing education credits in a mutually-agreeable timeframe, but no later than 24 months after December 31 of the year following the year of license or renewal issuance. The Board reserves the right to require additional information to support the licensee's claim. The Board will notify the licensee of its decision in writing.

History Note: Authority G.S. 90-202.4(g); 90-202.11;
Eff. February 1, 1976;
Amended Eff. October 1, 2012; February 1, 2012; November 1, 2011; June 1, 2011; December 1, 1988.

21 NCAC 52 .0612 PAYMENT OF FEES

The Board shall accept payment of its fees in the form of cash, money order, check, or credit card. For checks that are returned by the Board's bank for insufficient funds, the payor shall reimburse the Board the fee charged to the Board by the bank for insufficient funds. For each credit card payment transaction, the Board shall assess a convenience fee in the amount equivalent to the merchant account fee the bank charges the Board for processing of credit card charges.

History Note: Authority G.S. 55B-10; 55B-11; 90-202.4(g); 90-202.5; 90-202.10;
Eff. October 1, 2012.

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CHAPTER 63 – SOCIAL WORK CERTIFICATION AND LICENSURE BOARD

21 NCAC 63 .0102 DEFINITIONS

Whenever used in this Chapter, the definitions set forth in G.S. 90B-3 are herein incorporated by reference. The following definitions apply in this Chapter:

(1) NCSWCLB - this designation represents the North Carolina Social Work Certification and Licensure Board.

(2) CSW - this designation represents the certified social worker level of certification.

(3) CMSW - this designation represents the certified master social worker level of certification.

(4) CSWM - this designation represents the certified social work manager level of certification.

(5) LCSW - this designation represents the licensed clinical social worker level of certification.

(6) LCSWA - this designation represents the licensed clinical social worker associate level of certification.

(7) Reprimand. Reprimand is a public rebuke and sanction by the Board for practice misconduct. A reprimand typically is given for less severe offenses and may require specific follow-up actions by the social worker.

(8) Censure. Censure is an act involving severe condemnation and a sanction by the Board for

practice misconduct. Censuring is typically for severe offenses and may require specific follow-up actions by the social worker.

(9) Probation. Probation is a stay of revocation or suspension allowing limited practice within preconditions established by the Board. Violations of these conditions may result in revocation.

(10) Suspension. Suspension is the withdrawal of privilege to practice for a specific period of time.

(11) Revocation. Revocation is the withdrawal of privilege to practice as a certified or licensed social worker in the State of North Carolina.

(12) Clinical Social Work Experience. As it relates to the work experience required for LCSW licensure, two years of clinical social work experience in direct practice means the professional application of master or doctoral social work theory, knowledge, methods, ethics, and the professional use of self to restore or enhance social, psychosocial, or biopsychosocial function. Clinical social work experience requires the application of specialized clinical knowledge and advanced clinical skills in the areas of assessment, diagnosis, and treatment of one or more of the following disorders or conditions: mental, emotional, addictive, behavioral, or developmental disorders and conditions. In addition, the clinical social work experience may also include clinical case management, information and referral, mediation, client education, clinical supervision and clinical consultation that is directly related to the treatment plan or personal care plan of a client or consumer.

(13) Diagnosis. In the context of licensed clinical social work practice diagnosis is the process of distinguishing, beyond the general social work assessment, among one or more of the following: mental, emotional, addictive, behavioral, or developmental disorders and conditions within a psychosocial framework on the basis of their similar and unique characteristics consistent with American Psychiatric Association or World Health Organization classification systems.

(14) Clinical Case Management. A comprehensive approach to care integrating a broad array of interventions to include planning, implementation and management of care for clients with one or more of the following: mental, emotional, addictive, behavioral, or developmental disorders and conditions. Interventions by the clinical case manager shall involve face-to-face contact with the client on a regular basis, shall be grounded in clinical social work theory, and shall be guided by the client's treatment plan or personal care plan.

(15) Treatment. Clinical social work intervention, including individual, couples, family, or group psychotherapy, that is empirically grounded and used to help resolve symptoms of one or more of the following: mental, emotional, addictive, behavioral, or developmental disorders and conditions.

(16) Surrender. Surrender is the voluntary relinquishment of a certification or license by its holder. The surrender of a certification or license shall be accepted only by Consent Order with the Board.

History Note: Authority G.S. 90B-3; 90B-6;
Eff. August 1, 1987;
Temporary Amendment Eff. October 1, 1999;
Amended Eff. October 1, 2012; July 1, 2011; January 1, 2009; July 1, 2000.

21 NCAC 63 .0210 ASSOCIATE LICENSES

(a) The Board shall issue an associate license to any person who meets the requirements in G.S. 90B-7(f).

(b) Applications and forms shall be obtained from and returned to the Board Office. The application fee set in Rule .0208 of this Chapter shall be submitted with the application.

(c) Prior to practicing clinical social work, applicants must demonstrate in writing that, in the event of a clinical emergency, they have immediate access to a licensed mental health professional who has agreed to provide to them emergency clinical consultation to assure that standards of clinical social work practice are maintained. Each licensed clinical social worker associate shall notify the Board in writing of any change in such access.

(d) Each associate licensee must be supervised as set forth in G.S. 90B-7(f) and receive on-going appropriate supervision as defined in Rule .0211(a)(2) of this Chapter until the associate licensee is licensed as a Licensed Clinical Social Worker.

(e) All associate licensees shall submit reports of their clinical social work experience and supervision on the appropriate Board form(s) every six months for review and evaluation by the Board.

(f) To prevent a lapse in licensure, associate licensees who desire to become Licensed Clinical Social Workers shall complete the application process for the Licensed Clinical Social Worker classification and submit the application fee as set in Rule .0208 of this Chapter early enough to allow 30 days for administrative processing and Board action prior to the expiration of the associate license.

History Note: Authority G.S. 90B-6; 90B-7;
Eff. August 1, 1993;
Temporary Amendment Eff. October 1, 1999;
Amended Eff. October 1, 2012; August 1, 2012; September 1, 2005; April 1, 2001.

21 NCAC 63 .0211 WORK EXPERIENCE

(a) For the Licensed Clinical Social Worker credential:

(1) Two years of post-MSW clinical social work experience shall mean 3,000 clock hours of work or employment for a fee or salary while engaged in the practice of clinical social work. The 3,000 hours shall be accumulated over a period of time not less than two years nor more than six years. Practicum or internship experience gained as part of any educational program shall not be included.

(2) Appropriate supervision shall mean supervision in person by an MSW who is also a Licensed Clinical Social Worker and who is in good standing with the Board. A supervisor formally disciplined by any professional credentialing body or professional organization, or who has violated the provisions of an occupational licensing Board may not provide supervision to an associate licensee without the written permission of the Board. The Licensed Clinical Social Worker Associate's (LCSWA) clinical social work supervisor shall have an additional two years of clinical social work experience post LCSW licensure.

(3) Appropriate supervision shall be that which is provided on a regular basis with at least one hour of supervision during every 30 hours of experience. A minimum of 100 hours of supervision is required. It is the professional responsibility of the clinical supervisor to make the initial determination whether or not the applicant's work experience meets the definition of clinical social work practice. The Board shall make the final determination whether or not the applicant's work experience meets the definition of clinical social work practice. Appropriate supervision may be individual or group supervision. Individual supervision shall mean one on one, in person, supervision by an MSW who is also an LCSW where the supervisor reviews and discusses clinical social work cases and provides evaluative comments and direction to the LCSWA. Group supervision shall mean supervision provided by an MSW who is also an LCSW in a group setting, during which the supervisor reviews and discusses clinical social work cases and provides feedback and direction to each LCSWA in the group. A maximum of 25 hours of group supervision may be applied toward meeting the supervision requirements for the LCSW.

(b) For the Certified Social Work Manager credential:

(1) Two years of post social work degree experience shall mean 3,000 clock hours of employment for a salary while engaged in administrative social work duties including, policy and budgetary development and implementation, supervision and management, program evaluation, planning, and staff development. Such duties shall be carried out in an administrative setting where social work or other mental health services are delivered. The 3,000 hours shall be accumulated over a period of time not less than two years nor more than six years. Practicum or internship experience gained as part of any educational program shall not be included.

(2) Appropriate supervision shall mean supervision in person by a social work administrator certified by the Board on at least one level who has a minimum of five years of administrative experience in a social work or mental health setting. Appropriate supervision shall be that which is provided on a regular basis throughout the applicant's two years of administrative social work experience. A minimum of 100 hours of supervision is required. A maximum of 50 hours of group supervision may be applied toward meeting the supervision requirements for the CSWM.

History Note: Authority G. S. 90B-6; 90B-7;
Temporary Adoption Eff. October 1, 1999;
Eff. July 1, 2000;
Amended Eff. October 1, 2012; January 1, 2009; September 1, 2005.

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

AGENCY	CASE NUMBER	DATE	PUBLISHED DECISION REGISTER CITATION
ALCOHOLIC BEVERAGE CONTROL COMMISSION			
James Ivery Smith, Ivy Lee Armstrong v. ABC Commission	11 ABC 08266	04/12/12	
Trawick Enterprises LLC v. ABC Commission	11 ABC 08901	05/11/12	27:01 NCR 39
Dawson Street Mini Mart Lovell Glover v. ABC Commission	11 ABC 12597	05/23/12	
ABC Commission v. Christian Broome Hunt T/A Ricky's Sports Bar and Grill	11 ABC 13161	05/03/12	
Alabarati Brothers, LLC T/A Day N Nite Food Mart, v. ABC Commission	11 ABC 13545	05/01/12	
Playground LLC, T/A Playground v. ABC Commission	11 ABC 14031	05/16/12	27:01 NCR 64
ABC Commission v. Quick Quality, Inc., T/A Rock Star Grill and Bar	11 ABC 14036	07/05/12	
ABC Commission v. D's Drive Thru Inc. T/A D's Drive Thru	12 ABC 00060	05/29/12	
ABC Commission v. Choudhary, LLC T/A Speedway	12 ABC 00721	05/01/12	
ABC Commission v. Dos Perros Restaurant LLC T/A Dos Perros Resturant	12 ABC 05312	09/25/12	
ABC Commission v. Tecleab Maasho	12 ABC 01294	07/05/12	27:09 NCR 902
DEPARTMENT OF CRIME CONTROL AND PUBLIC SAFETY			
Alexander R. Hayes v. Division of Crime Victim Compensation Services	12 CPS 00195	06/25/12	27:09 NCR 908
Teresa Herbin v. Department of Public Safety Victim Services	12 CPS 03680	08/10/12	
DEPARTMENT OF HEALTH AND HUMAN SERVICES			
Bright Haven Residential and Community Care d/b/a New Directions Group Home v. Division of Medical Assistance, DHHS	10 DHR 00232	04/27/12	
Warren W Gold, Gold Care Inc. d/b/a Hill Forest Rest Home, v. DHHS/Division of Health Service Regulation, Adult Care Licensure Section	10 DHR 01666	05/18/12	
Warren W Gold, Gold Care Inc. d/b/a Hill Forest Rest Home v. DHHS, Division of Health Service Regulation, Adult Care Licensure and Certification Section	10 DHR 05801	05/18/12	
Gold Care Inc. Licensee Hill Forest Rest Home Warren W. Gold v. DHHS, Adult Care Licensure Section	10 DHR 05861	05/18/12	
Mary Ann Barnes v. DHHS, Division of Health Service Regulation, Health Care Personnel Registry	11 DHR 6488	07/16/12	
Powell's Medical Facility and Eddie N. Powell, M.D., v. DHHS, Division of Medical Assistance	11 DHR 01451	03/05/12	27:01 NCR 75
Julie Sadowski v. DHHS, Division of Health Service Regulation	11 DHR 01955	04/03/12	
Cherry's Group Home, Alphonso Cherry v. DHSR Michelle Elliot	11 DHR 09590	07/12/12	
Teresa Diane Marsh v. DHHS, Division of Health Service Regulation	11 DHR 11456	04/27/12	
Betty Parks v. Division of Child Development, DHHS	11 DHR 11738	06/20/12	

Lorrie Ann Varner v. DHHS, Regulation Health Care Personnel Registry Section	11 DHR 11867	08/02/12	
Timothy John Murray v. DHHS, Division of Health Service Regulation	11 DHR 12594	06/15/12	
Holly Springs Hospital II, LLC v. DHHS, Division of Health Service Regulation, CON Section and Rex Hospital, Inc., Harnett Health System, Inc. and WakeMed	11 DHR 12727	04/12/12	27:04 NCR 486
Rex Hospital, Inc., v. DHHS, Division of Health Service Regulation, CON Section and WakeMed, Holly Springs Hospital II, LLC, and Harnett Health System, Inc.	11 DHR 12794	04/12/12	27:04 NCR 486
Harnett Health System, Inc., v. DHHS, Division of Health Service Regulation, CON Section and Rex Hospital, Inc., Holly Springs Hospital II, LLC, and WakeMed	11 DHR 12795	04/12/12	27:04 NCR 486
WakeMed v. DHHS, Division of Health Service Regulation, CON Section and Holly Springs Hospital II, LLC, Rex Hospital, Inc., and Harnett Health System, Inc	11 DHR 12796	04/12/12	27:04 NCR 486
Sandra Ellis v. DHHS	11 DHR 12959	07/11/12	
Vendell Haughton v. DHHS, Division of Medical Assistance	11 DHR 13616	07/05/12	
Tarsand Denise Morrison v. DHHS, Division of Health Service Regulation	11 DHR 13906	07/11/12	
Care Well of Charlotte Inc, Joy Steele v. DHHS	11 DHR 13909	08/02/12	
Michael Timothy Smith, Jr. v. DHHS, Division of Health Service Regulation	11 DHR 14184	08/01/12	
Cynthia Tuck Champion v. DHHS, Division of Health Service Regulation	11 DHR 14283	06/15/12	
Lauren Stewart v. DHHS, Division of Health Service Regulation, Health Care Personnel Registry	11 DHR 14570	06/08/12	
Alice M. Oakley v. Division of Child Development, DHHS	11 DHR 14571	05/15/12	27:04 NCR 508
Althea L. Flythe v. Durham County Health Department	12 DHR 00242	05/17/12	
Jerri Long v. DHHS, Division of Health Service Regulation, Health Care Personnel Registry	12 DHR 00361	07/06/12	
Jessica Lynn Ward v. DHHS	12 DHR 00643	05/17/12	
Trinity Child Care II & I v. DHHS, Division of Public Health, Child and Adult Care Food Program	12 DHR 00861	04/20/12	27:04 NCR 518
Dr. Karen J. Williams, LPC v. DHHS, Division of Medical Assistance	12 DHR 00926	09/18/12	
Faith Home Care of NC, Bonita Wright v. DHHS, DMA	12 DHR 00928	07/25/12	
Angela C Jackson v. DHHS	12 DHR 01097	06/19/12	
Paula N Umstead v. DHHS	12 DHR 01098	05/11/12	
ACI Support Specialists Inc. Case #2009-4249 v. DHHS	12 DHR 01141	06/06/12	
AriLand Healthcare Service, LLC, NCMHL #018-092, Shawn Kuhl Director of Operations v. DHHS, Emery E. Milliken, General Counsel	12 DHR 01165	05/25/12	
Kenneth Holman v. DHHS	12 DHR 01244	06/05/12	
Hillcrest Resthome Inc. ($2000 penalty) v. DHHS	12 DHR 01289	05/30/12	
Hillcrest Resthome Inc. ($4000 penalty) v. DHHS	12 DHR 01290	05/30/12	
Vivian Barrear v. DHHS, Division of Medical Assistance DHHS	12 DHR 01296	06/06/12	
Patricia Satterwhite v. DHHS	12 DHR 01338	07/23/12	
Timothy L Durham v. DHHS, Division of Health Services Regulation	12 DHR 01396	09/04/12	
Clydette Dickens v. Nash Co DSS	12 DHR 01625	05/15/12	
Robert Lee Raines v. DHHS	12 DHR 01736	05/30/12	
Ms. Antoinette L. Williams v. DHHS	12 DHR 01739	06/15/12	
Tricia Watkins v. DHHS, Division of Medical Assistance, Office of Medicaid TLW-Auditing Office	12 DHR 01807	06/01/12	
First Path Home Care Services Gregory Locklear v. DHHS	12 DHR 01878	06/22/12	
Patriotic Health Care Systems, LLC v. DHHS	12 DHR 02105	09/19/12	
John and Christina Shipman v. DHHS	12 DHR 02107	07/24/12	
Leslie Taylor, Octavia Carlton, Paula Carlton	12 DHR 02217	08/31/12	
Madeline Brown v. DHHS, Division of Health Service Regulation	12 DHR 02257	06/01/12	
Evelyn Evans v. DHHS, Division of Health Service Regulation	12 DHR 02258	07/02/12	
Precious Haven Inc. Melissa McAllister v. DHHS, Program Integrity	12 DHR 02430	05/18/12	
Michael and Jamie Hart v. Davidson County, Department of Social Services	12 DHR 02542	07/03/12	
Jessica L Thomas v. Randolph County DSS	12 DHR 02955	07/24/12	
Moses E Shoffner v. DHHS, Division of Child Development	12 DHR 03459	08/15/12	
Marco Evans v. DHHS, Division of Health Service Regulation	12 DHR 04110	07/30/12	
James C. Bartley v. DHHS, DMA	12 DHR 04116	07/25/12	
LaBrenda Jane Elliot v. DHHS, Division of Medical Assistance	12 DHR 04993	09/24/12	
James Johnson v. DHHS, Division of Health Service Regulation	12 DHR 05148	09/11/12	
Cathy Crosland v. DHHS, Division of Health Service Regulation	12 DHR 05610	08/06/12	
Beverly Coleman v. DHHS, Division of Health Service Regulation, Health Care Personnel Registry Section	12 DHR 05961	09/05/12	
Dwight William Osborne v. Glana M Surles, DHHS (Medicaid)	12 DHR 05693	09/14/12	
Gregory Howard v. Health Care Personnel Registry	12 DHR 06157	09/07/12	
Harrison E Shell Jr v. Wake County Human Services	12 DHR 06203	08/28/12	
Valtina Bronson v. DHHS, Division of Health Service Regulation	12 DHR 06365	08/29/12	
Angela Mackey v. DHHS, Division of Health Service Regulation	12 DHR 07619	10/05/12	

DEPARTMENT OF CORRECTIONS			
Myron Roderick Nunn v. Jennifer O'Neal, Accountant DOC	12 DOC 01022	07/12/12	
DEPARTMENT OF JUSTICE			
Tommy Keith Lymon v. Criminal Justice Education and Training Standards Commission	09 DOJ 03751	07/30/12	27:06 NCR 649
Greary Michael Chlebus v. Criminal Justice Education and Training Standards Commission	11 DOJ 4829	04/27/12	
Dillan Nathanuel Hymes v. Criminal Justice Education and Training Standards Commission	11 DOJ 10315	07/23/12	27:06 NCR 661
Barbara Renay Whaley v. Criminal Justice Education and Training Standards Commission	11 DOJ 10316	04/25/12	
Robert Kendrick Mewborn v. Criminal Justice Education and Training Standards Commission	11 DOJ 10318	04/23/12	
Athena Lynn Prevatte v. Sheriffs' Education and Training Standards Commission	11 DOJ 13148	05/25/12	27:04 NCR 529
Shatel Nate Coates v. Sheriffs' Education and Training Standards	11 DOJ 13151	07/05/12	
James Lee Ray v. Sheriffs' Education Training Standards	11 DOJ 13152	08/27/12	
Ko Yang v. Sheriff's Education and Training Standards Commission	11 DOJ 13153	06/14/12	
Dustin Edward Wright v. Sheriffs' Education and Training Standards Commission	11 DOJ 13154	08/08/12	
Walter Scott Thomas v. Sheriff's Education and Training Standards Commission	11 DOJ 13155	05/10/12	
Darryl Howard v. Criminal Justice Education and Training Standards Commission	11 DOJ 13157	04/12/12	
John Jay O'Neal v. Criminal Justice Education and Training Standards Commission	11 DOJ 13158	07/06/12	27:07 NCR 749
Charlesene Cotton v. Criminal Justice Education and Training Standards Commission	11 DOJ 13159	06/05/12	27:04 NCR 538
William James Becker v. Criminal Justice Education and Training Standards Commission	11 DOJ 13160	08/16/12	
Steve Michael Galloway, Jr, Private Protective Services Board	11 DOJ 14434	04/23/12	
Justin Thomas Medlin v. Alarm Systems Licensing Board	11 DOJ 14493	04/23/12	
Bruce Clyde Shoe v. Private Protective Services Board	12 DOJ 00556	09/26/12	
Angela Louise Giles v. Private Protective Services Board	12 DOJ 00557	04/18/12	
Marshall Todd Martin v. Sheriffs' Education	12 DOJ 00650	07/13/12	
Frances Gentry Denton v. Sheriffs' Education and Training Standards Commission	12 DOJ 00651	08/30/12	
Alvin Louis Daniels v. Criminal Justice Education and Training Standards Commission	12 DOJ 00654	08/17/12	
Michael Wayne McFalling v. Private Protective Services Board	12 DOJ 00814	05/21/12	
Robert John Farmer v. Alarm Systems Licensing Board	12 DOJ 00887	05/04/12	
Ricky Lee Ruhlman v. Private Protective Services Board	12 DOJ 01211	04/18/12	
Leroy Wilson Jr., Private Protective Services Board	12 DOJ 01293	04/18/12	
Clyde Eric Lovette v. Alarm Systems Licensing Board	12 DOJ 01498	05/02/12	
Vincent Tyron Griffin v. Alarm Systems Licensing Board	12 DOJ 01663	09/27/12	
Andre Carl Banks Jr., v. Alarm Systems Licensing Board	12 DOJ 01695	06/22/12	
Ryan Patrick Brooks v. Private Protective Services Board	12 DOJ 01696	06/05/12	
Dustin Lee Chavis v. Private Protective Services Board	12 DOJ 01697	06/01/12	
Jeffrey Adam Hopson v. Sheriffs' Education and Training Standards Commission	12 DOJ 01761	06/07/12	
John Henry Ceaser v. Sheriffs' Education and Training Standards Commission	12 DOJ 01762	06/18/12	
Jerome Douglas Mayfield v. Private Protective Services Board	12 DOJ 02381	06/15/12	
Elijah K. Vogel v. Private Protective Services Board	12 DOJ 02619	06/05/12	
Carlito Soler v. Alarm Systems Licensing Board	12 DOJ 03457	09/26/12	
Raymond Louis Soulet v. Sheriffs' Education and Training Standards Commission	12 DOJ 05142	08/27/12	
Lawrence W. Sitgraves v. Private Protective Services	12 DOJ 06059	09/13/12	
DEPARTMENT OF STATE TREASURER			
Ella Joyner v. Department of State Treasurer Retirement System Division	11 DST 02437	07/12/12	27:07 NCR 758
Brenda C. Hemphill v. Department of Treasurer, Retirement System Division	11 DST 10252	09/26/12	
Russell E. Greene v. Department of State Treasurer Retirement Systems Division	11 DST 10875	06/14/12	27:04 NCR 543
Marsha W Lilly, Robert L Hinton v. Retirement System	12 DST 01108	05/22/12	
STATE BOARD OF EDUCATION			
Louis A. Hrebar v. State Board of Education	11 EDC 01445	07/27/12	
Delene Huggins v. Department of Public Instruction	11 EDC 08899	06/28/12	
Myra F. Moore v. NC Board of Education	11 EDC 11927	05/01/12	
Dwayne White v. Department of Public Instruction, NC State Board of Education	11 EDC 11864	07/18/12	27:07 NCR 769
North Carolina Learns Inc. d/b/a North Carolina Virtual Academy	12 EDC 01801	05/18/12	
Katherine Kwesell Harris v. Public Schools, Board of Education	12 EDC 06520	09/05/12	
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES			
Pamlico-Tar River Foundation, NC Coastal Federation, Environmental Defense Fund, and	09 EHR 1839	04/26/12	27:01 NCR 87

Sierra Club v. DENR, Division of Water Quality and PCS Phosphate Company, Inc			
Don Hillebrand v. County of Watauga County Health Dept	10 EHR 00933	05/10/12	
House of Raeford Farms, Inc., v. DENR	10 EHR 05508	05/31/12	27:01 NCR 99
Lacy H Caple DDS v. Division of Radiation Protection Bennifer Pate	11 EHR 11454	05/09/12	
Holmes Development & Realty, LLC, and H.L. Homes v. DENR – Land Quality Section (Re: LQS 11-018)	11 EHR 13208	06/29/12	27:07 NCR 774
Save Mart of Duplin LLC v. DENR	12 EHR 02328	07/25/12	
DIVISION OF EMPLOYMENT SECURITY			
Dwight Marvin Wright v. Department of Commerce, Division of Employment Security	12 ESC 05042	07/27/12	
MISCELLANEOUS			
Richard Lee Taylor v. City of Charlotte	11 MIS 14140	05/15/12	
Lloyd M Anthony v. New Hanover County Sheriff Office	12 MIS 01803	06/07/12	
OFFICE OF STATE PERSONNEL			
Amanda Thaxton v. State Ethics Commission	09 OSP 03754	09/20/12	
Dorothy H. Williams v. DHHS, Central Regional Hospital	10 OSP 5424	03/28/12	27:01 NCR 119
Larry F. Murphy v. Employment Security Commission of North Carolina	10 OSP 03213	06/04/12	
Walter Bruce Williams v. Dept. of Crime Control and Public Safety Butner Public Safety Division	10 OSP 03551	04/23/12	27:01 NCR 148
Daniel Chase Parrott v. Crime Control and Public Safety, Butner Public Safety Division	10 OSP 04792	05/30/12	
Steven M Mukumgu v. DAG	10 OSP 05199	08/07/12	
Beatrice T. Jackson v. Durham County Health Department	11 OSP 3835	06/08/12	
Brenda D. Triplett v. DOC	11 OSP 4605	03/20/12	27:06 NCR 669
Tommie J. Porter v. DOC	11 OSP 5352	06/05/12	27:06 NCR 678
Fortae McWilliams v. DOC	11 OSP 06236	05/30/12	27:06 NCR 684
Kimberly F. Loflin v. DOT, DMV	11 OSP 06762	07/10/12	
John Hardin Swain v. DOC, Hyde Correctional Inst.	11 OSP 07956	04/23/12	27:06 NCR 693
John Fargher v. DOT	11 OSP 08111	04/18/12	
Fredericka Florentina Demmings v. County of Durham	11 OSP 11498	06/12/12	
William C. Spender v. Dept. of Agriculture & Consumer Services, Veterinary Division	11 OSP 12479	04/27/12	
Terrence McDonald v. NCSU	11 OSP 12682	05/21/12	
Terrence McDonald v. DHHS, Emery Milliken	11 OSP 12683	05/18/12	
Raeford Quick v. DOC	11 OSP 14436	05/22/12	
Tawana McLaurin v. DOC	12 OSP 00116	08/21/12	
Bon-Jerald Jacobs v. Pitt County Department of Social Services	12 OSP 00634	06/12/12	
Diane Farrington v. Chapel Hill-Carrboro City Schools	12 OSP 01300	07/12/12	
Cynthia Moats v. Harnett County Health Dept	12 OSP 01536	08/10/12	
Natalie Wallace-Gomes v. Winston-Salem State University	12 OSP 01627	05/15/12	
Clark D. Whitlow v. UNC-Chapel Hill	12 OSP 01740	06/12/12	
Jeffrey L Wardick, v. Employment Securities Commission of NC	12 OSP 02027	07/17/12	
Sheila Bradley v. Community College System Sandhills Community College	12 OSP 02473	06/06/12	
Brenda S. Sessoms v. Department of Public Safety	12 OSP 02507	07/25/12	
Ronald Gilliard v. N.C. Alcoholic Law Enforcement	12 OSP 02618	09/26/12	
Kimberly Hinton v. DOT	12 OSP 02848	10/05/12	
Natalie Wallace-Gomes v. Winston Salem State University	12 OSP 02950	08/01/12	
Jaymar v. Department of Corrections, Central Prison	12 OSP 03381	07/20/12	
Michelle Houser v. Department of Public Safety, Division of Prisons	12 OSP 04826	09/26/12	
Audrey Melissa Tate v. Department of Public Safety, Division of Juvenile Justice	12 OSP 05182	08/03/12	
Charles E. Rouse v. DMV, Dist Sup Stacey Wooten	12 OSP 05315	09/05/12	
Edwards Robert Esslinger v. DPI	12 OSP 05459	09/12/12	
Barry L. Pruett v. DMV, Driver and Vehicle Services	12 OSP 05785	09/11/12	
Joseph Sandy v. UNC Chapel Hill	12 OSP 06152	09/05/12	
Phillip W Smith v. Department of Commerce, Division of Employment Security	12 OSP 06821	09/20/12	
DEPARTMENT OF REVENUE			

Jerry Lamont Lindsey v. Department of Revenue	11 REV 1914	07/25/12	
Thomas E Gust v. Department of Revenue	11 REV 13557	08/15/12	
Jonathan M Summers v. Department of Revenue	12 REV 01102	07/05/12	27:09 NCR 912
Brian Daniel Reeves v. Department of Revenue	12 REV 01539	06/04/12	
David Roser v. Department of Revenue	12 REV 01694	09/10/12	
Ronnie Lee Nixon v. Department of Revenue	12 REV 01881	10/03/12	
William S. Hall v. Department of Revenue	12 REV 04115	08/27/12	

OFFICE OF SECRETARY OF STATE

Rezell Gore	12 SOS 00492	07/10/12	
Jennifer Lynn Pierce-Founder Share Our Shoes v. Secretary of State's Office	12 SOS 01653	07/11/12	

UNC HOSPITALS

Onyedika C Nwaebube v. UNC Hospitals	12 UNC 01110	06/25/12	
Nephatiya Wade v. UNC Hospitals Chapel Hill NC	12 UNC 01209	07/17/12	
Fredia R Wall v. UNC Physicians & Associates	12 UNC 02256	10/04/12	
Carolyn A. Green v. UNC Hospitals	12 UNC 02259	09/19/12	
Vikki J Goings v. UNC Hospital	12 UNC 04109	09/18/12	
Elonnie Alston v.	12 UNC 04551	09/11/12	
Diara Z Andrews v. UNC Hospitals	12 UNC 04827	08/15/12	
Shonte Hayes v. UNC P&A	12 UNC 05746	09/10/12	

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OFFICE OF
ADMINISTRATIVE HEARINGS

7-5-2012 9:23:00 AM

STATE OF NORTH CAROLINA COUNTY OF WAKE	IN THE OFFICE OF ADMINISTRATIVE HEARINGS 12 ABC 01294
N. C. Alcoholic Beverage Control Commission Petitioner vs. Tecleab Maasho T/A Central Mini Mart Respondent	**FINAL DECISION**

This contested case was heard before Donald W. Overby, Administrative Law Judge, Office of Administrative Hearings, on June 26, 2012, in Raleigh, North Carolina.

APPEARANCES

For Petitioner: K. Renee Cowick, Esq.
NC Alcoholic Beverage Control Commission
Raleigh, NC

For Respondent: Robert K. Padovano, Esq.
Padovano & Zillioux
Raleigh, NC

ISSUES

Whether Respondent's employee, Berhanu Maru, sold a malt beverage to Austin Taylor, a person less than 21 years old, while on the licensed premises, on or about January 6, 2012, at 9:00 PM, in violation of G.S. §18B-302(a)(1).

FINDINGS OF FACT

1. Respondent has held permanent ABC permits issued by Petitioner since 2010 for an establishment located at 1300 Oakwood Avenue, Raleigh, North Carolina.

2. Austin Taylor's date of birth is November 29, 1991, making him 20 years of age on January 6, 2012.

3. Austin Taylor had been to Respondent's establishment on several occasions prior to January 6, 2012, and typically purchased tobacco products.

4. At approximately 9:00 PM on January 6, 2012, Alcohol Law Enforcement Special Agent Aaron Woodlief ("SA Woodlief") conducted a traffic stop on the vehicle Austin Taylor was driving. The registration plate light was not working.

5. SA Woodlief observed a black plastic bag hanging from the gear stick. Upon further investigation, SA Woodlief discovered an opened 40-ounce bottle of Ice House malt beverage. Austin Taylor admitted to purchasing the malt beverage around 6:30 or 7:00 PM earlier in the evening.

6. After further conversation, SA Woodlief determined that Austin Taylor's description of the establishment and the employee matched that of Respondent's establishment and employee Berhanu Maru. Austin Taylor identified Mr. Maru by the name "Solomon", a name by which Mr. Maru is sometimes known. He also identified Mr. Maru as wearing a cap and that he would always wear a cap. Austin Taylor was adamant in his identification of Mr. Maru as being the person who sold him alcohol.

7. SA Woodlief had worked in that particular area of Raleigh for approximately two years and knew the employees of Respondent's establishment to be the Respondent, Tecleab Maasho, and Respondent's nephew, Berhanu Maru.

8. Austin Taylor agreed to and did drive to the location where he purchased the malt beverage with SA Woodlief following in his own vehicle. Austin Taylor led SA Woodlief to Respondent's establishment.

9. Austin Taylor testified he has never tried to purchase alcoholic beverages from any establishment except Respondent's.

10. Austin Taylor and SA Woodlief entered Respondent's establishment. Berhanu Maru was working behind the counter and was wearing a Boston Red Sox baseball cap, consistent with Austin Taylor's description. Austin Taylor indicated to SA Woodlief that Berhanu Maru was the person who had sold the malt beverage to him and then left the premises.

11. SA Woodlief spoke with Berhanu Maru and told him about the sale of the malt beverage to Austin Taylor earlier that evening. SA Woodlief issued a criminal citation to Berhanu Maru. At the time SA Woodlief was talking with Mr. Maru, Mr. Maru did not raise an issue about the time of the sale to Austin Rivers or that he was not working at that time.

12. On January 9, 2012, at approximately 4:00 PM, SA Woodlief returned to Respondent's establishment to inform Respondent of the events of January 6, 2012. Respondent acknowledged Berhanu Maru had already informed him.

13. Respondent allowed SA Woodlief to view the video surveillance system. SA Woodlief was unable to find recordings of events for January 6, 2012 and January 8, 2012. SA Woodlief did find recordings labeled January 7, 2012 and January 9, 2012.

14. Although both Respondent and Berhanu Maru testified, neither could provide an explanation as to what happened to the recordings for January 6, 2012, and January 8, 2012. Respondent and Berhanu Maru are the only employees of this store, except on occasion someone will come in for temporary help. No one else was working on the date in question.

15. Austin is found to have been a credible witness, whereas Respondent and Berhanu Maru were not credible.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, the undersigned Administrative Law Judge makes the following Conclusions of Law:

1. The Office of Administrative Hearings has jurisdiction in this matter.

2. Petitioner has demonstrated by a preponderance of the evidence that Respondent's employee, Berhanu Maru, sold a malt beverage to Austin Taylor, a person less than 21 years of age, while on the licensed premises, on or about January 6, 2012, in violation of G.S. §18B-302(a)(1).

FINAL DECISION

Based upon the foregoing, Findings of Fact and Conclusions of Law, the undersigned Administrative Law Judge determines that the Respondent's ABC permits be suspended for a period of seven-days and a monetary penalty of $500.00 be imposed (on dates to be determined at a regularly scheduled monthly ABC Commission meeting).

NOTICE

Under the provisions of North Carolina General Statute 150B-45, any party wishing to appeal the final decision of the Administrative Law Judge must file a Petition for Judicial Review in the Superior Court of Wake County or in the Superior Court of the county in which the party resides. **The appealing party must file the petition within 30 days after being served with a written copy of the Administrative Law Judge's Final Decision.** In conformity with the Office of Administrative Hearings' rule 26 N.C. Admin. Code 03.012, and the Rules of Civil Procedure, N.C. General Statute 1A-1, Article 2, **this Final Decision was served on the parties the date it was placed in the mail as indicated by the date on the Certificate of Service attached to this Final Decision.** N.C. Gen. Stat. §150B-46 describes the contents of the Petition and requires service of the Petition on all parties. Under N.C. Gen. Stat. §150B-47, the

Office of Administrative Hearings is required to file the official record in the contested case with the Clerk of Superior Court within 30 days of receipt of the Petition for Judicial Review. Consequently, a copy of the Petition for Judicial Review must be sent to the Office of Administrative Hearings at the time the appeal is initiated in order to ensure the timely filing of the record.

This is the 5th day of July 2012.

Donald W. Overby
Administrative Law Judge

CERTIFICATE OF SERVICE

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

K Renee Cowick
Assistant Counsel
NC ABC Commission
4307 Mail Service Center
Raleigh, NC 27699-4307
ATTORNEY FOR PETITIONER

Robert K Padovano
Padovano & Zillioux PLLC
333 Fayetteville Street
Suite 1201
Raleigh, NC 27601
ATTORNEY FOR RESPONDENT

This the 5th 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 IREDELL		IN THE OFFICE OF ADMINISTRATIVE HEARINGS 12 CPS 00195
Alexander R Hayes, Petitioner, vs. North Carolina Division of Crime Victim Compensation Services, Respondent.	)	**FINAL DECISION**

The above entitled contested case was heard before administrative law judge Beecher R. Gray on May 11, 2012, in Morganton, North Carolina. At the conclusion of the evidence and arguments, a decision was announced in favor of Petitioner.

APPEARANCES

Petitioner: Alexander Hayes, appearing *pro se*
Respondent: Tammera Hill, Assistant Attorney General

ISSUE

Whether Respondent's decision to deny Petitioner's application for crime victim compensation because he failed to cooperate with law enforcement is supported by the evidence.

FINDINGS OF FACT

1. The parties received notice of hearing by certified mail more than 15 days prior to the hearing, and each stipulated on the record that notice was proper.

2. On October 31, 2010, Petitioner was a student at East Carolina University in Greenville, North Carolina. Petitioner resided off-campus in an apartment in Greenville.

3. On the evening of October 30, 2010, Petitioner and some friends went to another friend's house to visit. While there, Petitioner—who was 21 years of age at the time—drank two beers. Petitioner left his friend's house just after his other friends left, all with the agreed purpose of meeting at another location in downtown Greenville. Petitioner was walking to the next destination to meet his friends but could not see them ahead of him as he walked at about 11:30 p.m.

4. As he was walking, a dark-colored car approached him from the rear and stopped, its occupants cursing and yelling from its windows. The occupants of the car attacked Petitioner as he ran in an attempt to escape. Petitioner was tackled; beaten; and kicked by the three male occupants of the car. Petitioner was struck with a metal object, suffering

numerous bruises. Petitioner believes that he may have been unconscious for a short period of time. He was not robbed as he had no cash on his person.

5. When able, Petitioner made his way back to the friend's house from which he had departed and lay down. His other friends, who had departed the house just before Petitioner left, returned looking for him and transported Petitioner to Pitt County Memorial Hospital's ("PCMH") emergency room ("ER").

6. In the ER, Petitioner was administered CT scans of his face, head, and cervical spine. He was given Oxycodone and Hydrocodone for pain management during the early morning hours at PCMH and placed in room G-5 of the hospital.

7. Hospital Police Department Officer Conley Mangum went to Petitioner's room at 6:01 a.m. to interview him about the assault. Petitioner told Officer Mangum that he could not identify the assailants and that there was no use in pressing charges. Petitioner was, at this time, enduring the continued effects of the assault and was also under the influence of the narcotics Oxycodone and Hydrocodone, as administered by the PCMH medical staff earlier that morning. Officer Mangum left Petitioner's room at 6:10 a.m. and never told Petitioner that he had to do anything further about the assault case. No other police officer from any jurisdiction visited Petitioner or asked questions about the assault.

8. The Greenville Police Department was told by Officer Mangum that Petitioner did not want to press charges. Based on that communication, the Greenville Police Department elected not to visit Petitioner to get a report or to follow up on the assault. No police report was prepared by any police officer of any jurisdiction. Officer Mangum prepared an Operations Report, admitted into evidence as Respondent's Exhibit 1, which reports that he visited Petitioner in his room for 9 minutes on the morning of October 31, 2010.

9. Petitioner's mother was informed about the Crime Victims Compensation program while at PCMH and began to assist Petitioner in filing an application for compensation for his medical expenses. Petitioner sought a police report for the Crime Victims application process from both the Hospital and from the Greenville Police Department, neither of which had a police report.

10. Respondent denied Petitioner's application for compensation on November 10, 2011, on the ground that Petitioner had not reported the crime to law enforcement within 72 hours.

11. On February 7, 2012, Respondent issued a "Substitute Decision of Director: Denied" in which Respondent changed its reason for denial from failure to report the crime within 72 hours to failure by Petitioner to cooperate with law enforcement.

12. The total medical expenses charged to Petitioner by PCMH for this incident was approximately $7, 741.00 of which $2,840.95 was adjusted on the basis of a Blue Cross and Blue Shield policy held by Petitioner's parents. The approximate uncompensated cost to Petitioner for his care is $5,475.48.

Based upon the foregoing findings of fact, I make the following:

CONCLUSIONS OF LAW

1. The parties properly are before the Office of Administrative Hearings.

2. Petitioner was a victim of criminally injurious conduct which Petitioner reported to law enforcement within 72 hours of its occurrence by and through his interview with the PCMH Police Officer Mangum.

3. The evidence in this contested case demonstrates that Petitioner cooperated with law enforcement and made efforts to obtain police reports from PCMH and the Greenville Police Department which did not exist. PCMH Police Officer Mangum's 9 minute interview of Petitioner while Petitioner was under the effects of a recent assault and recently-administered narcotics does not constitute a knowing refusal to cooperate with law enforcement.

Based upon the foregoing findings of fact and conclusions of law I make the following:

FINAL DECISION

Respondent's decision to deny Petitioner's application on the basis that Petitioner failed to cooperate with law enforcement is not supported by the evidence and is REVERSED. This is a Final Decision under the authority of N.C.G.S. §150B-34.

NOTICE

Under G.S. 150B-45, any party wishing to appeal the final decision of the Administrative Law Judge may commence such appeal by filing a Petition for Judicial Review in the Superior Court of Wake County or in the Superior Court of the county in which the party resides. The party seeking review must file the petition within 30 days after being served with a written copy of the Administrative Law Judge's Decision and Order (see date on Certificate of Service, last page). Under G.S. 150B-47, the Office of Administrative Hearings is required to file the official record in the contested case with the Clerk of Superior Court within 30 days of receipt of the Petition for Judicial Review. Consequently, a copy of the Petition for Judicial Review must be sent to the Office of Administrative Hearings at the time the appeal is initiated in order to ensure the timely filing of the record.

This the 25 day of June, 2012.

Beecher R. Gray
Administrative Law Judge

3

A copy of the foregoing was mailed to:

Alexander R Hayes
162 Lake Pine Road
Mooresville, NC 28117
PETITIONER

Tammera S. Hill
Assistant Attorney General
NC Department of Justice
9001 Mail Service Center
Raleigh, NC 27699-9001
ATTORNEY FOR RESPONDENT

This the 25th day of June, 2012.

Anne Hollowell

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

FILED
OFFICE OF
ADMINISTRATIVE HEARINGS

7-5-2012 10:20:00 AM

STATE OF NORTH CAROLINA COUNTY OF WAKE	IN THE OFFICE OF ADMINISTRATIVE HEARINGS 12 REV 01102
Jonathan M Summers Petitioner vs. N.C. Department of Revenue Respondent	**FINAL DECISION ALLOWING SUMMARY JUDGMENT FOR RESPONDENT**

THIS MATTER comes before the Honorable Donald W. Overby, Administrative Law Judge presiding, for consideration of Respondent's Motion for Summary Judgment filed with the Office of Administrative Hearings on June 15, 2012. There are a number of pending motions filed by both the Petitioner and the Respondent; however, this Order is dispositive of the entire case and therefore it is unnecessary to address those pending motions.

Having considered Respondent's Motion with attachments, as well as Petitioner's response thereto, and all matters of record appropriate for consideration, the Court finds as fact and concludes as a matter of law that there is no genuine issue of material fact and therefore summary judgment is appropriate.

At issue in this contested case is the Respondent's assessment of income tax against Petitioner for income earned by Petitioner in tax year 2008. Petitioner has raised as an issue the source of the income, the source of Respondent's information and the calculation of the tax. All of such information has been satisfactorily provided, at the very least as attachments to the Motion for Summary Judgment. Petitioner has never denied earning the income as reported by the two companies. His attacks on the levying of the tax have been on the process and on the periphery of the tax itself, without merit. He has never produced any evidence that he would be entitled to any exception, exclusion or exemption from the tax. Petitioner has not filed a North Carolina tax return for the disputed income for tax year 2008.

In assessing the tax, Respondent was not arbitrary or capricious, did not exceed its authority or jurisdiction, did not fail to act as required by law or rule, and did use proper procedure.

It is therefore ORDERED that summary judgment for Respondent is ALLOWED, and the assessment of the tax against the Petitioner is affirmed.

NOTICE

Under the provisions of North Carolina General Statute 150B-45, any party wishing to appeal the final decision of the Administrative Law Judge must file a Petition for Judicial Review in the Superior Court of Wake County or in the Superior Court of the county in which the party resides. **The appealing party must file the petition within 30 days after being served with a written copy of the Administrative Law Judge's Final Decision.** In conformity with the Office of Administrative Hearings' rule, 26 N.C. Admin. Code 03.012, and the Rules of Civil Procedure, N.C. General Statute 1A-1, Article 2, **this Final Decision was served on the parties the date it was placed in the mail as indicated by the date on the Certificate of Service attached to this Final Decision.** N.C. Gen. Stat. §150B-46 describes the contents of the Petition and requires service of the Petition on all parties. Under N.C. Gen. Stat. §150B-47, the Office of Administrative Hearings is required to file the official record in the contested case with the Clerk of Superior Court within 30 days of receipt of the Petition for Judicial Review. Consequently, a copy of the Petition for Judicial Review must be sent to the Office of Administrative Hearings at the time the appeal is initiated in order to ensure the timely filing of the record.

This the 5th day of July, 2012.

Donald W. Overby
Administrative Law Judge

CERTIFICATE OF SERVICE

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

Jonathan M Summers
943 Upper White Store Road
Peachland, NC 28133
PETITIONER

David D. Lennon
NC Department of Justice
9001 Mail Service Center
Raleigh, NC 27699-9001
ATTORNEY FOR RESPONDENT

This the 5th day of July, 2012.

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Jul 09 9 49 AM 2012

STATE OF NORTH CAROLINA	IN THE OFFICE OF ADMINISTRATIVE HEARINGS
COUNTY OF WAKE	12 REV 01102
Jonathan M Summers Petitioner vs. N.C. Department of Revenue Respondent	**ORDER AMENDING FINAL DECISION**

Pursuant to 26 NCAC 3.0129, for the purpose of correcting a clerical error, IT IS HEREBY ORDERED that the Final Decision Allowing Summary Judgment for Respondent, issued from this Office on July 5, 2012, is amended as follows:

NOTICE

Under the provisions of North Carolina General Statute 150B-45, any party wishing to appeal the final decision of the Administrative Law Judge must file a Petition for Judicial Review in the Superior Court of Wake County. The appealing party must file the petition within 30 days after being served with a written copy of the Administrative Law Judge's Final Decision. In conformity with the Office of Administrative Hearings' Rule 26 N.C. Admin. Code 03.012, and the Rules of Civil Procedure, N.C. General Statute 1A-1, Article 2, this Final Decision was served on the parties the date it was placed in the mail as indicated by the date on the Certificate of Service attached to this Final Decision. N.C. Gen. Stat. §150B-46 describes the contents of the Petition and requires service of the Petition on all parties. Under N.C. Gen. Stat. §150B-47, the Office of Administrative Hearings is required to file the official record in the contested case with the Clerk of Superior Court within 30 days of receipt of the Petition for Judicial Review. Consequently, a copy of the Petition for Judicial Review must be sent to the Office of Administrative Hearings at the time the appeal is initiated in order to ensure the timely filing of the record.

This the 9th day of July, 2012.

Donald W. Overby
Administrative Law Judge

A copy of the foregoing was mailed to:

Jonathan M Summers
943 Upper White Store Road
Peachland, NC 28133
PETITIONER

David D. Lennon
NC Department of Justice
9001 Mail Service Center
Raleigh, NC 27699-9001
ATTORNEY FOR RESPONDENT

This the 9th day of July, 2012.

Vicky Bullock

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