

NORTH CAROLINA REGISTER

VOLUME 27 • ISSUE 10 • Pages 915 - 990

November 15, 2012

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PUBLISHED BY

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

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

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NORTH CAROLINA REGISTER
Publication Schedule for January 2012 – December 2012

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

EXPLANATION OF THE PUBLICATION SCHEDULE

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

GENERAL

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

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

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

FILING DEADLINES

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

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

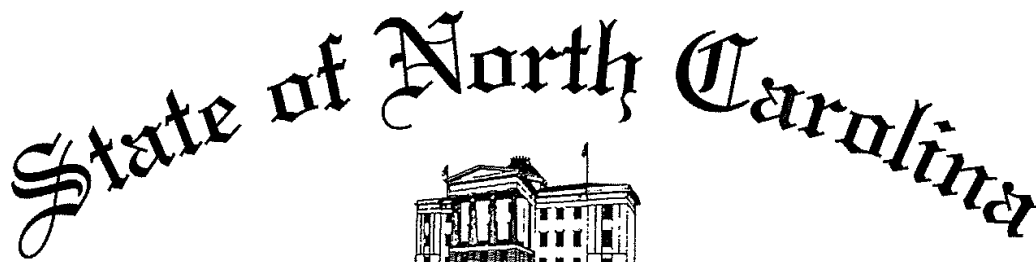
NOTICE OF TEXT

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

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

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

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



BEVERLY EAVES PERDUE
GOVERNOR

EXECUTIVE ORDER NO. 128

**EXPANDING OPPORTUNITIES FOR AT-RISK FOUR-YEAR-OLDS
TO ACHIEVE ACADEMIC SUCCESS THROUGH NORTH CAROLINA'S
PRE-KINDERGARTEN PROGRAM**

WHEREAS, the North Carolina Pre-Kindergarten Program (hereafter "NC Pre-K"), formerly known as More at Four, is widely acknowledged to be one of the finest and most successful pre-kindergarten programs in America; and

WHEREAS, without the opportunity for appropriate development in the early years, children are in danger of falling behind their peers and remaining at a disadvantage throughout their educational careers; and

WHEREAS, studies have repeatedly shown that at-risk children who participate in NC Pre-K are better prepared to succeed in school and that these benefits are maintained for years thereafter; and

WHEREAS, all other children in the classroom also benefit from the success of at-risk children because teachers have more time to devote to helping all children learn; and

WHEREAS, studies have shown that through early childhood education, states save millions of dollars that would otherwise be spent on early grade retention, special education, remedial programs, drop-out prevention, and a myriad of other costs; and

WHEREAS, the Supreme Court of North Carolina has expressly recognized the constitutional right of all children in North Carolina to have the opportunity to obtain a sound basic education; and

WHEREAS, on August 21, 2012, the North Carolina Court of Appeals issued a decision in the case captioned *Hoke County Board of Education, et al v. State of North Carolina*, affirming an order from the North Carolina Superior Court mandating "the unrestricted acceptance of all 'at-risk' four-year-old prospective enrollees who seek to enroll in existing pre-kindergarten programs in his or her respective county"; and

WHEREAS, there are currently eligible at-risk four-year-olds throughout the State who have applied for NC Pre-K and who have been placed on waiting lists instead of being immediately enrolled; and

WHEREAS, the North Carolina Court of Appeals' decision makes clear that the State may "not deny any eligible 'at-risk' four-year-old admission to the North Carolina Pre-Kindergarten Program"; and

WHEREAS, the North Carolina Department of Health and Human Services (hereafter "the Department") has determined that capacity currently exists for the State to (1) enroll by January 1, 2013, into NC Pre-K up to 6,300 additional eligible at-risk four-year-olds; and (2) begin enrollment immediately; and

WHEREAS, North Carolina General Statute § 143C-6-4(b)(2)a. permits an agency, with the approval of the Director of the Budget, to spend more than was authorized in the certified budget for a program if the overexpenditure of the program is required by a court order; and

WHEREAS, the General Fund budget for fiscal year 2012 ended with an unreserved fund balance of approximately \$400 million.

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

Section 1. The Department is directed to enroll up to 6,300 eligible at-risk four-year-olds in NC Pre-K beginning immediately as of October 19, 2012, and continuing through January 1, 2013.

Section 2. The Secretary of the Department is directed to (1) identify anticipated unspent funds within the Department's budget in an amount sufficient to accomplish the enrollments set out in Section 1 above; and (2) transfer said funds to the Division of Child Development and Early Education to support the increased enrollment in NC Pre-K.

Section 3. The Department is directed to pursue all available means to expand the capacity of NC Pre-K throughout the State in order to accomplish, as soon as is practicable, the ultimate goal of enrolling all eligible at-risk-four-year-olds who apply for admission to NC Pre-K.

Section 4. The Department shall strive to eliminate any existing or potential barriers that have the effect of preventing or discouraging participation by eligible at-risk four-year-olds in NC Pre-K.

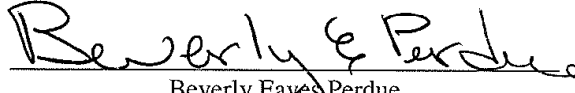
Section 5. The Department shall ensure that the existing high academic standards for NC Pre-K shall remain in effect throughout the State.

Section 6. I call on the General Assembly to appropriate the required funds in the legislative session commencing in January, 2013 to enable the State to fulfill its constitutional duty of enrolling within NC Pre-K all eligible at-risk four-year-olds who apply for admission.

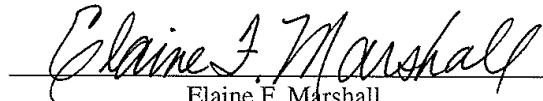
Section 7. This Executive Order is effective immediately and shall remain in effect until rescinded.

IN WITNESS WHEREOF, I have hereunto signed my name and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh, this 18th day of October in the year of our Lord two thousand and twelve and of the Independence of the United States of America the two hundred and thirty-seventh.




Beverly Eaves Perdue
Governor

ATTEST:


Elaine F. Marshall
Secretary of State

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

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

TITLE 21 – OCCUPATIONAL LICENSING BOARDS AND COMMISSIONS

CHAPTER 14 – BOARD OF COSMETIC ART EXAMINERS

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Board of Cosmetic Art Examiners intends to amend the rules cited as 21 NCAC 14H .0301; 14P .0108; and 14T .0502, .0606, .0612, .0701.

Agency obtained G.S. 150B-19.1 certification:

- ☐ OSBM certified on:
- ☐ RRC certified on:
- ☒ Not Required

Link to agency website pursuant to G.S. 150B-19.1(c):
<http://www.nccosmeticarts.com/uploads/Board/PROctober2012.pdf>

Proposed Effective Date: March 1, 2013

Public Hearing:

Date: November 30, 2012

Time: 9:00 a.m.

Location: 1207 Front Street, Suite 110, Raleigh, NC 27609

Reason for Proposed Action: *These rules have been written/amended by the Board to provide clear language for required licensee actions per G.S. 88B and to eliminate unnecessary regulations or parts of regulations.*

Procedure by which a person can object to the agency on a proposed rule: *Interested persons may present oral or written comments at the rulemaking hearings. In addition, the record will be open for receipt of written comments from October 24, 2012 until January 14, 2013. Written comments not presented at the hearing should be directed to Stefanie Kuzdrall.*

Comments may be submitted to: Stefanie Kuzdrall, 1207 Front Street, Suite 110, Raleigh, NC 27609

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

SUBCHAPTER 14H - SANITATION

SECTION .0300 - COSMETIC ART SHOP AND EQUIPMENT

21 NCAC 14H .0301 WATER SUPPLY

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

Authority G.S. 88B-2; 88B-4; 88B-14.

SUBCHAPTER 14P - CIVIL PENALTY

SECTION .0100 - CIVIL PENALTY

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

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

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

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

- (1) 1st offense \$500.00
- (2) 2nd offense \$800.00
- (3) 3rd offense \$1,000.00
- (c) The presumptive civil penalty for altering a license, permit or authorization issued by the Board is:
 - (1) 1st offense \$500.00
 - (2) 2nd offense \$800.00
 - (3) 3rd offense \$1000.00
- (d) The presumptive civil penalty for submitting false or fraudulent documents is:
 - (1) 1st offense \$500.00
 - (2) 2nd offense \$800.00
 - (3) 3rd offense \$1,000.00
- (e) The presumptive civil penalty for refusing to present photographic identification is:
 - (1) 1st offense \$100.00
 - (2) 2nd offense \$250.00
 - (3) 3rd offense \$500.00
- (f) The presumptive civil penalty for permitting an individual to practice cosmetic art with an expired license is:
 - (1) 1st offense \$ 50.00
 - (2) 2nd offense \$100.00
 - (3) 3rd offense \$250.00
- (g) The presumptive civil penalty for practicing or attempting to practice by fraudulent misrepresentation is:
 - (1) 1st offense \$500.00
 - (2) 2nd offense \$800.00
 - (3) 3rd offense \$1000.00
- (h) The presumptive civil penalty for the illegal use or possession of equipment or ~~Methyl Methacrylate Monomer (MMA)~~ in a cosmetic art shop or school is:
 - (1) 1st offense \$300.00
 - (2) 2nd offense \$500.00
 - (3) 3rd offense \$1000.00
- (i) ~~The presumptive civil penalty for failure to maintain footspa sanitation records is:~~
 - ~~(1) 1st offense \$100.00~~
 - ~~(2) 2nd offense \$200.00~~
 - ~~(3) 3rd offense \$300.00~~

Authority G.S. 88B-4; 88B-24; 88B-29.

SUBCHAPTER 14T - COSMETIC ART SCHOOLS

SECTION .0500 - RECORD KEEPING

21 NCAC 14T .0502 PERMANENT RECORDS, FORMS AND DOCUMENTATION

- (a) Cosmetic art schools must maintain a secure/locked permanent file of matriculations for all enrolled students and students that have withdrawn or graduated within the last six months together in one room within the approved square footage of the cosmetic art school. Withdrawal and graduation forms reviewed by the Board or an agent of the Board may be removed from this room. The permanent file shall include a copy of:
 - (1) Board Enrollment Form;
 - (2) Documentation of student receipt of school policies, school/student contract and the Board felony policy;

- (3) All applicable Board Withdrawal Forms;
- (4) Social security card for any individual that has a social security number or tax ID card or student visa information;
- (5) Government issued ID and proof of date of birth;
- (6) Grades for all examinations and documentation for pass/fail performances;
- (7) Documentation for any leave of absence over 30 days;
- (8) Transfer of hours form documenting hours earned in other schools and hours accepted by current school; and
- (9) Graduation Form.
- (b) Record of hours earned daily, including field trip hours and documentation of field trip hours (updated and subtotaled weekly with a running grand total):
 - (1) A daily record shall be kept of the performances for each student, showing the actual date of the performance and the teacher that approved;
 - (2) A daily record shall be kept of the actual number of hours of attendance; and
 - (3) Performance Record (updated and subtotaled weekly).
- (c) When a student enrolled in a cosmetic art school withdraws from such school, the cosmetic art school shall report the withdrawal to the Board of the administrative decision to withdraw the student.
- (d) If a student withdraws from a cosmetic art program within the first five days, the school need not submit the enrollment to the Board.
- (e) The graduation form documentation must be signed by on site school staff or on site school administrators and must have the seal of the school affixed. The original graduation form documentation must be prepared on the Board form. The cosmetic art school shall mail, within 30 days after the student's graduation date, with the school seal affixed, the graduation form documentation to the Board at the Board's address.
- (f) All forms submitted to the Board must be sealed originals and a copy maintained in the school file. All forms submitted to the Board must be completed, except for student signatures as necessary, by on site school staff or on site school administrators. Board forms shall be used for the sole purpose of documenting to the Board student records and shall not be used to notify students of enrollment, transfer of hours, withdrawal or graduation.
- (g) Changes or corrections to any Board form must be submitted to the Board with supporting documentation.
- (h) All cosmetic art schools must maintain an original, daily record of enrolled students hours and performances on file at the school. This record must be kept in a secured location under lock and key but made available for review by the Board or its agent at any time.
- (i) All records kept by a cosmetic art school on a student that has withdrawn or graduated must be kept in the school's locked files for future reference until the date the student is accepted for the state board examination or five years after the date the student first enrolled in the school, whichever occurs earlier.

Forms reviewed by the Board or an agent of the Board may be removed from this room.

(j) The record of all hours and performances must be ~~verifiable through documentation such as time cards or performance grading documented~~. Credit issued to students that cannot be verified may be eliminated from the student record by an agent of the Board.

(k) Access to student records must be limited to agents of the Board, teachers and administrators of the school. Records cannot be altered offsite. Records altered onsite must be attached to supporting documentation.

(l) All individuals in a cosmetic art school receiving cosmetic art education, earning hours, performing or practicing cosmetic art services must be enrolled in the school.

(m) Only teachers reported to the Board as employees of a cosmetic art school may grade practical student examinations and evaluate pass/fail of student performances. Only on site teachers, on site school administrators or on site school staff shall record student hours and performances, grade examinations and determine completion and record credit of live model/mannequin performances.

(n) Passing grades for examinations and the successful completion of live model/mannequin performances as determined through the school's evaluation plan that is approved by the Board at the time of application shall be disclosed to students at the time of enrollment. Passing grades and performances cannot be credited to students without meeting the requirements of the evaluation plan.

(o) Cosmetic art schools must provide to each student a copy of school policies, the Board felony policies and retain for the permanent file a copy of the student's acknowledgement of receipt.

(p) Students with unsatisfied academic obligations shall not be submitted to the Board as graduates.

(q) Cosmetic art schools shall not report to the Board the unsatisfied financial obligations of any cosmetic art student. Cosmetic art schools must not prevent the graduation of students that have met the Board minimum requirements and passed all school academic requirements.

(r) Records of hours must be rounded to no more than the nearest quarter hour. Cosmetic art schools cannot give or deduct hours or performances as a reward or penalty.

(s) An applicant may receive credit for instruction taken in another state if the conditions set forth in this Rule are met:

(1) The applicant's record shall be certified by the state agency or department that issues licenses to practice in the cosmetic arts. If this agency or department does not maintain any student records or if the state does not give license to practice in the cosmetic arts, then the records may be certified by any state department or state agency that does maintain such records and is willing to certify their accuracy. If no state department or board will certify the accuracy of the student's records, then the Board shall review the student's records on a case-by-case basis. ~~Hours transferred between open North Carolina schools must be obtained by the submission of the Board transfer form submitted directly from the school in which the hours are earned with the school seal affixed, with grades for examinations and performance. Such original documentation shall be submitted to the Board with enrollment; and~~

(2) ~~In order that hours may be transferred from one cosmetic art school to another, a student must pass an entrance examination given by the school to which the student is transferring.~~

(t) Hours transferred between open North Carolina schools must be obtained by the submission of the Board transfer form submitted directly from the school in which the hours are earned with the school seal affixed, with grades for examinations and performance. Such original documentation shall be submitted to the Board with enrollment.

(u) In order that hours may be transferred from one cosmetic art school to another, a student must pass an entrance examination given by the school to which the student is transferring.

Authority G.S. 88B-2; 88B-4; 88B-16; 88B-17.

SECTION .0600 - CURRICULA

21 NCAC 14T .0606 NATURAL HAIR CARE STYLING CURRICULUM

(a) To meet the approval of the Board, a natural hair care styling training course must consist of at least 300 hours of instruction in theory and practical application, divided as follows:

Theory and Performance Requirements	Hours	Services	
Beginners: Sanitation, bacteriology, disinfection, first aid, shampooing, draping, anatomy, disorders of the hair and scalp <u>scalp, client consultation</u>	60		
Advanced: Styles and techniques of natural hair styling including twisting, wrapping, extending, locking, blowdry and hot <u>thermal</u> iron; and business management and professional ethics	240		
Performance Requirements		Mannequin	Live Model
Braids		5	5

Twists		5	5
Knots		3	2
Corn rows		3	2
Hairlocking		5	5
Artificial hair and decorations		5	5
Blow dry and flat thermal iron		5	5
Braid Removal		5	5

- (b) A minimum of 60 hours of theory and 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~~ allowed unless the live model service consists of 20 or more lengths of hair.
- (i) Credit for a performance shall be given to only one student.
- (j) A performance shall consist of 10 or more lengths of hair.

Authority G.S. 88B-2; 88B-4; 88B-16; 88B-17.

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.

Authority G.S. 88B-2; 88B-4; 88B-16; 88B-17.

SECTION .0700 - SCHOOL LICENSURE, OPERATIONS, CLOSING AND RELOCATING SCHOOLS

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 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.

Authority G.S. 88B-2; 88B-4; 88B-16; 88B-17.

TITLE 21 – OCCUPATIONAL LICENSING BOARDS AND COMMISSIONS

CHAPTER 22 - HEARING AID DEALERS AND FITTERS BOARD

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC State Hearing Aid Dealers and Fitters Board intends to amend the rules cited as 21 NCAC 22F .0101, .0120; 22I .0103; 22J .0103, and repeal the rules cited as 21 NCAC 22A .0203, .0204.

Agency obtained G.S. 150B-19.1 certification:

- ☐ OSBM certified on:
☐ RRC certified on:
☒ Not Required

Link to agency website pursuant to G.S. 150B-19.1(c):
<http://www.nchalb.org/regulatory/rulechange.php>

Proposed Effective Date: March 1, 2013

Public Hearing:

Date: December 6, 2012

Time: 12:45 p.m.

Location: Office of Administrative Hearings, 1711 New Hope Church Road, Commission Room, Raleigh, NC 27609

Reason for Proposed Action: *The Board has done an annual review of rules, in consideration of changes in G.S. 93D, and to incorporate previous "guidelines" into the rules.*

Procedure by which a person can object to the agency on a proposed rule: *A person can object to the agency by speaking at the public hearing on December 6, 2012 or by submitting written comments to the following address no later than January 14, 2013: NC State Hearing Aid Dealers and Fitters Board, ATTN: Rulemaking, P.O. Box 97833, Raleigh, NC 27624.*

Comments may be submitted to: Catherine Jorgensen, Rulemaking Coordinator, NC State Hearing Aid Dealers and Fitters Board, P.O. Box 97833, Raleigh, NC 27624

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

SUBCHAPTER 22A - BOARD RULES

SECTION .0200 - THE BOARD

21 NCAC 22A .0203 MEETINGS OF THE BOARD

~~Meetings of the Board shall be held bimonthly or on the call of the president, the executive secretary, or a majority of the members of the Board. The annual meeting to elect the president and the secretary treasurer shall occur between the fifteenth day~~

~~of July and the fifteenth day of August in each year. The dates for the bimonthly meetings for the Board's ensuing year and the examination preparation workshop dates for the upcoming calendar year shall be approved at that time.~~

Authority G.S. 93D-3(b).

21 NCAC 22A .0204 APPOINTMENTS

~~Any member of the Board may continue to serve beyond his term until his successor is duly appointed and sworn, in accordance with G.S. 93B-10, however any holdover shall not affect the expiration date of the succeeding term.~~

Authority G.S. 93B-10; 93D-3(a).

SUBCHAPTER 22F - GENERAL EXAMINATION AND LICENSE PROVISIONS

21 NCAC 22F .0101 TIME AND PLACE OF EXAMINATIONS

The Board shall hold qualifying examinations as set forth in G.S. 93D-8 by publicizing the time and place of each exam on the Board's website at least 90 days in advance. ~~advance, with one exam being offered on a day during the first week in May of each year.~~

Authority G.S. 93D-3(c); 93D-8.

21 NCAC 22F .0120 CONTINUING EDUCATION

(a) Except as provided herein, each individual ~~Each~~ licensee shall be required to obtain 10 clock hours of approved continuing education, on an annual basis, as a requirement for license renewal. The duty of obtaining information regarding the number of required continuing education program clock hours of credit or the topic content categories applicable for credit, and for obtaining the forms, issued by the Board, for requesting program approval and attendance verification is solely the responsibility of the licensee. Current requirements may be obtained from the office of the Board and these requirements shall be reviewed annually by the Board.

(b) An individual shall be exempt from the continuing education requirement for the first license renewal after initial licensure.

Authority G.S. 93D-3(c); 93D-11.

SUBCHAPTER 22I - PROFESSIONAL AFFAIRS

21 NCAC 22I .0103 VISUAL INSPECTION AND HEARING TEST

(a) All licensees and registered apprentices shall use make a visual inspection of the external auditory canal and the tympanic membrane, using a suitable device having its own light source ~~for visual inspection of the external auditory canal and the tympanic membrane,~~ in order to fulfill the requirements of 21 CFR 801 (effective August 15, 1977), Subpart 801.420 concerning the warning to hearing aid dispensers, which has been adopted by reference in Rule ~~.0004~~ .0101 of this Subchapter.

(b) All licensees and registered apprentices shall conduct a hearing test using an audiometer, the calibration for which is on file at the Board office, or equivalent physiologic testing.

(c) The hearing test shall be conducted in an environment conducive to obtaining accurate results and shall include the following:

- (1) pure tone audiometry, including air conduction testing and bone conduction testing;
- (2) live voice or recorded voice speech audiometry, including speech reception threshold testing and speech discrimination testing;
- (3) effective masking, if audiometric testing reveals a difference between the ears at any one frequency equal to or greater than 40 decibels or if there is audiometric air-bone gap of 15 dB or greater;
- (4) testing at least at the following frequencies: 500 Hz, 1000 Hz, 2000 Hz, 3000Hz, and 4000 Hz; and
- (5) Mid-octaves shall be tested when there is a 20 dB or greater difference between any adjacent octaves.

(d) The evaluation of products dispensed to determine effectiveness based on recognized standards of practice. Measures of evaluation may include but are not limited to: sound field measurements, real ear measurements and client evaluation sheets.

Authority G.S. 93D-3(c).

SUBCHAPTER 22J - CODE OF ETHICS

21 NCAC 22J .0103 ADVERTISING

It shall be unethical to perform any of the following acts:

- (1) ~~To use or cause or prompt the use of any advertising matter, promotional literature, testimonial, guarantee, warranty, label, brand, insignia, or any other representation however disseminated or published which is misleading, deceiving, or untruthful; To advertise a particular model, type, or kind of hearing aid for sale when purchasers or prospective purchasers responding to such advertisements cannot have it demonstrated to them or cannot purchase the advertised hearing aid from the licensee or registered apprentice;~~
- (2) ~~To advertise a particular model, type, or kind of hearing aid for sale when purchasers or prospective purchasers responding to such advertisements cannot have it demonstrated to them or cannot purchase the advertised model or kind from the licensee or registered apprentice, and the purpose of the advertisement is to obtain prospects for the sale of a different model, type, or kind of hearing aid than that advertised;~~
- (3)(2) To advertise that a product is offered for sale at a special or reduced price, or words of

similar meaning such as "sale price," when, within the past six months from the date of the advertisement, less than 50 percent of all sales of that specific model of the product were sold at a higher price; price higher than the special or reduced price;

- (4) ~~To advertise hearing aids at a low price and thereafter attempt to encourage customers to purchase similar hearing aids which were not described and priced in such advertising; or~~
- (5) ~~To advertise or disseminate any information which represents hearing aids as having a regular price or stated value, or words of similar meaning such as "list price," when, within the past six months from the date of the advertisement, less than 50 percent of all sales of that specific model of the product were sold at that price.~~
- (3) To advertise a testimonial or endorsement by a living person unless the advertisement:
 - (a) contains the actual full name of the person directly following the quote or directly under any picture,
 - (b) lists the person's city and state of residence for any person who is not a nationally recognized celebrity, and
 - (c) discloses whether the person making the endorsement or testimonial received compensation for making the endorsement or testimonial;
- (4) To advertise titles or credentials by the use of initials unless the meaning of the initials are written out in the advertisement; or
- (5) To advertise using words of comparison or performance specifications not based on verifiable data (i.e., lowest price, MSRP, highest quality, fits up to 35dB hearing loss).

Authority G.S. 93D-3(c); 93D-13(a).

CHAPTER 48 - BOARD OF PHYSICAL THERAPY EXAMINERS

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Board of Physical Therapy Examiners intends to adopt the rules cited as 21 NCAC 48A .0106-.0107, amend the rules cited as 21 NCAC 48A .0105; 48B .0103; 48C .0102; 48D .0112; 48E .0101, .0104-.0105; 48F .0102; 48G .0104-.0106, .0108-.0112, .0404, .0504, .0601-.0602, and repeal the rules cited as 21 NCAC 48A .0104; 48G .0405; 48H .0102.

Agency obtained G.S. 150B-19.1 certification:

- ☐ OSBM certified on:
- ☐ RRC certified on:
- ☒ Not Required

Link to agency website pursuant to G.S. 150B-19.1(c):
<http://www.ncptboard.org>

Proposed Effective Date:

July 1, 2013 - 21 NCAC 48A .0104, .0105, .0106, .0107; 48B .0103; 48C .0102; 48D .0112; 48E .0101, .0104, .0105; 48F .0102; 48G .0104, .0404, .0405, .0504, .0601, .0602; 48H .0102
January 1, 2014 - 21 NCAC 48G .0105, .0106, .0108, .0109, .0110, .0111, .0112

Public Hearing:

Date: December 6, 2012

Time: 10:00 a.m.

Location: Siena Hotel, 1505 E. Franklin Street, Chapel Hill, NC

Reason for Proposed Action: *As the NC Board of Physical Therapy Examiners has not proposed any significant changes in its rules since 2008, there are several reasons for proposing amendments: Editorial changes to make rules less ambiguous; compliance with G.S. 93B-2(d) – Suspension of Authority to Expend Funds; to allow eligible members of the United States Armed Services who are exempt from paying interest and penalties on late tax returns under G.S. 105-249.2 to be exempt from renewal requirements; in response to requests by licensees for safety and security purposes, a new rule is being proposed that will allow licensees to wear a name badge displaying only their first name; clarification of the responsibilities of the physical therapist; allow Board to utilize and recognize changes in technology such as verifying or authenticating licensees in other States/Jurisdictions and receive payments for services electronically; clarification of definitions; clarification and modification of continuing competence requirements; elimination of a category of discipline (Reprimand) that is obsolete; and clarification of rules related to prohibited actions that could lead to disciplinary action.*

Procedure by which a person can object to the agency on a proposed rule: *Any person may object to the proposed rules by speaking at the public hearing and/or by submitting the objections in writing to Ben F. Massey, Jr., PT, Executive Director, NC Board of Physical Therapy Examiners, 18 West Colony Place, Suite 140, Durham, NC 27705; or by email to benmassey@ncptboard.org.*

Comments may be submitted to: Ben F. Massey, Jr., PT, Executive Director, NC Board of Physical Therapy Examiners, 18 West Colony Place, Suite 140, Durham, NC 27705; phone 1-919-490-6393 or 1-800-800-8982; fax 1-919-490-5106; email benmassey@ncptboard.org

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 G.S. 150B-21.4

SUBCHAPTER 48A - ORGANIZATION

21 NCAC 48A .0104 EXECUTIVE DIRECTOR

~~An executive director shall be hired when deemed necessary by the chairman with the approval of the Board.~~

Authority G.S. 90-270.26.

21 NCAC 48A .0105 DEFINITIONS

The following definitions and the definitions in G.S. 90-270.24 will apply throughout Chapter 48:

- ~~(1)(2)~~ "Computer Based Testing" or "CBT" means the Federation approved National Physical Therapist and Physical Therapist Assistant Examinations administered by a testing agency approved by the Federation.
- ~~(2)~~ "Credentials" means the materials an applicant for licensure must present to the Board.
- ~~(3)(4)~~ "Educational programs" means physical therapy and physical therapist assistant educational programs accredited by the Commission on Accreditation of Physical Therapy Education (CAPTE).
- ~~(4)~~ "Endorsement" means granting a license in this State based on an active license in another State.
- ~~(5)(3)~~ "Federation" means Federation of State Boards of Physical Therapy.
- ~~(6)(4)~~ "Graduated" or "graduation" means the completion of all requirements, including clinical experience, from an accredited program for physical therapists or physical therapist assistants. If an educational program certifies that the degree is assured and will be conferred at a later date, an applicant will be considered to have been graduated.
- ~~(7)~~ "Inappropriate touching" means the unwelcome or unwanted laying of hands by a

licensee for a purpose inconsistent with a physical therapy evaluation or treatment of a patient.

- (8) "Note" means the physical therapy progress note that documents each patient visit.
- (9)(8) "On-site supervision" means the supervising licensee is present in the department or facility where services are provided, is immediately available to the person being supervised and maintains continued involvement in aspects of treatment sessions in which students completing clinical requirements or physical therapy aides are involved in components of care.
- (10) "Patient" means any recipient of physical therapy services and includes the term "client".
- (11) "PT" means a Physical Therapist.
- (12)(5) "PT exam" means a Federation approved licensing examination for physical therapists.
- (13) "PTA" means a Physical Therapist Assistant.
- (14)(7) "PTA exam" means a Federation approved licensing examination for physical therapist assistants.
- (15)(6) Reserved.

Authority G.S. 90-270.24; 90-270.26; 90-270.31.

21 NCAC 48A .0106 SUSPENSION OF AUTHORITY TO EXPEND FUNDS

In the event the Board's authority to expend funds is suspended pursuant to G.S. 93B-2(d), the Board shall continue to issue and renew licenses and all fees tendered shall be placed in an escrow account maintained by the Board for this purpose. Once the Board's authority is restored, the funds shall be moved from the escrow account into a general operating account.

Authority G.S. 93B-2.

21 NCAC 48A .0107 IDENTIFICATION REQUIREMENTS

- (a) When providing physical therapy interventions to a patient, a licensee is required to wear a visible badge or other form of identification displaying the licensee's first and last name and level of physical therapy licensure.
- (b) Identification of the licensee may be limited to first name only and level of licensure when necessary for the licensee's safety.
- (c) A name badge is not required to be worn in the licensee's office if the licensee's name is prominently displayed in the office.

Authority G.S. 90-640(a) through (d).

SUBCHAPTER 48B - TYPES OF LICENSES

21 NCAC 48B .0103 LICENSES BY EXAMINATION

- (a) Applicants. An applicant seeking an initial license or who fails to meet the requirements in 21 NCAC 48B .0102 for endorsement must pass a computer-based examination to

practice in North Carolina following the acceptance of ~~his~~ the applicant's credentials.

- (b) Timing of Examination. If the examination is not taken initially within ~~six months~~ one year of the time of approval of the application, the credentials must be reviewed again by the Board before the examination may be taken. ~~An applicant's reason for delaying the examination must be given to the Board in writing.~~

- (c) Examination Taken in Another State. Applicants not previously licensed who take a PT exam or a PTA exam in another state may be ~~considered for licensure~~ licensed in North Carolina ~~by providing if they provide~~ scores that meet the North Carolina passing level. level and meet all ~~All~~ other requirements for North Carolina licensure in effect at the time of ~~application must be met.~~ application.

Authority G.S. 90-270.26; 90-270.29; 90-270.30.

SUBCHAPTER 48C - SCOPE OF PHYSICAL THERAPY PRACTICE

SECTION .0100 - PHYSICAL THERAPISTS

21 NCAC 48C .0102 RESPONSIBILITIES

- (a) ~~The A~~ physical therapist must determine the patient care plan and the elements of that plan appropriate for delegation.
- (b) ~~The A~~ physical therapist must determine that those persons acting under his or her supervision possess the competence to perform the delegated activities.
- (c) ~~The A~~ physical therapist may delegate responsibilities to physical therapist assistants. ~~The A~~ supervising physical therapist must determine that the PT or PTA student is working under supervision at all times.
- (d) ~~The A~~ physical therapist must enter and review chart documentation, reexamine and reassess the patient and revise the patient care plan if necessary, based on the needs of the patient.
- (e) ~~The A~~ physical therapist must establish ~~the a~~ discharge plan. plan that includes a discharge summary for each patient.
- (f) For each date of service, a physical therapist must provide all therapeutic interventions that require the expertise of a physical therapist and must determine the use of assistive personnel who provide delivery of service that is safe and effective for each patient.
- (g) A physical therapist's responsibility for patient care management ~~must include~~ includes first-hand knowledge of the status of each patient and oversight of all documentation for services rendered to each patient, including awareness of fees and reimbursement structures.
- (h) A physical therapist must be immediately available directly or by telecommunication to a physical therapist assistant supervising a physical therapy aide or student engaging in patient care.
- (i) A physical therapist must ~~be limited to~~ clinically supervising supervise only that number of assistive personnel, including physical therapists assistants, physical therapy aides, and students completing clinical requirements, as is appropriate for providing safe and effective patient interventions at all times.
- (j) ~~If a physical therapist assistant or physical therapy aide is involved in the patient care plan, the patient must be reassessed~~

~~by the supervising physical therapist~~ A physical therapist must reassess a patient no less frequently than every ~~30 days~~, 60 days or 13 visits, whichever occurs first.

(k) A physical therapist who is supervising a physical therapy aide or student must be present in the same facility when patient care is provided.

(l) ~~The~~ A physical therapist must document every evaluation and ~~intervention/treatment~~, intervention or treatment including ~~which must include~~ the following elements:

- (1) Authentication (signature and designation) by the physical therapist who performed the service;
- (2) Date of the evaluation or treatment;
- (3) Length of time of total treatment session or evaluation;
- (4) Patient status report;
- (5) Changes in clinical status;
- (6) Identification of specific elements of each ~~intervention/modality~~ intervention or modality provided. Frequency, intensity, or other details may be included in the plan of care and if so, do not need to be repeated in the daily note;
- (7) Equipment provided to the patient or client; and
- (8) Interpretation and analysis of clinical signs and symptoms and response to treatment based on subjective and objective findings, including any adverse reactions to an intervention.

(m) At the time of reassessment ~~least every 30 days~~, the physical therapist must document:

- (1) The patient's response to therapy intervention;
- (2) Progress toward achieving goals; and
- (3) Justifications for continued treatment.

Authority G.S. 90-270.24; 90-270.26; 90-270.31; 90-270.34.

SUBCHAPTER 48D - EXAMINATIONS

21 NCAC 48D .0112 COMPUTER EXAMINATION

The ~~test will~~ examination required for licensure shall be a Computer Based Test (CBT) and ~~will shall~~ be administered by ~~the National Testing Service~~ a testing service recognized by the Federation.

Authority G.S. 90-270.26; 90-270.29; 90-270.30.

SUBCHAPTER 48E - APPLICATION FOR LICENSURE

SECTION .0100 - REQUIREMENTS

21 NCAC 48E .0101 FILING APPLICATION

(a) ~~The~~ An applicant for licensure shall ascertain that his or her credentials are filed ~~properly~~ with the executive ~~director~~, director in accordance with the rules of this Subchapter.

(b) To be certain an applicant ~~shall~~ will be considered for the desired examination date, the application shall be submitted to the executive director at least 30 days prior to the examination.

(c) The Board shall not ~~consider~~ approve an application until the applicant has ~~successfully completed all the academic~~

~~requirements and all clinical affiliations~~, graduated as defined by 21 NCAC 48A .0105(6).

Authority G.S. 90-270.26; 90-270.29; 90-270.31(b).

21 NCAC 48E .0104 EXAMINATION SCORES

Persons seeking licensure by endorsement shall have their examination scores sent to the executive director ~~by a state of endorsement, by the state in which the examination was taken, or by report from the appropriate testing service, on a form authenticated by the reporting Board. The scores shall be on a form bearing the official signature and seal of the reporting Board.~~

Authority G.S. 90-270.26; 90-270.31(b).

21 NCAC 48E .0105 VERIFICATION OF LICENSURE

An applicant must submit verification ~~Verification~~ of an active license in another state must bear the official signature and seal of the Board of that ~~state~~, state, or authenticated by the reporting Board as an official electronic document.

Authority G.S. 90-270.26; 90-270.31(b).

SUBCHAPTER 48F - CERTIFICATES: FEES: INVESTIGATIONS: RECORD OF LICENSEES

SECTION .0100 - CERTIFICATES: FEES: INVESTIGATIONS: RECORD OF LICENSEES

21 NCAC 48F .0102 FEES

(a) The following fees are charged by the Board:

- (1) application for physical therapist licensure, one hundred fifty dollars (\$150.00);
- (2) application for physical therapist assistant licensure, one hundred fifty dollars (\$150.00);
- (3) renewal for all persons, one hundred dollars (\$100.00);
- (4) penalty for late renewal, twenty dollars (\$20.00) plus renewal fee;
- (5) revival of license lapsed less than five years, thirty dollars (\$30.00) plus renewal fee;
- (6) transfer of licensure information fee, including either the examination scores or licensure verification or both, thirty dollars (\$30.00);
- (7) retake examination, sixty dollars (\$60.00);
- (8) certificate replacement or duplicate, thirty dollars (\$30.00);
- (9) directory of licensees, ten dollars (\$10.00);
- (10) licensee list or labels or any portion there-of for physical therapists, sixty dollars (\$60.00);
- (11) licensee list or labels or any portion there-of for physical therapist assistants, sixty dollars (\$60.00);
- (12) processing fee for returned checks, maximum allowed by law.

(b) The application fee is not refundable.

(c) ~~A certified check, money order or cash is required for payment~~ Payment of application fees listed in Subparagraphs

(a)(1) and (2) of this ~~Rule~~. Rule must be made by certified check, cash, credit card or debit card.

Authority G.S. 25-3-512; 90-270.33.

SUBCHAPTER 48G - RETENTION OF LICENSE

SECTION .0100 - LICENSURE RENEWAL

21 NCAC 48G .0104 RENEWAL

(a) If on active duty, and to whom G.S. 105-249.2 grants an extension of time to file a tax return, a member of the United States Armed Services is exempt from compliance with renewal requirements.

(b) The Board shall make available to each licensee having an active license, a A licensure card and renewal certificate bearing the current name of the licensee, license number and a January 31 expiration date will be issued to each person having an active license. date.

Authority G.S. 90-270.26; 90-270.32; 93B-15; 105-249.2.

21 NCAC 48G .0105 DEFINITIONS

As used in this Subchapter, the following definitions apply:

- (1) "Approved provider" means an entity that has been approved by the Board to provide continuing competence activities for licensees as provided in the rules in this Section.
- (2) "Clinical Practice" means physical therapy consultation or patient ~~care~~/client care or client management or the supervision thereof.
- (3) "Contact Hour" means at least 50 consecutive minutes of engagement in a continuing competence activity. Two segments of at least 25 consecutive minutes each is equivalent to one contact hour. Breaks and meals are not included in contact hours.
- (4) "Continuing Competence" means the licensee's ongoing activities to augment knowledge, skills, behaviors, and abilities related to the practice of physical therapy.
- (5) "Continuing Education" means courses of study designed to provide learning experiences for physical therapy licensees.
- (6) "Documentation" means evidence of completion of continuing competence activities.
- (7) "Jurisprudence Exercise" is an online set of questions concerning the Physical Therapy Practice Act, Board rules and Position Statements.
- (8) "Licensee" means a physical therapist or physical therapist assistant licensed in North Carolina.
- (9) "Peer-reviewed" means judged by an independent panel of experts having special knowledge or skills in a particular field of study.

(10) "Point" means a unit of continuing competence.

(11) "Registered" means enrollment in a continuing competence activity.

(12) "Reporting period" means a ~~two-year~~ twenty-five month period commencing on January 1 during which the licensee must complete all continuing competence requirements. Points earned by a licensee may be counted toward completion during one reporting period only.

Authority G.S. 90-270.26(3a).

21 NCAC 48G .0106 CONTINUING COMPETENCE REQUIREMENT

(a) For individuals licensed prior to January 1, 2009, during each reporting period thereafter, each physical therapist must accumulate 30 points, and each physical therapist assistant must accumulate 20 points of continuing competence activities to be eligible for license renewal.

(b) For individuals whose date of initial licensure is after January 1, 2009, commencing on January 1 following the date of initial licensure, each physical therapist must accumulate 30 points and each physical therapist assistant must accumulate 20 points of continuing competence during the reporting period to be eligible for license renewal.

(c) Up to 10 extra points earned during one reporting period may be carried over to the next reporting ~~period.~~ period, except that points earned for the Jurisprudence Exercise, Clinical Practice and Self-Assessment categories may not be carried forward.

Authority G.S. 90-270.26(3a).

21 NCAC 48G .0108 APPROVAL OF PROVIDERS AND ACTIVITIES

(a) The Board shall approve a provider if it is satisfied that the provider's programs have met the standards set forth in Rule .0107 of this Section.

(b) Once a provider is approved, the continuing competence activities ~~sponsored~~ offered by that organization are approved for credit and no application must be made to the Board for approval.

(c) The following organizations are approved providers:

- (1) Any agency or board responsible for licensing individuals to practice physical therapy in the United States or Canada;
- (2) The American Physical Therapy Association (APTA), including any Sections, credentialed residencies and fellowships and its accrediting subsidiary;
- (3) State Chapters of APTA;
- (4) The Federation of State Boards of Physical Therapy (FSBPT), and any accrediting subsidiary;
- (5) The International Association for Continuing Education and Training (IACET);
- ~~(5)(6)~~ Any providers approved or accredited by the agencies or organizations listed in

Subparagraphs (1) through (4) of this Paragraph;

~~(6)~~(7) Physical therapist and physical therapist assistant programs approved by an agency recognized by either the U.S. Department of Education or the Council on Postsecondary Accreditation; and

~~(7)~~(8) The North Carolina Department of Public Instruction, North Carolina Division of Public Health and North Carolina Area Health Education Centers with regard to activities directly related to physical therapy.

(d) The Board may at any time revoke the approval of a provider for failure to satisfy the requirements of Rule .0107 of this Section. The Board may evaluate an activity presented by an approved provider and, upon a determination that the activity does not satisfy the requirements of Rule .0107 of this Section, notify the approved provider that any presentation of the same activity is not approved for credit. The notice shall be sent by the Board to the approved provider within 30 days after receipt of the notification. The approved provider may request reconsideration of the decision by submitting a letter of appeal to the Board's Executive Director within 15 days of receipt of the notice of disapproval.

(e) Any organization not approved as a provider that desires approval of a course or activity to be offered in North Carolina shall apply to the Board at least 60 days prior to the date the activity is scheduled. Required information includes the name and address of the activity provider, the date, location and schedule for the activity, a description of the qualifications of the presenters and the content of the activity, including written materials. An activity shall be approved if notice of denial is not furnished to the organization within 30 days of the scheduled activity. An applicant denied approval of a program may request reconsideration of the decision by submitting a letter of appeal to the Board's Executive Director within 15 days of receipt of the notice of disapproval.

(f) A licensee desiring approval of a course or activity that has not otherwise been approved shall apply to the Board at least 30 days prior to the date the activity is scheduled. The licensee shall furnish the name and address of the activity provider, the date, location and schedule of the activity and a description of the qualifications of the presenters and the content of the activity, including written materials. An activity shall be approved if notice of denial is not furnished to the licensee within 10 days of the scheduled activity. An applicant denied approval of a program may request reconsideration of the decision by submitting a letter of appeal to the Board's Executive Director within 15 days of receipt of the notice of disapproval.

(g) For continuing competence activities offered for credit in this State, the providers shall furnish to the Board the assigned activity code number assigned by the Board and a list of all licensees completing the activity, including full name and license number, within 90 days of the completion of the approved activity.

Authority G.S. 90-270.26(3a).

21 NCAC 48G .0109 CONTINUING COMPETENCE ACTIVITIES

(a) Continuing Education activities are eligible for points as follows:

- (1) A registered attendee at courses or conferences offered live, in real time by approved providers earns one point for each contact hour, and the maximum number of points allowed during any reporting period is 29. The maximum number of points allowed during any reporting period for an interactive course offered through electronic media is 15. Credit shall not be given for the same course or conference more than once during any reporting period. The licensee shall submit the Certificate of Attendance issued by the approved provider.
- (2) For registered participation in an academic course related to physical therapy offered for credit in a post-baccalaureate program unless the course is required for licensure, one class hour earns one point, and the maximum number of points allowed during any reporting period is 29. The licensee must obtain a letter grade of "C" or better or "P" if offered on a Pass/Fail basis. Credit shall not be given for the same course more than one time. The licensee shall submit the course description published by the approved provider.
- (3) For attendance or participation in an activity related to physical therapy for which no assessment is received, two contact hours earns one point, and the maximum number of points allowed during any reporting period is five. Credit shall not be given for the same activity more than one time. The licensee shall submit a certificate of completion, or if that is not available, a summary of the objectives of the activity and the time spent in the activity.
- (4) For registered participation in a non-interactive course offered by an approved provider by videotape, satellite transmission, webcast, DVD or other electronic media ~~for which an assessment is received~~, one hour of participation earns one point, and the maximum number of points allowed during any reporting period is 10. Credit shall not be given for the same course more than once during a reporting period. The licensee shall submit a certificate of ~~completion and assessment results furnished by the approved provider~~ completion.
- (5) For participation in a study group consisting of at least three licensees involved whose purpose is to advance the knowledge and skills of the participants related to the practice of physical therapy, two hours of participation in the study group earns one point, and the maximum

number of points allowed during any reporting period is ~~five~~, ten. The licensee shall submit a biography of each participant, a statement of the goals of the study group, attendance records for each participant, assignments for each participant and an analysis by each participant specifying the knowledge and skills enhanced by participating in the study group.

- (6) For participation in a self-designed home study program designed to advance the knowledge and skill of the participant related to the practice of physical therapy, three hours of home study earns one point, and the maximum number of points allowed for home study during any reporting period is five. The licensee shall submit a description of the plans and objectives of the home study, an analysis of the manner in which the plans and objectives were met, and a certification of the time spent on the project.
- (7) For participation in continuing education required by credentialed residencies and fellowships, one point is granted for each contact hour and the maximum number of points for each reporting period is 29. The licensee shall submit the certificate of attendance issued by the APTA credentialed residency or fellowship.
- (8) For completion of a home study physical therapy program furnished by an approved provider, one hour of home study earns one point, and the maximum number of points allowed is 10. The licensee shall submit a certificate of completion issued by the approved provider.

(b) Points are awarded for Advanced Training as follows:

- (1) For fellowships conferred by organizations credentialed by the American Physical Therapy Association ("APTA") in a specialty area of the practice of physical therapy, 10 points are awarded for each full year of clinical participation, up to a maximum of 20 points for this activity. The licensee shall submit the certificate conferred on the licensee.
- (2) For completion of a residency program in physical therapy offered by an APTA credentialed organization, 10 points are awarded for each full year of clinical participation, up to a maximum of 20 points for this activity. The licensee shall submit evidence that all requirements of the residency program have been met.
- (3) For specialty certification or specialty recertification by the American Board of Physical Therapy Specialization ("ABPTS"), or its successor organization, 20 points are awarded upon receipt of such certification or recertification during any reporting period.

The licensee shall submit evidence from ABPTS that the certification or recertification has been granted.

- (4) For a physical therapist assistant ("PTA"), Advanced Proficiency designation by the APTA for the PTA earns 19 points. The licensee shall submit evidence from APTA that the designation has been awarded.

(c) Achieving a passing score on the FSBPT's Practice Review Tool ("PRT") earns 10 points. Taking the PRT without achieving a passing score earns five points. The licensee shall submit the certificate of completion and performance report. Points shall be awarded only one time for any specific practice area.

(d) Clinical Education Activities are eligible for points as follows:

- (1) For completion of a course offered by an approved provider for a licensee to become a Credentialed Clinical Instructor recognized by APTA, one course hour earns one point, and the maximum number of points awarded during any reporting period is 29. The licensee shall submit a credential certificate issued by the approved provider. Credit for completing the same course shall be given only one time.
- (2) For enrollment in a course offered by APTA for a licensee to become a Credentialed Clinical Instructor Trainer, one course hour earns one point, and the maximum number of points awarded during any reporting period is 29. The licensee shall submit a Trainer certificate issued by APTA. Credit for completing the same course will be given only one time.
- (3) For serving as a Clinical Instructor for a physical therapist or physical therapist assistant student, resident or fellow for a period of at least 80 hours, 40 hours of direct supervision earns one point, and a maximum credit of eight points is allowed during any reporting period. The licensee shall submit verification of the clinical affiliation agreement with the accredited educational program for the student supervised and a log showing the number of hours spent supervising the student.

(e) Presenting or teaching for an accredited physical therapy educational program, a transitional Doctor of Physical Therapy ("DPT") program, an accredited program for health care practitioners licensed under the provisions of Chapter 90 of the North Carolina General Statutes, or a state, national or international workshop, seminar or professional health care conference earns two points for each hour of presentation or teaching. The licensee shall submit written materials advertising the presentation or teaching, or other evidence of the date, subject and goals and objectives of the presentation and any written materials prepared by the licensee. A maximum of six points is allowed during any reporting period, and credit shall

not be given for teaching or presenting the same subject matter more than one time.

(f) Research and published books or articles are eligible to accumulate up to a maximum of 15 points as follows:

- (1) Submission of a request to a funding agency for a research grant as a Principal or Co-Principal Investigator earns 10 points. The licensee shall submit a copy of the research ~~grant, which grant that~~ must include the title, an abstract, the funding agency and the grant period. Points shall be awarded only one time during any reporting period.
- (2) Having a research grant funded as a Principal Investigator or Co-Principal Investigator earns 10 points. The licensee shall submit a copy of the research ~~grant, which grant that~~ must include the title, an abstract, the funding agency, the grant period and documentation of the funding received and for what period. Points shall be awarded only one time during a reporting period.
- (3) Service as a Grants Reviewer earns one point for each two hours of grant review and a maximum of five points may be earned. The licensee shall submit a description of all grants reviewed and any reports generated in connection with the reviews, including the dates of service, the agency for whom the review was performed and the hours spent on the grant review. Points shall be awarded only one time during any reporting period.
- (4) The author or editor of a book dealing with a subject related to the practice of physical therapy earns 10 points. The licensee shall submit a copy of the published book and a list of consulted resources. Points shall be awarded only one time during any reporting period.
- (5) The author or editor of a chapter in a book dealing with a subject related to the practice of physical therapy earns five points. The licensee shall submit a copy of the published book and a list of consulted resources. Points shall be awarded only one time during any reporting period.
- (6) The author of a published peer-reviewed article relating to the practice of physical therapy earns 10 points. The licensee shall submit the article, names and employers of the reviewers and a list of consulted resources. Points shall be awarded only one time during any reporting period.
- (7) The author of a published non peer-reviewed article or book-review relating to the practice of physical therapy earns ~~three~~ four points. The licensee shall submit the article and a list of consulted resources. Points shall be awarded only one time during any reporting period.

- (8) The author of a peer-reviewed abstract for a poster or presentation related to the practice of physical therapy to a professional health care group earns five points for a presentation, up to a maximum of 15 points during any reporting period, and credit for the same poster or presentation shall not be awarded more than one time. The licensee shall submit a copy of the poster or presentation and a list of consulted resources.

(g) Clinical practice is eligible for points as follows:

- (1) For each year that a licensee is engaged in full-time clinical practice, three points shall be awarded. The licensee shall submit certification from the licensee's employer(s) or documentation of practice hours as owner of a practice that clinical practice during the year reached or exceeded 1750 hours.
- (2) For each year that a licensee is engaged in part-time clinical practice, two points shall be awarded. The licensee shall submit a certification from the licensee's employer(s) or documentation of practice hours as owner of a practice that clinical practice during the year reached or exceeded 1000 hours.
- (3) For each year that a licensee is engaged in clinical practice for at least 200 hours, one point shall be awarded. The licensee shall submit a certification from the employer(s) for whom the services were performed or documentation of practice hours as owner of a practice.

(h) Professional Self-Assessment earns five points for completion of an approved Reflective Practice Exercise. This exercise shall be approved if it is a process for a licensee to evaluate current professional practice abilities, to establish goals to improve those abilities, to develop a plan to meet those goals and to document that the objectives are being accomplished. The licensee shall submit evidence of completion of all elements of the Reflective Practice Exercise. Points shall be awarded only one time during any reporting period.

(i) Workplace Education is eligible for points as follows:

- (1) Presentation or attendance at an in-service session related to the practice of physical therapy, including health care issues related to the practice of physical therapy, is allowed. The licensee shall submit a roster or certificate of attendance signed by a representative of the employer. Two hours of attendance earns one point. One hour of presentation earns one point. A maximum of five points may be earned during any one reporting period. ~~Two hours of in-service earns one point. A maximum of five points may be earned during any reporting period.~~ Credit for the same in-service shall not be granted more than one time.
- (2) Presentation or attendance at an in-service session devoted to general patient safety,

emergency procedures, or governmental regulatory requirements is allowed. The licensee shall submit a roster or certificate of attendance signed by a representative of the employer. Two contact hours of in-service are equivalent to one point, which is the maximum credit that shall be granted during any reporting period. Credit for the same in-service shall not be granted more than one time during any reporting period.

(j) Professional Service is eligible for points as follows:

- (1) Participation in a national physical therapy or interdisciplinary (including physical therapy) organization as an officer or chair of a physical therapy services committee or physical therapy services task force member for at least one year earns five points for each full year of participation, up to a maximum of 10 points during any reporting period. The licensee shall submit organizational materials listing the licensee's participation, a statement of the responsibilities of the position and a summary of the activities of the licensee.
- (2) Participation in a state physical therapy or interdisciplinary (including physical therapy) organization as an officer or chair of a physical therapy services committee for at least one year earns four points for each full year of participation, up to a maximum of eight points during any reporting period. The licensee shall submit organizational materials listing the licensee's participation, a statement of the responsibilities of the position and a summary of the activities of the licensee.
- (3) Participation in a local or regional physical therapy or interdisciplinary (including physical therapy) organization as an officer or chair of a physical therapy service committee for at least one year earns two points for each full year of participation, up to a maximum of four points during any reporting period. The licensee shall submit organizational materials listing the licensee's participation, a statement of the responsibilities of the position and a summary of the activities of the licensee.
- (4) Participation as a member of a physical therapy professional organization committee involved with physical therapy services for at least one year earns one point for each full year of participation, up to a maximum of two points during any reporting period. The licensee shall submit organizational materials listing the licensee's participation, a statement of the responsibilities of the committee and a summary of the work of the committee.
- (5) Participation in unpaid volunteer service to the general public and healthcare professionals related to physical therapy earns one point for at least 20 hours spent on service activities

during each year, up to a maximum of two points during any reporting period. The licensee shall submit published materials describing the service activity.

- (6) Membership in the APTA for one year earns one point. A point may be earned for each year of membership. The licensee shall submit proof of membership in the APTA.
- (7) Membership in an APTA Section for one year earns one-half point. The licensee shall submit proof of membership in the APTA Section. Points shall not be awarded for membership in more than one Section.
- (8) Selection by Federation of State Boards of Physical Therapy (FSBPT) for participation as an item writer for the National Physical Therapy Examination (NPTE) or by the American Board of Physical Therapy Specialties (ABPTS) earns five points for each year of participation. The licensee shall submit documentation of participation by the FSBPT or ABPTS.
- (9) The author of a published abstract or book review related to the practice of physical therapy earns a maximum 4 points during any reporting period. The licensee shall submit a copy of the abstract or book review.
- (10) Participation in clinical research, clinical trials or research projects related to the practice of physical therapy earns one point for each hour of participation up to a maximum of 10 hours per reporting period. The licensee shall submit a log of hours of participation including date, activity performed, location of the research and primary investigator.

~~(k) During each reporting period, a licensee may complete an ethics exercise as directed by the Board. A certificate of completion shall be issued to a licensee at the conclusion of the exercise, at which time one point shall be awarded to the licensee.~~

~~(4)(k)~~ During each reporting period, every licensee must complete a jurisprudence exercise provided by the Board. The jurisprudence exercise shall be available online at the Board's website, and a certificate of completion shall be issued to a licensee at the conclusion of the exercise, at which time one point shall be awarded to the licensee. The maximum number of points allowed during a reporting period is three.

Authority G.S. 90-270.26(3a).

21 NCAC 48G .0110 EVIDENCE OF COMPLIANCE

(a) Each licensee shall submit a completed Continuing Competence ~~Compliance~~ Reporting Form with an application for license renewal.

(b) Licensees shall retain evidence of compliance with continuing competence requirements for a period of four years following the end of the reporting period for which credit is sought for an activity.

(c) Documentary evidence for Continuing Education activities shall include the following for each activity:

- (1) Name of approved ~~sponsor~~; provider;
- (2) Name of accrediting organization;
- (3) Title;
- (4) ~~Summary of content~~;
- (5) ~~Schedule~~;
- (6) ~~Location~~;
- (7) ~~Name and qualifications of each presenter~~;
- (8)(4) Date;
- (9)(5) Hours for presentation; and
- (10)(6) Record of attendance or participation by ~~sponsor~~; and provider;
- (11) ~~Other information demonstrating completion of the activity.~~

(d) The Board shall conduct random audits to ensure continuing competence compliance. Within 30 days from receipt of an Audit Notice from the Board, the licensee must furnish the Board with the documentary evidence required by the rules in this Subchapter showing completion of the points required for the audited reporting period.

(e) Requests for extensions of time for up to an additional 30 days to respond to the Audit Notice shall be granted by the Board's Executive Director. For circumstances beyond the control of the licensee or for personal hardship, the Board shall grant an additional period of time to respond to the Audit Notice.

(f) If the results of the audit show a licensee has not completed the required points, and the number of additional points needed by the licensee is 10 or less, the licensee shall complete the remaining points within 90 days from the date the Board notifies the licensee by certified mail of the deficiency. For circumstances beyond the control of the licensee or for personal hardship, the Board shall grant an additional period of time to respond to the Audit Notice.

(g) Failure to respond to the Board's Audit Notice in a timely fashion, or failure to provide the necessary documentary evidence of compliance pursuant to this Rule shall subject the licensee to disciplinary action pursuant to 21 NCAC 48G .0601(a)(10).

Authority G.S. 90-270.26(3a).

21 NCAC 48G .0111 EXEMPTIONS

(a) To qualify for an exemption ~~or deferment~~ from the rules in this Subchapter, a licensee must furnish the applicable information required on the Continuing Competence Compliance Form.

(b) A member of the United States Armed Services is exempt from compliance if on active duty for ~~a period of at least 120 consecutive days~~. such period of time as G.S. 105-249.2 would grant an extension to file a tax return. The reporting period shall commence on January 1 following the licensee's discharge from active duty.

(c) The Board shall grant an exemption from completing applicable continuing competence requirements for up to two years to any licensee who becomes disabled or sustains a personal hardship that makes completion of continuing competence requirements impractical.

(d) In cases of personal or family emergencies, the Board shall allow the licensee up to an additional one year to complete the applicable continuing competence requirements.

(e) Upon written application to the Board, any licensee who is 65 years of age or older and is not engaged in practice or patient treatment shall be granted an exemption of up to two years from completing continuing competence requirements.

(f) Other requests for partial exemptions ~~or deferments~~ for hardships or circumstances beyond the control of the licensee shall be granted by the Board upon written application of the licensee.

(g) A licensee seeking an exemption ~~or deferment~~ pursuant to this Rule shall provide written documentation to the Board to support the ~~exemption or deferment~~. exemption.

Authority G.S. 90-270.26(3a).

21 NCAC 48G .0112 COSTS

(a) There is no cost for approval of continuing competence activities offered by approved ~~sponsors~~; providers.

(b) For a ~~non-Approved~~ non-approved provider seeking approval of a continuing competence activity offered to licensees in this State, the cost is one hundred fifty dollars (\$150.00) per activity.

(c) For a licensee seeking approval of a continuing competence activity that is not offered by an approved ~~sponsor~~; provider, the cost is twenty-five dollars (\$25.00).

Authority G.S. 90-270.26(7).

SECTION .0400 - PROBATION OR WARNING

21 NCAC 48G .0404 NOTIFICATION AND HEARING

(a) Any licensee subject to being placed on probation or receiving a warning ~~will~~ shall be notified by the Board of the alleged acts or conduct warranting the intended action, and ~~such~~ the licensee shall be given an opportunity for an informal meeting with the Board to show why the licensee should not be placed on probation or receive a warning. Provided, however, nothing herein shall limit a licensee's right to request a contested case hearing.

(b) Before a ~~reprimand~~ warning is issued to a licensee, the licensee may request an informal meeting with the Board to show why the licensee should not receive a ~~reprimand~~. warning.

Authority G.S. 90-270.26; 90-270.35; 90-270.36.

21 NCAC 48G .0405 GROUNDS FOR REPRIMAND

~~Whenever grounds exist for placing a licensee on probation or issuing a warning, if the results of the informal meeting with the Board demonstrate that a public censure of the licensee would be counterproductive or unwarranted, a private reprimand may be issued to the licensee. "Private" means that the issuance of a reprimand will not be published on the Board's web page or in the Board's Newsletter.~~

Authority G.S. 90-270.26; 90-270.35; 90-270.36.

SECTION .0500 - CONTESTED CASE HEARINGS

21 NCAC 48G .0504 COMPLAINTS AND INVESTIGATIONS

(a) In order to file a complaint with the Board, the following information shall be submitted to the Board in writing:

- (1) name and address of person alleged to have violated Physical Therapy Practice Act;
- (2) ~~succinct~~ statement of conduct giving rise to complaint;
- (3) name, address and telephone number of complainant.

(b) Upon receipt of a written complaint alleging misconduct that might subject a licensee to disciplinary action, or upon the receipt of confirmation that a violation of the Physical Therapy Practice Act has occurred, the Board ~~may~~ shall investigate such matter to determine whether probable cause exists to institute ~~formal~~ disciplinary proceedings.

(c) The executive director of the Board and a member appointed by the Chair shall serve as a probable cause or investigating committee. This committee may be assisted by the Board's attorney or investigator or by a former member of the Board or consultant who possesses expertise that will assist the Committee in its investigation retained for the purpose of such investigation.

(d) The probable cause committee shall investigate the complaint. In conducting its investigation, the Board Chair (or Executive Director, if designated by the Chair) may issue subpoenas in the Committee's name for the production of documents pursuant to the provisions of 21 NCAC 48G .0512. The committee shall determine whether ~~or not~~ there is probable cause to believe that the licensee has violated any statute or board rule ~~which that~~ would justify a disciplinary hearing. If the Committee determines probable cause does not exist, the complaint shall be dismissed, and the complainant shall be notified of the Committee's action and its reasons. ~~The Committee may issue an advisory letter to the licensee, which is non-disciplinary and notifies a licensee that, while there is insufficient evidence to support disciplinary action, the Committee believes that the licensee should modify or eliminate certain conduct or practices.~~ If the committee determines that such probable cause exists, the committee ~~may~~ shall offer confer with the licensee in an attempt to settle the matter through informal means. If the committee and the licensee reach an agreement on the disposition of the matter under investigation, the committee ~~may~~ shall cause to be drafted a proposed settlement ~~agreement, which may agreement that shall~~ include findings of fact, conclusions of law, and a consent order, for presentation to and consideration by the Board. ~~Such The~~ settlement agreement shall be presented to and approved by the licensee before ~~they are~~ it is presented to the Board for consideration and approval.

(e) If the probable cause committee and the licensee are not able to settle the matter under investigation by informal means, the licensee may request a contested case hearing pursuant to Rule .0502 of this Section or the Board ~~may~~ shall give notice of a disciplinary or contested case ~~hearing, if required.~~ hearing.

(f) If probable cause is found, but it is determined that license suspension or revocation is not warranted, the committee ~~may~~ shall recommend that the Board place the licensee on probation, ~~or issue a warning or issue a reprimand~~ to the licensee. The

committee shall mail a copy of its recommendation to the licensee.

(g) Within 20 days after receipt of the recommendation, the licensee may refuse the ~~probation, warning, probation or warning~~ or reprimand and request a contested case hearing pursuant to this Section. ~~Such The~~ refusal and request shall be filed with the Board. The legal counsel for the Board shall thereafter prepare, file, and serve a Notice of Hearing. ~~In the alternative, the licensee may request an informal meeting with the Board pursuant to the provisions of 21 NCAC 48G .0404.~~

(h) In the alternative, within 20 days after receipt of the recommendation, the licensee may request an informal meeting with the Board to discuss the basis of the committee's recommendation and present reasons why the Board should not follow the committee's recommendation. There shall be no sworn testimony presented, nor shall there be a formal record of the proceedings.

(i) If the licensee does not request a contested case hearing or an informal meeting with the Board, the Board shall still determine whether to accept the committee's recommendation.

(j) Participation by a current Board member in the investigation of a complaint shall disqualify that Board member from participating in the decision making process of a contested case hearing.

(k) Subsequent to the issuance of a notice of hearing, the attorney prosecuting the contested case for the Board may not communicate, directly or indirectly, in connection with any issue of fact or question of law, with any party, including the members of the Board assigned to make a decision or to make findings of fact and conclusions of law in the contested case, except on notice and opportunity for all parties to participate. However, the attorney prosecuting the matter for the Board may continue to communicate concerning such contested case with the members of the probable cause committee who investigated such matter, with persons not parties to the contested case who may be called as ~~witnesses,~~ witnesses including the person who filed the complaint and with the Board members about other matters.

Authority G.S. 90-270.26; 150B-38; 150B-39; 150B-40.

SECTION .0600 - DISCIPLINARY ACTION

21 NCAC 48G .0601 PROHIBITED ACTIONS

(a) Behaviors and activities which may result in disciplinary action by the Board pursuant to G.S. 90-270.36(1), (6), (7), (8) and (9) and G.S. 90-270.35(4) include the following:

- (1) recording false or misleading data, measurements or notes regarding a patient;
- (2) delegating responsibilities to a person when the licensee delegating knows or has reason to know that the competency of that person is impaired by physical or psychological ailments, or by alcohol or other pharmacological agents, prescribed or not;
- (3) practicing or offering to practice beyond the scope permitted by law;
- (4) accepting and performing professional responsibilities which the licensee knows or

- has reason to know that he or she is not competent to perform;
- (5) performing, without adequate supervision as described in the rules in this Chapter, professional services which the licensee is authorized to perform only under the supervision of a licensed professional, except in an emergency situation where a person's life or health is in danger;
 - (6) harassing, abusing, inappropriately touching, or intimidating a patient either physically or verbally;
 - (7) failure to exercise supervision over persons who are authorized to practice only under the supervision of the licensed professional;
 - (8) promoting an unnecessary device, treatment intervention, nutritional supplement, product or service for the financial gain of the practitioner or of a third party;
 - (9) directly or indirectly offering, giving, soliciting, or receiving or agreeing to receive, any fee or other consideration to or from a third party for the referral of a client;
 - (10) failure to file a report, filing a false report or failure to respond to an inquiry within 30 days, required by law or ~~these Rules~~, the rules in this Subchapter, or impeding or obstructing such filing or inducing another person to do so;
 - (11) revealing identifiable data, or information obtained in a professional capacity, without prior consent of the patient, except as authorized or required by law;
 - (12) guaranteeing that a patient will benefit from the performance of professional services;
 - (13) altering a license or renewal card by changing any information appearing thereon;
 - (14) using a license or renewal card which has been altered;
 - (15) permitting or allowing another person to use his or her license or renewal card for the practice of physical therapy;
 - (16) delegating professional responsibilities to a person when the licensee delegating such responsibilities knows or has reason to know that such a person is not qualified by training, by experience, or by licensure to perform such responsibilities;
 - (17) violating any term of probation, condition, or limitation imposed on the licensee by the Board;
 - (18) soliciting or engaging in any activities of a sexual nature, including kissing, fondling or touching any person while engaged in the practice of physical therapy; the person is under the care of a physical therapist or physical therapist assistant;
 - (19) billing or charging for services or treatment not performed;
 - (20) making treatment recommendations or basing a patient's continued treatment on the extent of third party benefits instead of the patient's condition;
 - (21) willfully or intentionally communicating false or misleading information regarding a patient;
 - (22) harassing, abusing, or intimidating any person, either physically or verbally, ~~in the presence of a patient;~~ while engaged in the practice of physical therapy;
 - (23) using a form of a license or renewal card that was not issued by the Board or is not current.
 - (24) failing to record patient data within a reasonable period of time following evaluation, assessment or intervention;
 - (25) failing to pay the costs of investigation or otherwise to comply with an order of discipline;
 - (26) failing to maintain legible patient records that contain an evaluation of objective findings, a diagnosis, a plan of care including desired outcomes, the treatment record including all elements of 21 NCAC 48C .0102(l) or 21 NCAC 48C .0201(f), a discharge ~~plan~~ summary including the results of the intervention, and sufficient information to identify the patient and the printed name and title of each person making an entry in the patient record;
 - (27) charging fees not supported by ~~treatment notes; and~~ documentation in the patient record;
 - (28) furnishing false or misleading information on an application for licensure and licensure renewal; renewal; and
 - (29) engaging in misrepresentation or deceit of, or exercising undue influence over a patient or former patient for the financial gain of the licensee.
- (b) When a person licensed to practice physical therapy is also licensed in another jurisdiction and that other jurisdiction takes disciplinary action against the licensee, the North Carolina Board of Physical Therapy Examiners may summarily impose the same or lesser disciplinary action upon receipt of the other jurisdiction's actions. The licensee may request a hearing. At the hearing the issues shall be limited to:
- (1) whether the person against whom action was taken by the other jurisdiction and the North Carolina licensee are the same person;
 - (2) whether the conduct found by the other jurisdiction also violates the North Carolina Physical Therapy Act; and
 - (3) whether the sanction imposed by the other jurisdiction is lawful under North Carolina law.
- (c) In accordance with G.S. 150B-3(c) a license may be summarily suspended if the public health, safety, or welfare requires emergency action. ~~This determination is delegated to the Chairman or Executive Director of the Board pursuant to G.S. 90-270.26(8).~~ Such a finding shall be incorporated with the

order of the Board of Physical Therapy Examiners and the order shall be effective on the date specified in the order or on service of the certified copy of the order at the last known address of the licensee, whichever is later, and continues to be effective during the proceedings. Failure to receive the order because of refusal of service or unknown address does not invalidate the order. ~~Proceedings shall be commenced promptly.~~

(d) When the Board receives a notice from a Clerk of Superior Court that the license of a physical therapist or a physical therapist assistant has been forfeited pursuant to G.S. 15A-1331A, the licensee shall surrender the license to the Board immediately within 24 hours and not engage in the practice of physical therapy during the period of forfeiture. Forfeiture under this Section shall not limit the Board's authority to take further disciplinary action against the licensee in accordance with the Board's rules.

Authority G.S. 15A-1331A; 90-270.24; 90-270.26; 90-270.35(4); 90-270.36; 150B-3.

21 NCAC 48G .0602 SANCTIONS; REAPPLICATION

(a) The Board may, upon proof of a violation of G.S. 90-270.36 or the rules in this Chapter, impose any of the following ~~sanctions in its discretion:~~ sanctions:

- ~~(1) — issue a reprimand;~~
- ~~(2)(1)~~ issue a warning to a licensee;
- ~~(3)(2)~~ place a licensee on probation;
- ~~(4)(3)~~ suspend a license, the duration of which shall be determined by the Board;
- ~~(5)(4)~~ revoke any license;
- ~~(6)(5)~~ refuse to issue or renew a license;
- ~~(7)(6)~~ accept a voluntary surrender of a license; and
- ~~(8)(7)~~ charge the reasonable costs of investigation and hearing to a licensee who is disciplined.

(b) In addition to the sanctions specified in Subparagraphs ~~(a)(2), (3) and (4)~~ (a)(1), (2) and (3) of this Rule, the Board may also impose restrictions and conditions on a license including scope of practice, place of practice, supervision of practice, duration of licensed status, whether a licensee may work alone or supervise others, or type or condition of patient or client served, including requiring a licensee to submit regular reports to the Board on matters related to the restricted license.

(c) A person whose license has been revoked or who surrenders a license:

- (1) is not permitted to reapply for a license for a period of two years from the date of revocation;
- (2) is not permitted to reapply for a license for a period not to exceed two years from the date of surrender;
- (3) must submit as part of the reapplication process all materials requested by the Board related to the revocation or surrender and ~~may~~ shall be required to meet with the Board; and
- (4) may have the restrictions specified in Paragraph (b) of this Rule imposed in conjunction with the issuance of a license.

Authority G.S. 90-270.26.

SUBCHAPTER 48H - RULEMAKING AND ADMINISTRATIVE HEARING PROCEDURES

SECTION .0100 - AVAILABILITY OF RULES

21 NCAC 48H .0102 INSPECTION OF RULES

~~Official rules will be available for public inspection in the Office of Administrative Hearings or by making an appointment with the executive director.~~

Authority G.S. 90-270.26; 150B-11; 150B-62.

CHAPTER 52 - BOARD OF PODIATRY EXAMINERS

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Board of Podiatry Examiners intends to adopt the rule cited as 21 NCAC 52 .0613 and amend the rules cited as 21 NCAC 52 .0202 and .0207.

Agency obtained G.S. 150B-19.1 certification:

- ☐ OSBM certified on:
- ☐ RRC certified on:
- ☒ Not Required

Link to agency website pursuant to G.S. 150B-19.1(c):
<http://www.ncbpe.org>

Proposed Effective Date: *March 1, 2013*

Public Hearing:

Date: *January 14, 2013*

Time: *10:00 a.m.*

Location: *FirstPoint Management Resources, 1500 Sunday Drive, Suite 102, Conference Room, Raleigh, NC 27607*

Reason for Proposed Action:

21 NCAC 52 .0202 – This proposed amendment provides for a second examination section on podiatry practice and ethics and addresses objections by the Rules Review Commission to 21 NCAC 52 .0205 "Practice Orientation" which is also being amended to make the Orientation training optional rather than mandatory.

21 NCAC 52 .0207 – This proposed amendment clarifies that signatures on renewal paperwork must be original and not stamped or signed by non-podiatry staff.

21 NCAC 52 .0613 – Although the Board's fees are listed in the State statutes and some rules, there was no rule that listed all the fees; this proposed adoption lists all the Board's fees in one place.

Procedure by which a person can object to the agency on a proposed rule: *Any person wishing to submit a petition requesting the Board to object to a rule shall address a petition to the office of the Board of Podiatry Examiners. The caption of the petition shall bear the notation "RULEMAKING PETITION RE:" and then the subject area. The petition must include the*

following information: (1) an indication of the subject area to which the petition is directed. For example: "This petition is to object to proposed amended Rule .0000;" (2) either a draft of the proposed rule or a summary of its contents; (3) reason for the proposal; (4) the effect on existing rules; (5) any data supporting the proposal; (6) effect of the proposed rule on existing practices in the area involved, including cost factors; (7) names of those most likely to be affected by the proposed rule with addresses if reasonably known; and (8) name(s) and address(es) of petitioner(s).

Comments may be submitted to: Penney De Pas, Executive Secretary, NC Board of Podiatry Examiners, 1500 Sunday Drive, Suite 102, Raleigh, NC 27607-5151; fax (919) 787-4916; email info@ncbpe.org

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 .0200 - EXAMINATION AND LICENSING

21 NCAC 52 .0202 EXAMINATION

(a) The board shall conduct an examination as set out in G.S. 90-202.6. The examination shall be scheduled so as not to conflict with the APMLE.

(b) An applicant who has qualified to sit for the examination must pass written and oral sections on medical and clinical subjects related to the practice of podiatric medicine.

(c) An applicant who has successfully completed the examination in Paragraph (a) of this Rule, must also pass an examination section on podiatric office practice and ethics.

Authority G.S. 90-202.6.

21 NCAC 52 .0207 ANNUAL RENEWAL OF LICENSE

The executive secretary of the board shall mail to the last known address of each license holder each year a form on which to apply for renewal of his license. The renewal form and accompanying documents shall be returned to the board with original signatures signed by the licensed podiatrist. The penalties for failure to comply are specified in G.S. 90-202.10.

Authority G.S. 90-202.4(g); 90-202.10.

SECTION .0600 - GENERAL PROVISIONS

21 NCAC 52 .0613 FEE SCHEDULE

The following fees shall apply:

- (1) Application for examination (non-refundable) three hundred dollars (\$300.00);
- (2) Examination (non-refundable) fifty dollars (\$50.00);
- (3) Re-Examination (application + exam fee, non-refundable) three hundred fifty dollars (\$350.00);
- (3) Initial license certificate one hundred dollars (\$100.00);
- (4) Duplicate license certificate twenty-five dollars (\$25.00);
- (5) Annual License Renewal two hundred dollars (\$200.00);
- (6) License Renewal Late Fee (per month, up to six months) twenty-five dollars (\$25.00);
- (7) Database Listing for Pharmaceutical Verification three hundred dollars (\$300.00);
- (8) Returned check: the fee as set in Rule .0612. As of the effective date of this Rule that fee was twelve dollars (\$12.00);
- (9) Incorporation for PA/PC/PLLC fifty dollars (\$50.00);
- (10) Annual Corporate Renewal twenty-five dollars (\$25.00);
- (11) Corporate Renewal Late Fee ten dollars (\$10.00).

Authority G.S. 55B-10; 55B-11; 90-202.5(a); 90-202.6(c); 90-202.9; 90-202.10.

CHAPTER 58 – REAL ESTATE COMMISSION

Notice is hereby given in accordance with G.S. 150B-21.2 that the Real Estate Commission intends to adopt the rules cited as 21 NCAC 58A .0116-.0118, .2201-.2202, amend the rules cited as 21 NCAC 58A .0103, .0105, .0108, .0110-.0111, .0503-.0504, .0506, .0616, .1401-.1404; 58B .0102-.0103, and repeal the rule cited as 21 NCAC 58A .0107.

Agency obtained G.S. 150B-19.1 certification:

- ☐ OSBM certified on:
- ☐ RRC certified on:

☒ Not Required

Link to agency website pursuant to G.S. 150B-19.1(c):
www.ncrec.gov

Proposed Effective Date: April 1, 2013

Public Hearing:

Date: December 12, 2012

Time: 9:00 a.m.

Location: North Carolina Real Estate Commission, 1313 Navaho Drive, Raleigh, NC 27609

Reason for Proposed Action:

21 NCAC 58A .0103 - To move paragraph (b), dealing with registration of assumed names, and paragraph (d), dealing with business names, from Rule 21 NCAC 58A .0105 to this Rule as the subject matter relates more to names used by licensees; to clarify that licensees doing business under assumed names must register the name with the register of deeds in each county in which the licensee intends to do business; to clarify that a sole proprietorship, partnership, or other business entity other than a corporation or limited liability company may not include the name of a provisional broker or an unlicensed person in the name of the firm and that no licensee shall use in its name the name of any active, inactive, or cancelled broker without the permission of that broker.

21 NCAC 58A .0105 - To move paragraphs (b) and (d) to Rule 21 NCAC 58A .0103 Broker Name and Address as their provisions relate more to broker names than advertising; to reorganize the remaining paragraphs so that the subject matter is presented in a more logical sequence.

21 NCAC 58A .0107 - To repeal this lengthy Rule and reorganize its provisions into three new rules: 21 NCAC 58A .0116 Handling Trust Money, 21 NCAC 58A .0117 Accounting for Trust Money, and 21 NCAC 58A .0118 Trust Money Belonging to Property Owners' Associations.

21 NCAC 58A .0108 - To add broker price opinions now permitted by the recently enacted G.S. 93A-83 to the records a broker is required to retain.

21 NCAC 58A .0110 - To reorganize text into a more logical order; to clarify that sole proprietorships must designate a broker-in-charge unless otherwise exempt; to clarify the delivery address requirements for a broker-in-charge of multiple firms; to eliminate the 10 day period for the filing of a broker-in-charge declaration; to clarify that the Commission designates broker-in-charge after eligibility is determined; to eliminate the requirement that a broker-in-charge provide statements to the Commission about work performed by a broker under his or her supervision; to require a broker-in-charge to take the 12 hour broker-in-charge course if his or her status is terminated for failure to complete educational requirements.

21 NCAC 58A .0111 - To make grammatical corrections to paragraph (a).

21 NCAC 58A .0116 - To adopt a new rule governing the handling of funds belonging to others consisting of amended paragraphs (a), (b), (c), (g), (h), and (j) of current Rule 21 NCAC 58A .0107 which is being repealed.

21 NCAC 58A .0117 - To adopt a new rule governing accounting for funds belonging to others consisting of amended paragraphs (d), (e), (f), (k), and (l) of current Rule 21 NCAC 58A .0107 which is being repealed; to add a personal funds provision and definitions; and to add a provision concerning bank reconciliation.

21 NCAC 58A .0118 - To adopt a new rule governing trust money belonging to a property owners' association consisting of amended paragraph (i) of current Rule 21 NCAC 58A .0107 which is being repealed; and to add a provision limiting the responsibilities of broker/property owners who receive trust money belonging to a property owners' association in their capacity as an officer of the association for which they receive no compensation.

21 NCAC 58A .2201 and .2202 - The General Assembly recently enacted S.L. 2012-163 which added Article 6 to Chapter 93A of the General Statutes. Article 6, which went into effect October 1, 2102, authorizes real estate licensees, other than provisional brokers, to prepare broker price opinions ("BPO") and comparative market analyses ("CMA") for a fee, subject to certain requirements and restrictions. Pursuant to G.S. § 93A-83(d), the Real Estate Commission ("REC") is authorized to adopt rules not inconsistent with the provisions of Article 6. In accordance therewith, the REC is adopting Rule 21 NCAC 58A .2201 to define those broker price opinions and comparative market analyses to which Section .2200 applies, and Rule 21 NCAC 58A .2202 to provide minimum requirements for BPO and CMA assignments that may be accepted by licensees, and to establish minimum standards for performing BPOs and CMAs.

21 NCAC 58A .0503 - To raise the annual license renewal fee from \$40 to \$45. The Commission's revenues have declined along with the decline in the real estate market, while operating expenses have increased. By cutting operating expenses and increasing efficiencies, the Commission has been able to maintain current operations with a \$40 annual renewal fee for over ten years. The modest \$5 annual increase in license renewal fees is now necessary to help the Commission achieve a balanced budget while continuing to perform its statutory duties and to provide consumers and licensees with the exceptional level of service they have come to rely on.

21 NCAC 58A .0504 - To permit the submission of license activation forms over the Internet.

21 NCAC 58A .0506 - To facilitate electronic filing of notifications of supervision and requests for license activation by requiring only the broker-in-charge's signature; also to add satisfaction of post-licensing education deficiency as one of the requirements for license reactivation.

21 NCAC 58A .0511 - To delete obsolete provisions referring to licensing by reciprocity and to clarify licensure requirements for persons licensed in other states.

21 NCAC 58A .0616 - To update paragraph (a)'s description of character required for licensure so that it conforms to the requisite character described in G.S. § 93A-4(b).

21 NCAC 58A .1401 through .1404 - To update references to "Real Estate Recovery Fund" to reflect the current, statutory name of the fund: "Real Estate Education and Recovery Fund."

21 NCAC 58B .0102 and .0103 - To amend 21 NCAC 58B .0102 to standardize the fee for the initial and all subsequent time share registrations for developers selling eleven or more

time shares to \$1,000; to increase the fee for the initial and all subsequent time share registrations for developers selling ten or fewer time shares from \$600 to \$700; and to increase the fee for registration of time shares acquired by homeowners' association in satisfaction of unpaid assessments from \$400 to \$450. Also to amend **21 NCAC 58B .0103** to increase the fee for renewing time share project registrations from \$750 to \$800. The change in the timeshare fee structure is designed to simplify the current structure and to better reflect the costs associated with application review and regulating timeshares. Costs and inflation have risen since the year 2000, when the current registration fees were adopted, and have dramatically increased since 1984, when the existing timeshare renewal fee was established.

Procedure by which a person can object to the agency on a proposed rule: Any person who objects or who has a comment about proposed rule changes may submit written comments to rule-making coordinator, Curtis E. Aldendifer, at PO Box 17100, Raleigh, NC 27619.

Comments may be submitted to: Curtis E. Aldendifer, North Carolina Real Estate Commission, PO Box 17100, Raleigh, NC 27619, Phone (919)875-3700, fax (919)981-5023, email curtis@ncrec.gov.

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

SUBCHAPTER 58A - REAL ESTATE BROKERS

SECTION .0100 - GENERAL BROKERAGE

21 NCAC 58A .0103 BROKER NAME AND ADDRESS

(a) Upon initial licensure and at all times thereafter, every ~~licensee-broker~~ shall assure that the Commission has on record the ~~licensee's broker's~~ current personal name, firm name, trade name, residence address and firm address. Every ~~licensee-broker~~ shall notify the Commission in writing of each change of personal name, firm name, trade name, residence address and firm address within 10 days of said change. All addresses shall be sufficiently descriptive to enable the Commission to correspond with and locate the ~~licensee-broker~~.

(b) Registration of Assumed Name. In the event that any broker shall advertise in any manner using a firm name or an assumed name which does not set forth the surname of the broker, the broker shall first file the appropriate certificate with the office of the county register of deeds in each county in which the broker intends to engage in brokerage activities in compliance with G.S. 66-68 and notify the Commission in writing of the use of such a firm name or assumed name.

(c) Business names. A broker shall not include the name of a provisional broker or an unlicensed person in the name of a sole proprietorship, partnership or business entity other than a corporation or limited liability company. No broker shall use a business name that includes the name of any active, inactive, or cancelled broker without the permission of that broker or that broker's authorized representative.

Authority G.S. 93A-3(c).

21 NCAC 58A .0105 ADVERTISING

(a) Authority to Advertise.

(1) A provisional broker shall not advertise any brokerage service or the sale, purchase, exchange, rent or lease of real estate for another or others without the consent of his or her broker-in-charge and without including in the advertisement the name of the broker or firm with whom the provisional broker is associated.

(2) A broker shall not advertise or display a "for sale" or "for rent" sign on any real estate without the written consent of the owner or the owner's authorized agent.

(a)(b) Blind Ads. A ~~licensee-broker~~ shall not advertise the sale, purchase, exchange, rent or lease of real estate, for another or others, in a manner indicating the offer to sell, purchase, exchange, rent, or lease is being made by the ~~licensee's broker's~~ principal only. Every such advertisement shall conspicuously indicate that it is the advertisement of a broker or brokerage firm and shall not be confined to publication of only a post office box number, telephone number, street address, internet web address, or e-mail address.

~~(b) Registration of Assumed Name. In the event that any licensee shall advertise in any manner using a firm name or an assumed name which does not set forth the surname of the licensee, the licensee shall first file the appropriate certificate with the office of the county register of deeds in compliance with G.S. 66-68 and notify the Commission in writing of the use of such a firm name or assumed name.~~

~~(c) Authority to Advertise.~~

- (1) ~~A provisional broker shall not advertise any brokerage service or the sale, purchase, exchange, rent or lease of real estate for another or others without the consent of his or her broker in charge and without including in the advertisement the name of the broker or firm with whom the provisional broker is associated.~~
- (2) ~~A licensee shall not advertise or display a "for sale" or "for rent" sign on any real estate without the consent of the owner or his or her authorized agent.~~

~~(d) Business names. A licensee shall not include the name of a provisional broker or an unlicensed person in the name of a sole proprietorship, partnership or non corporate business formed for the purpose of real estate brokerage.~~

~~(e)(c) A person licensed as a limited nonresident commercial broker shall comply with the provisions of Rule .1809 of this Subchapter in connection with all advertising concerning or relating to his or her status as a North Carolina licensee/broker.~~

Authority G.S. 55B-5; 66-68; 93A-3(c); 93A-9.

21 NCAC 58A .0107 HANDLING AND ACCOUNTING OF FUNDS

~~(a) Except as provided in this Rule, all monies received by a licensee acting in his or her fiduciary capacity shall be deposited in a trust or escrow account maintained by a broker not later than three banking days following receipt of such monies except that earnest money deposits paid by means other than currency which are received on offers to purchase real estate and tenant security deposits paid by means other than currency which are received in connection with real estate leases shall be deposited in a trust or escrow account not later than three banking days following acceptance of such offer to purchase or lease; the date of acceptance of such offer to purchase or lease shall be set forth in the purchase or lease agreement. All monies received by a provisional broker shall be delivered upon receipt to the broker by whom he or she is employed, except that all monies received by nonresident commercial licensees shall be delivered as required by Rule .1808 of this Subchapter. A licensee may accept custody of a check or other negotiable instrument made payable to the seller of real property as payment for option money or option fee in connection with an option contract or for a fee to the seller for a buyer's right to inspect property or determine its suitability for the buyer's needs prior to the closing of a sales transaction, but only for the purpose of delivering the instrument to the seller. While the instrument is in the custody of the licensee, the licensee shall, according to the instructions of the buyer, either deliver it to the seller or return it to the buyer. The licensee shall safeguard the instrument and shall be responsible to the parties on the instrument for its safe delivery as required by this Rule. A licensee shall not retain such an instrument for more than three business days after the acceptance of the option or other sales contract.~~

~~(b) If monies received by a licensee while acting in a fiduciary capacity are deposited in a trust or escrow account which bears interest, the licensee having custody over such monies shall first secure from all parties having an interest in the monies written~~

~~authorization for the deposit of the monies in an interest bearing account. Such authorization shall specify how and to whom the interest will be disbursed, and, if contained in an offer, contract, lease, or other transaction instrument, such authorization shall be set forth in a conspicuous manner which shall distinguish it from other provisions of the instrument.~~

~~(c) Closing statements shall be furnished to the buyer and the seller in the transaction not more than five days after closing.~~

~~(d) Trust or escrow accounts shall be so designated by the bank or savings and loan association in which the account is located, and all deposit tickets and checks drawn on said account as well as the monthly bank statement for the account shall bear the words "Trust Account" or "Escrow Account."~~

~~(e) A licensee shall maintain and retain records sufficient to identify the ownership of all funds belonging to others. Such records shall be sufficient to show proper deposit of such funds in a trust or escrow account and to verify the accuracy and proper use of the trust or escrow account. The required records shall include:~~

- ~~(1) bank statements;~~
- ~~(2) canceled checks and other evidence or memoranda of payments from the account, whether by transfer between accounts, wire payments, or payments by electronic means, which shall be referenced to the corresponding journal entry or check stub entries and to the corresponding sales transaction ledger sheets or for rental transactions, the corresponding property or owner ledger sheets. Checks and other evidence or memoranda of payments from the account shall identify the payee by name and shall bear a notation identifying the purpose of the disbursement. When a payment is used to disburse funds for more than one sales transaction, owner, or property, the check or other evidence or memoranda of payment shall bear a notation identifying each sales transaction, owner, or property for which disbursement is made, including the amount disbursed for each, and the corresponding sales transaction, property, or owner ledger entries. When necessary, the check notation may refer to the required information recorded on a supplemental disbursement worksheet which shall be cross referenced to the corresponding check or payment. In lieu of retaining canceled checks, a licensee may retain digitally imaged copies of the canceled checks or substitute checks provided that such images are legible reproductions of the front and back of such instruments with no smaller images than 1.1875 x 3.0 inches and provided that the licensee's bank retains for a period of at least six years the original checks, "substitute checks" as described in 12 C.F.R. 229.51 or the capacity to provide substitute checks as described in 12 C.F. R. 229.51, and makes the original or substitute checks~~

- available to the licensee and the Commission upon request;
- (3) ~~deposit tickets or other evidence or memoranda of deposits or payments into the account, whether by transfer between accounts, wire payments, or payments by electronic means. For a sales transaction, the deposit ticket or other evidence or memoranda of deposits or payments into the account shall identify the purpose and remitter of the funds deposited, the property, the parties involved, and a reference to the corresponding sales transaction ledger entry. For a rental transaction, the deposit ticket or other evidence or memoranda of deposits or payments into the account shall identify the purpose and remitter of the funds deposited, the tenant, and the corresponding property or owner ledger entry. For deposits of funds belonging to or collected on behalf of a property owner association, the deposit ticket or other evidence or memoranda of deposits or payments into the account shall identify the property or property interest for which the payment is made, the property or interest owner, the remitter, and the purpose of the payment. When a single deposit ticket or payment is used to deposit funds collected for more than one sales transaction, property owner, or property, the required information shall be recorded on the ticket or other evidence or memoranda of deposits or payments into the account for each sales transaction, owner, or property, or it may refer to the same information recorded on a supplemental deposit worksheet which shall be cross referenced to the corresponding deposit ticket;~~
 - (4) ~~a payment record sheet for each property or interest for which funds are collected and deposited into a property owner association trust account as required by Paragraph (i) of this Rule. Payment record sheets shall identify the amount, date, remitter, and purpose of payments received, the amount and nature of the obligation for which payments are made, and the amount of any balance due or delinquency;~~
 - (5) ~~a separate ledger sheet for each sales transaction and for each property or owner of property managed by the licensee identifying the property, the parties to the transaction, the amount, date, and purpose of the deposits and from whom received, the amount, date, check number, and purpose of disbursements and to whom paid, and the running balance of funds on deposit for the particular sales transaction or, in a rental transaction, the particular property or owner of property. Monies held as~~
- ~~tenant security deposits in connection with rental transactions may be accounted for on a separate tenant security deposit ledger for each property or owner of property managed by the licensee. For each security deposit the tenant security deposit ledger shall identify the remitter, the date the deposit was paid, the amount, the tenant, landlord, and subject property. For each disbursement of tenant security deposit monies, the ledger shall identify the check number, amount, payee, date, and purpose of the disbursement. The ledger shall also show a running balance. When tenant security deposit monies are accounted for on a separate ledger as provided in this Rule, deposit tickets, canceled checks and supplemental worksheets shall reference the corresponding tenant security deposit ledger entries;~~
- (6) ~~a journal or check stubs identifying in chronological sequence each bank deposit and disbursement of monies to and from the trust or escrow account, including the amount and date of each deposit and a reference to the corresponding deposit ticket and any supplemental deposit worksheet, and the amount, date, check number, and purpose of disbursements and to whom paid. The journal or check stubs shall also show a running balance for all funds in the account;~~
 - (7) ~~copies of contracts, leases and management agreements;~~
 - (8) ~~closing statements and property management statements;~~
 - (9) ~~covenants, bylaws, minutes, management agreements and periodic statements relating to the management of a property owner association; and~~
 - (10) ~~invoices, bills, and contracts paid from the trust account, and any documents not otherwise described in this Rule necessary and sufficient to verify and explain record entries.~~
- Records of all receipts and disbursements of trust or escrow monies shall be maintained in such a manner as to create an audit trail from deposit tickets and canceled checks to check stubs or journals and to the ledger sheets. Ledger sheets and journals or check stubs must be reconciled to the trust or escrow account bank statements on a monthly basis. Records of trust or escrow monies must include a worksheet for each such monthly reconciliation showing the ledger sheets, journals or check stubs, and bank statements to be in agreement and balance.
- (f) All trust or escrow account records shall be made available for inspection by the Commission or its authorized representatives in accordance with Rule 21 NCAC 58A .0108.
 - (g) In the event of a dispute between the seller and buyer or landlord and tenant over the return or forfeiture of any deposit other than a residential tenant security deposit held by a licensee, the licensee shall retain the deposit in a trust or escrow account until the licensee has obtained a written release from the parties

consenting to its disposition or until disbursement is ordered by a court of competent jurisdiction. Alternatively, the licensee may deposit the disputed monies with the appropriate clerk of court in accordance with the provisions of G.S. 93A-12. If it appears to a licensee holding a disputed deposit that a party has abandoned his or her claim, the licensee may disburse the money to the other claiming parties according to their written agreement provided that the licensee first makes a reasonable effort to notify the party who has apparently abandoned his or her claim and provides that party with an opportunity to renew his or her claim to the disputed funds. Tenant security deposit monies shall be disposed of in accordance with the requirements of G.S. 42-50 through 56 and G.S. 42A-18.

(h) A licensee may transfer earnest money deposits in his or her possession collected in connection with a sales transaction from his or her trust account to the closing attorney or other settlement agent not more than ten days prior to the anticipated settlement date. A licensee shall not disburse prior to settlement any earnest money in his or her possession for any other purpose without the written consent of the parties.

(i) The funds of a property owner association, when collected, maintained, disbursed or otherwise controlled by a licensee, are trust monies and shall be treated as such in the manner required by this Rule. Such funds must be deposited into and maintained in a trust or escrow account dedicated exclusively for funds belonging to a single property owners association and may not be commingled with funds belonging to other property owner associations or other persons or parties. A licensee who undertakes to act as manager of a property owner association or as the custodian of funds belonging to a property owner association shall provide the association with periodic statements which report the balance of association funds in the licensee's possession or control and which account for the funds the licensee has received and disbursed on behalf of the association. Such statements must be made in accordance with the licensee's agreement with the association, but not less frequently than every 90 days.

(j) Every licensee shall safeguard the money or property of others coming into his or her possession in a manner consistent with the requirements of the Real Estate License Law and the rules adopted by the Commission. A licensee shall not convert the money or property of others to his or her own use, apply such money or property to a purpose other than that for which it was paid or entrusted to him or her, or permit or assist any other person in the conversion or misapplication of such money or property.

(k) In addition to the records required by Paragraph (e) of this Rule, a licensee acting as agent for the landlord of a residential property used for vacation rentals shall create and maintain a subsidiary ledger sheet for each property or owner of such properties onto which all funds collected and disbursed are identified in categories by purpose. On a monthly basis, the licensee shall reconcile the subsidiary ledger sheets to the corresponding property or property owner ledger sheet.

(l) In lieu of maintaining a subsidiary ledger sheet, the licensee may maintain an accounts payable ledger sheet for each owner or property and each vendor to whom trust monies are due for monies collected on behalf of the owner or property identifying the date of receipt of the trust monies, from whom the monies

were received, rental dates, and the corresponding property or owner ledger sheet entry including the amount to be disbursed for each and the purpose of the disbursement. The licensee may also maintain an accounts payable ledger sheet in the format described in Paragraph (k) of this Rule for vacation rental tenant security deposit monies and vacation rental advance payments.

Authority G.S. 93A-3(c); 93A-9.

21 NCAC 58A .0108 RETENTION OF RECORDS

~~Licenses-Brokers~~ shall retain records of all sales, rental, and other transactions conducted in such capacity, whether the transaction is pending, completed or terminated prior to its successful conclusion. The ~~licensee-broker~~ shall retain such records for three years after all funds held by the ~~licensee-broker~~ in connection with the transaction have been disbursed to the proper party or parties or ~~until parties~~, the successful or unsuccessful conclusion of the transaction, or the termination of the broker's agency agreement, whichever occurs later. Such records shall include ~~contracts of sale, written leases, agency contracts, options, offers to purchase, trust or escrow records, earnest money receipts, disclosure documents, closing statements, brokerage cooperation agreements, declarations of affiliation, and any other records pertaining to real estate transactions.~~ Such records shall include the following:

- (1) contracts of sale,
- (2) written leases,
- (3) agency contracts,
- (4) options,
- (5) offers to purchase,
- (6) trust or escrow records,
- (7) earnest money receipts,
- (8) disclosure documents,
- (9) closing statements,
- (10) brokerage cooperation agreements,
- (11) declarations of affiliation,
- (12) broker price opinions and comparative market analyses prepared pursuant to G.S. 93A, Article 6, including any notes and supporting documentation, and
- (13) any other records pertaining to real estate transactions.

All such records shall be made available for inspection and reproduction by the Commission or its authorized representatives without prior notice.

Authority G.S. 93A-3(c); 93A-9.

21 NCAC 58A .0110 BROKER-IN-CHARGE

(a) When used in this Rule, the term:

- (1) "Office" means any place of business where acts are performed for which a real estate license is required or where monies received by a broker acting in a fiduciary capacity are handled or records for such trust monies are maintained.
- (2) "Branch Office" means any office in addition to the principal office of a broker which is

operated in connection with the broker's real estate business; and

~~(a)~~(b) Except as provided in this paragraph and Paragraph (c) of this Rule, ~~Every~~ every real estate firm, including a sole proprietorship, shall ~~designate~~ have a broker designated by the Commission as provided in Paragraph (d) of this Rule to serve as the broker-in-charge at its principal office and a broker to serve as broker-in-charge at any branch office. No broker shall be broker-in-charge of more than one office at a time. If a firm shares office space with one or more other firms, one broker may serve as broker-in-charge of each firm at that ~~location~~ location; however, all firms at that location shall maintain with the Commission as a delivery address the same delivery address as that of the designated broker-in-charge. No office or branch office of a firm shall have more than one designated broker-in-charge. A licensed real estate firm is not required to have a broker-in-charge if it:

- (1) has been organized for the sole purpose of receiving compensation for brokerage services furnished by its qualifying broker through another firm or broker;
- (2) is treated for tax purposes as a Subchapter S corporation by the United States Internal Revenue Service;
- (3) has no principal or branch office; and
- (4) has no person associated with it other than its qualifying broker.

(c) A broker who is a sole proprietor shall ~~designate~~ obtain the Commission's designation of himself or herself as a broker-in-charge if the broker engages in any transaction where the broker is required to deposit and maintain monies belonging to others in a trust account, engages in advertising or promoting his or her services as a broker in any manner, or has one or more other brokers affiliated with him or her in the real estate business. Maintenance of a trust or escrow account by a broker solely for holding residential tenant security deposits received by the broker on properties owned by the broker in compliance with G.S. 42-50 shall not, standing alone, subject the broker to the requirement to designate himself or herself as a broker-in-charge.

(d) A broker desiring to be a broker-in-charge shall ~~declare~~ immediately request in writing his or her designation as broker-in-charge ~~of an office to~~ by the Commission on a form prescribed by the ~~Commission~~ Commission within 10 days following the broker's designation as broker in charge of any office. Upon receipt of Notice from the Commission that the broker has been designated as broker-in-charge, the broker shall assume the duties of broker-in-charge.

(e) To qualify to become a broker-in-charge, a broker shall:

- (1) have a license on active status but not on provisional status;
- (2) possess at least two years of full-time real estate brokerage experience or equivalent part-time real estate brokerage experience within the previous five years or real estate education or experience in real estate transactions that the Commission finds equivalent to such experience; and

- (3) complete the Commission's 12 classroom hour broker-in-charge course either within three years prior to designation as a broker-in-charge or within 120 days following designation as a broker-in-charge.

Upon the request of the Commission, a broker shall provide to the Commission evidence that he or she possesses the requisite experience. A broker-in-charge designation shall be immediately terminated if a broker-in-charge fails to complete the broker-in-charge course during the required time period or if the Commission finds the broker-in-charge does not possess the required experience. A broker who is removed as broker-in-charge for failure to timely complete the Commission's 12 hour broker-in-charge course must first complete the 12 hour broker-in-charge course before he or she may again be designated as broker-in-charge.

(f) By submission of a broker-in-charge designation request to the Commission, a broker certifies that he or she possesses the experience required to become a broker-in-charge and upon designation by the Commission, the broker shall be authorized to act as a broker-in-charge. Upon his or her designation as broker-in-charge and completion of the broker-in-charge course within the time period prescribed in Subparagraph (e)(3) of this Rule, the designated broker-in-charge acquires the eligibility to be re-designated as a broker-in-charge at any time in the future after a period of not actively serving as a broker-in-charge without having to again satisfy the qualification requirements for initial designation stated in this Paragraph so long as the broker continuously satisfies the requirements to retain such eligibility described in Paragraph (i) of this Rule.

(g) The broker-in-charge shall, in accordance with the requirements of G.S. 93A and the rules adopted by the Commission, assume the responsibility at his or her office for:

- (1) the retention of current license renewal pocket cards by all brokers employed at the office for which he or she is broker-in-charge; the proper display of licenses at such office in accordance with Rule .0101 of this Section; and assuring that each ~~licensee~~ broker employed at the office has complied with Rules .0503, .0504, and .0506 of this Subchapter;
- (2) the proper notification to the Commission of any change of business address or trade name of the firm and the registration of any assumed business name adopted by the firm for its use;
- (3) the proper conduct of advertising by or in the name of the firm at such office;
- (4) the proper maintenance at such office of the trust or escrow account of the firm and the records pertaining thereto;
- (5) the proper retention and maintenance of records relating to transactions conducted by or on behalf of the firm at such office, including those required to be retained pursuant to Rule .0108 of this Section;
- (6) the proper supervision of provisional brokers associated with or engaged on behalf of the firm at such office in accordance with the requirements of Rule .0506 of this Subchapter;

- (7) the proper supervision of all ~~licensees~~ brokers employed at the office for which he or she is broker-in-charge with respect to adherence to agency agreement and disclosure requirements.

(b) ~~When used in this Rule, the term:~~

- (1) ~~"Branch Office" means any office in addition to the principal office of a broker which is operated in connection with the broker's real estate business; and~~
- (2) ~~"Office" means any place of business where acts are performed for which a real estate license is required or where monies received by a licensee acting in a fiduciary capacity are handled or records for such trust monies are maintained.~~

(c) ~~To qualify to become a broker in charge, a broker shall:~~

- (1) ~~have a license on active status but not on provisional status;~~
- (2) ~~possess at least two years of full time real estate brokerage experience or equivalent part-time real estate brokerage experience within the previous five years or real estate education or experience in real estate transactions that the Commission finds equivalent to such experience; and~~
- (3) ~~complete the Commission's 12 classroom-hour broker in charge course either within three years prior to designation as a broker in charge or within 120 days following designation as a broker in charge.~~

~~By submission of a broker in charge declaration to the Commission, a broker certifies that he or she possesses the experience required to become a broker in charge and upon acknowledgement by the Commission of a completed declaration, the broker shall receive his or her broker in charge designation and be authorized to act as a broker in charge. Upon his or her designation as broker in charge and completion of the broker in charge course within the time period prescribed in Subparagraph (c)(3) of this Rule, the designated broker in charge acquires the eligibility to be re-designated as a broker in charge at any time in the future after a period of not actively serving as a broker in charge without having to again satisfy the qualification requirements for initial designation stated in this Paragraph so long as the broker continuously satisfies the requirements to retain such eligibility described in Paragraph (e) of this Rule. A broker in charge designation shall be immediately terminated if a broker in charge fails to complete the broker in charge course during the required time period or if the Commission finds the broker in charge does not possess the required experience. Upon the request of the Commission, a broker shall provide to the Commission evidence that he or she possesses the required experience. A broker who is removed as broker in charge for failure to timely complete the Commission's 12 hour broker in charge course must first complete the 12 hour broker in charge course before he or she may again be designated as broker in charge. A broker in charge, upon written request of the Commission or a broker who has been affiliated with the broker in charge within the previous five~~

~~years, shall provide the Commission or broker an accurate written statement regarding the broker's work at the office of the broker in charge, including the dates of affiliation, average number of hours worked per week, and the number and type of properties listed, sold, bought, leased, or rented for others by the licensee during his or her affiliation with the broker in charge.~~

~~(d)(h)~~ A broker who was the broker-in-charge of a real estate office on April 1, 2006, whose broker-in-charge declaration was received by the Commission prior to that date, and who completed the Commission's broker-in-charge course prior to April 1, 2006 or within 120 days following designation as a broker-in-charge, may continue to serve as a broker-in-charge thereafter until his or her eligibility to serve as a broker-in-charge is terminated as provided in Paragraph ~~(f)(j)~~ of this Rule.

~~(e)(i)~~ Once a broker has been designated as a broker-in-charge and completed the 12 hour broker-in-charge course as prescribed by Paragraph ~~(e)(e)~~ of this Rule, the broker may maintain broker-in-charge eligibility by timely annual renewal of his or her broker license, completion each license year of the four hour mandatory continuing education update course prescribed for all ~~licensees~~ brokers and known as the "Real Estate Update Course," and completion each license year of the four hour special continuing education course prescribed by the Commission only for brokers-in-charge and known as the "Broker-In-Charge Annual Review Course." The Broker-In-Charge Annual Review Course must be taken initially by a broker-in-charge during the first full license year following the license year in which the broker was designated as a broker-in-charge and must be taken each license year thereafter in order for the broker to maintain broker-in-charge eligibility. The Broker-In-Charge Annual Review Course shall satisfy the broker's general continuing education elective course requirement, but the broker must also take the mandatory continuing education Real Estate Update Course each license year. The Broker-In-Charge Annual Review Course is reserved exclusively for current brokers-in-charge, and brokers who are not currently acting as a broker-in-charge but who desire to retain their broker-in-charge eligibility. Only these brokers shall receive continuing education elective credit for taking the course.

~~(f)(j)~~ A broker's broker-in-charge eligibility and, if currently designated as a broker-in-charge, his or her broker-in-charge designation shall be terminated upon the occurrence of any of the following events:

- (1) The broker's license expires or the broker's license is suspended, revoked or surrendered;
- (2) the broker's license is made inactive for any reason, including failure to satisfy the continuing education requirements described in Rule .1702 of this Subchapter;
- (3) the broker fails to complete the Broker-In-Charge Annual Review Course described in Paragraph ~~(e)(i)~~ of this Rule; or
- (4) the broker is found by the Commission to have not possessed the experience required in Paragraph ~~(e)(e)~~ of this Rule at the time of either initial designation as a broker-in-charge or re-designation as a broker-in-charge.

(k) When a broker who is a former broker-in-charge desires to be re-designated as a broker-in-charge following termination of his or her broker-in-charge designation or eligibility, he or she must first have a license on active status. The broker then must satisfy the experience requirements for initial designation set forth in Paragraph (e)(e) of this Rule, and the broker must complete the 12 hour broker-in-charge course ~~within 120 days following re-designation, except that if the broker has taken the 12 hour broker-in-charge course within the preceding three years, he or she has the option to complete the Broker In Charge Annual Review Course for the current license year within 120 days following re-designation as a broker-in-charge in lieu of repeating the 12 hour broker in charge course prior to re-designation as broker-in charge.~~ If a broker who has been re-designated as a broker-in-charge and then removed as broker-in-charge due to failure to satisfy his education requirement within 120 days following re-designation subsequently seeks another re-designation as broker-in-charge, the broker must first complete the 12 hour broker in charge course before he or she may again be designated as a broker in charge, even if the broker has completed the 12 hour broker-in-charge course within the preceding three years.

~~(g)(l)~~ A broker-in-charge shall notify the Commission in writing that he or she no longer is serving as broker-in-charge of a particular office within 10 days following any such change.

~~(h)~~ A licensed real estate firm is not required to designate a broker-in-charge if it:

- ~~(1) has been organized for the sole purpose of receiving compensation for brokerage services furnished by its qualifying broker through another firm or broker;~~
- ~~(2) is treated for tax purposes as a Subchapter S corporation by the United States Internal Revenue Service;~~
- ~~(3) has no principal or branch office; and~~
- ~~(4) has no person associated with it other than its qualifying broker.~~

~~(i)(m)~~ A broker-in-charge residing outside of North Carolina who is the broker-in-charge of a principal or branch office not located in North Carolina is not required to complete the broker-in-charge course or the special continuing education course prescribed for brokers-in-charge under Paragraph (e)(i) of this Rule. However, if such broker-in-charge either becomes a resident of North Carolina or becomes broker-in-charge of an office located within North Carolina, then he or she must take the 12 hour broker-in-charge course within 120 days of such change, unless he or she has taken the 12 hour course within the preceding three years. Such broker-in-charge shall take the special broker-in-charge continuing education course prescribed in Paragraph (e)(i) of this Rule during the first full license year following the change and each license year thereafter so long as the broker-in-charge remains a resident of North Carolina or continues to manage an office located in North Carolina.

~~(j)(n)~~ A nonresident commercial real estate broker licensed under the provisions of Section .1800 of this Subchapter shall not act as or serve in the capacity of a broker-in-charge of a firm or office in North Carolina.

Authority G.S. 93A-2; 93A-3(c); 93A-4; 93A-4.1; 93A-4.2; 93A-9.

21 NCAC 58A .0111 DRAFTING LEGAL INSTRUMENTS

(a) A broker acting as an agent in a real estate transaction shall not draft offers, sales contracts, options, leases, promissory notes, deeds, deeds of trust or other legal instruments by which the rights of others are secured; however, a broker may complete a preprinted offer, option contract, sales contract and lease forms form in a real estate transactions-transaction when authorized or directed to do so by the parties.

(b) A broker may use electronic, computer, or word processing equipment to store preprinted offer and sales contract forms which comply with Rule .0112, as well as preprinted option and lease forms, and may use such equipment to complete and print offer, contract and lease documents. Provided, however, a broker may not alter the form before it is presented to the parties. If the parties propose to delete or change any word or provision in the form, the form must be marked to indicate the change or deletion made. The language of the form shall not be modified, rewritten, or changed by the broker or their clerical employees unless directed to do so by the parties.

(c) Nothing contained in this Rule shall be construed to prohibit a broker from making written notes, memoranda or correspondence recording the negotiations of the parties to a real estate transaction when such notes, memoranda or correspondence do not themselves constitute binding agreements or other legal instruments.

Authority G.S. 93A-3(c).

21 NCAC 58A .0116 HANDLING OF TRUST MONEY

(a) Except as provided in Paragraph (b) of this Rule, all monies received by a broker acting in his or her fiduciary capacity (hereinafter "trust money") shall be deposited in a trust or escrow account as defined in Rule .0117(b) of this Subchapter no later than three banking days following the broker's receipt of such monies.

(b) Exceptions to the requirements of Paragraph (a):

- (1) All monies received by a provisional broker shall be delivered upon receipt to the broker with whom he or she is affiliated.
- (2) All monies received by a non-resident commercial broker shall be delivered as required by Rule .1808 of this Subchapter.
- (3) Earnest money or tenant security deposits paid by means other than currency and received by a broker in connection with a pending offer to purchase or lease shall be deposited in a trust or escrow account no later than three days following acceptance of such offer to purchase or lease; the date of such acceptance of such offer or lease shall be set forth in the purchase or lease agreement.
- (4) A broker may accept custody of a check or other negotiable instrument made payable to the seller of real property as payment for an option or due diligence fee, but only for the

purpose of delivering the instrument to the seller. While the instrument is in the custody of the broker, the broker shall, according to the instructions of the buyer, either deliver it to the seller or return it to the buyer. The broker shall safeguard the instrument and be responsible to the parties on the instrument for its safe delivery as required by this Rule. A broker shall not retain such an instrument for more than three business days after the acceptance of the option or other sales contract.

(c) Prior to depositing trust money into a trust or escrow account that bears interest, the broker having custody over such money shall first secure written authorization from all parties having an interest in the money. Such authorization shall specify and set forth in a conspicuous manner how and to whom the interest shall be disbursed.

(d) In the event of a dispute between buyer and seller or landlord and tenant over the return or forfeiture of any deposit other than a residential tenant security deposit held by the broker, the broker shall retain the deposit in a trust or escrow account until the broker has obtained a written release from the parties consenting to its disposition or until disbursement is ordered by a court of competent jurisdiction. Alternatively, the license may deposit the disputed monies with the appropriate Clerk of Superior Court in accordance with the provisions of G.S. 93A-12. If it appears that one of the parties has abandoned his or her claim to the funds, the broker may disburse the money to the other claimant according to the written agreement. Before doing so, however, the broker must first make a reasonable effort to notify the absent party and provide that party with an opportunity to renew his or her claim to the funds. Tenant security deposits shall be disposed of in accordance with G.S. 42-50 through 56 and G.S. 42A-18.

(e) A broker may transfer an earnest money deposit from his or her trust or escrow account to the closing attorney or other settlement agent no more than ten days prior to the anticipated settlement date. A broker shall not disburse prior to settlement any earnest money in his or her possession for any other purpose without the written consent of the parties.

(f) A broker shall not disburse trust money to or on behalf of a client in an amount exceeding the balance of trust money belonging to the client and held in the trust account.

(g) Every broker shall safeguard any money or property of others which comes into the broker's possession in a manner consistent with the Real Estate License Law and Commission Rules. A broker shall not convert the money or property of others to his or her own use, apply such money or property to a purpose other than for which it was intended or permit or assist any other person in the conversion or misapplication of such money or property.

Authority G.S. 93A-3(c); 93A-6.

21 NCAC 58A .0117 ACCOUNTING FOR TRUST MONEY

(a) A broker shall create, maintain and retain records sufficient to identify the ownership of all funds belonging to others. Such

records shall be sufficient to show proper deposit of such funds into a trust or escrow account, proper disbursement of such funds from the account, and to verify the accuracy and proper use of the trust or escrow account.

(b) A trust or escrow account shall satisfy the requirements of G.S. 93A-6(g) and shall be designated as a "Trust Account" or "Escrow Account." All bank statements, deposit tickets and checks drawn on said account shall bear the words "Trust Account" or "Escrow Account." A trust account shall provide for the full withdrawal of funds on demand without prior notice and without penalty or deduction to the funds.

(c) A broker shall create, maintain and/or retain the following records:

- (1) bank statements.
- (2) canceled checks and other evidence or memoranda of payments from the trust or escrow account, whether by transfer between accounts, wire payments, or payments by electronic means, which shall be referenced to the corresponding journal entry or check stub entries and to the corresponding sales transaction ledgers or for rental transactions, the corresponding property or owner ledgers. Checks and other evidence or memoranda of payments from the account shall identify the payee by name and shall bear a notation identifying the purpose of the disbursement. When a payment is used to disburse funds for more than one sales transaction, owner, or property, the check or other evidence or memoranda of payment shall bear a notation identifying each sales transaction, owner, or property for which disbursement is made, including the amount disbursed for each, and the corresponding sales transaction, property, or owner ledger entries. When necessary, the check notation may refer to the required information recorded on a supplemental disbursement worksheet which shall be cross-referenced to the corresponding check or payment. In lieu of retaining canceled checks, a broker may retain digitally imaged copies of the canceled checks or substitute checks provided that such images are legible reproductions of the front and back of such instruments with no smaller images than 1.1875 x 3.0 inches and provided that the broker's bank retains for a period of at least five years the original checks, "substitute checks" as described in 12 C.F.R. 229.51 or the capacity to provide substitute checks as described in 12 C.F.R. 229.51 and makes the original or substitute checks available to the broker and the Commission upon request.
- (3) deposit tickets or other evidence or memoranda of deposits or payments into the account, whether by transfer between accounts, wire payments, or payments by electronic means.

- (A) For a sales transaction, the deposit ticket or other evidence or memoranda of deposits or payments into the account shall identify the purpose and remitter of the funds deposited, the property, the parties involved, and a reference to the corresponding sales transaction ledger.
 - (B) For a rental transaction, the deposit ticket or other evidence or memoranda of deposits or payments into the account shall identify the purpose and remitter of the funds deposited, the tenant, and the corresponding property or owner ledger.
 - (C) For deposits of funds belonging to or collected on behalf of a property owner association, the deposit ticket or other evidence or memoranda of deposits or payments into the account shall identify the property or property interest for which the payment is made, the property or interest owner, the remitter, and the purpose of the payment.
 - (D) When a single deposit ticket or payment is used to deposit funds collected for more than one sales transaction, property owner, or property, the required information shall be recorded on the ticket or other evidence or memoranda of deposits or payments into the account for each sales transaction, owner, or property, or it may refer to the same information recorded on a supplemental deposit worksheet which shall be cross-referenced to the corresponding deposit ticket.
- (4) a separate ledger for each sales transaction, for each property or owner of property managed by the broker and for company funds held in the trust account.
- (A) The ledger for a sales transaction shall identify the property, the parties to the transaction, the amount, date, and purpose of the deposits and from whom received, the amount, date, check number, and purpose of disbursements and to whom paid, and the running balance of funds on deposit for each deposit and disbursement entry.
 - (B) The ledger for a rental transaction shall identify the particular property or owner of property, the tenant, the amount, date, and purpose of the deposits and from whom received, the amount, date, check number, and purpose of disbursements and to whom paid, and the running balance of funds on deposit for each deposit and disbursement entry.
- (C) A broker may maintain a maximum of one hundred dollars (\$100.00) in company funds in a trust account for the purpose of paying service charges incurred by the account. In the event that the services charges exceed one hundred dollars (\$100.00) monthly, the broker may deposit an amount each month sufficient to cover the service charges. A broker shall maintain a separate ledger for company funds held in the trust account identifying the date, amount and running balance for each deposit and disbursement.
- (5) a general journal, check register or check stubs identifying in chronological order each bank deposit and disbursement of monies to and from the trust or escrow account, including the amount and date of each deposit and a reference to the corresponding deposit ticket and any supplemental deposit worksheet, and the amount, date, check number, and purpose of disbursements and to whom paid. The journal or check stubs shall also show a running balance for each entry into the account;
- (6) a payment record for each property or interest for which funds are collected and deposited into a property owner association trust account as required by .0118 of this Subchapter. Payment record(s) shall identify the amount, date, remitter, and purpose of payments

- received, the amount and nature of the obligation for which payments are made, and the amount of any balance due or delinquency;
- (7) copies of earnest money checks, due diligence fee checks, receipts for cash payments, contracts, and closing statements in sales transactions;
 - (8) copies of leases, security deposit checks, property management agreements, property management statements, and receipts for cash payments in leasing transactions;
 - (9) copies of covenants, bylaws, minutes, management agreements and periodic statements relating to the management of property owner associations;
 - (10) copies of invoices, bills, and contracts paid from the trust account; and
 - (11) copies of any documents not otherwise described in this Rule necessary and sufficient to verify and explain record entries.

(d) Records of all receipts and disbursements of trust or escrow monies shall be maintained in such a manner as to create a clear audit trail from deposit tickets and canceled checks to check stubs or journals and to the ledger sheets.

(e) Brokers shall reconcile their trust or escrow accounts monthly. The trust account reconciliation shall be performed in the following manner as of a specific cutoff date selected by the broker:

- (1) A trial balance shall be prepared showing a list of the property or owner ledgers, their balances, and the total of all of the property or owner ledger balances as of the cutoff date.
- (2) A bank statement shall be reconciled by deducting from the statement's ending balance the amount of any outstanding checks and then adding to the balance the amount of any deposits-in-transit as of the cutoff date.
- (3) The trial balance, reconciled bank statement balance, and the journal balance shall be compared as of the cutoff date. If the amounts on the trial balance, journal balance and reconciled bank balance do not agree, the broker shall investigate the reason for any variation between the balances and make the necessary corrections to bring the balances into agreement.

A broker shall maintain and retain a worksheet for each monthly trust account reconciliation showing the balance of the journal or check stubs, the trial balance and the reconciled bank statement balance to be in agreement as of the cutoff date.

(f) In addition to the records required by Paragraph (d) of this Rule, a broker acting as agent for the landlord of a residential property used for vacation rentals shall create and maintain a subsidiary ledger sheet for each property or owner of such properties on which all funds collected and disbursed are identified in categories by purpose. On a monthly basis, the broker shall reconcile the subsidiary ledgers to the corresponding property or property owner ledger. In lieu of maintaining a subsidiary ledger, the broker may maintain an

accounts payable ledger for each owner or property and each vendor to whom trust monies are due for monies collected on behalf of the owner or property identifying the date of receipt of the trust monies, from whom the monies were received, rental dates, and the corresponding property or owner ledger entry including the amount to be disbursed for each and the purpose of the disbursement. The broker may also maintain an accounts payable ledger in the format described above for vacation rental tenant security deposit monies and vacation rental advance payments.

(g) Upon the written request of a client, a broker shall promptly, but in no event later than ten days after receipt of the request, furnish the client with copies of any records retained as required by Rule 21 NCAC 58A .0108 that pertain to the transaction to which the client was a party.

(h) All trust or escrow account records shall be made available for inspection by the Commission or its authorized representatives in accordance with Rule 21 NCAC 58A .0108.

Authority G.S. 93A-3(c); 93A-6.

21 NCAC 58A .0118 TRUST MONEY BELONGING TO PROPERTY OWNERS' ASSOCIATIONS

(a) The funds of a property owners' association, when collected, maintained, disbursed or otherwise controlled by a broker, are trust money and shall be treated as such in the manner required by this Rule. Such trust money must be deposited into and maintained in a trust or escrow account dedicated exclusively for trust money belonging to a single property owners' association and may not be commingled with funds belonging to other property owners' associations or other persons or parties. A broker who undertakes to act as manager of a property owners' association or as the custodian of trust money belonging to a property owners' association shall provide the association with periodic statements which report the balance of association trust money in the broker's possession or control and which account for the trust money the broker has received and disbursed on behalf of the association. Such statements must be made in accordance with the broker's agreement with the association, but not less frequently than every 90 days.

(b) A broker who receives trust money belonging to a property owners' association in his or her capacity as an officer of the association in a residential development in which the broker is a property owner and for which the broker receives no compensation is exempt from the requirements of .0116 of this Subchapter except that said broker shall not convert trust money belonging to the association to his or her own use, apply such money or property to a purpose other than that for which it was intended or permit or assist any other person in the conversion or misapplication of such money or property.

Authority G.S. 93A-3(c); 93A-6.

SECTION .0500 - LICENSING

21 NCAC 58A .0503 LICENSE RENEWAL; PENALTY FOR OPERATING WHILE LICENSE EXPIRED

(a) All real estate licenses issued by the Commission under G.S. 93A, Article 1 shall expire on the 30th day of June following

issuance. Any ~~licensee-broker~~ desiring renewal of a license shall apply for renewal within 45 days prior to license expiration by submitting a renewal application on a form prescribed by the Commission and submitting with the application the required renewal fee of ~~forty dollars (\$40.00)-forty-five dollars (\$45.00).~~

(b) Any person desiring to renew his or her license on active status shall, upon the second renewal of such license following initial licensure, and upon each subsequent renewal, have obtained all continuing education required by G.S. 93A-4.1 and Rule .1702 of this Subchapter.

(c) A person renewing a license on inactive status shall not be required to have obtained any continuing education in order to renew such license; however, in order to subsequently change his or her license from inactive status to active status, the ~~licensee-broker~~ must satisfy the continuing education requirement prescribed in Rule .1703 or .1711 of this Subchapter.

(d) Any person or firm which engages in the business of a real estate broker while his, her, or its license is expired is subject to the penalties prescribed in G.S. 93A-6.

Authority G.S. 93A-3(c); 93A-4(c),(d); 93A-4.1; 93A-6.

21 NCAC 58A .0504 ACTIVE AND INACTIVE LICENSE STATUS

(a) Except for licenses that have expired or that have been revoked, suspended or surrendered, all licenses issued by the Commission shall be designated as being either on active status or inactive status. The Subject to compliance with Rule .0110 of this Subchapter, the holder of a license on active status may engage in any activity requiring a real estate license and may be compensated for the provision of any lawful real estate brokerage service. The holder of a license on inactive status may not engage in any activity requiring a real estate license, including the referral for compensation of a prospective seller, buyer, landlord or tenant to another real estate ~~licensee-broker~~ or any other party. A ~~licensee-broker~~ holding a license on inactive status must renew the license and pay the prescribed license renewal fee in order to continue to hold the license. The Commission may take disciplinary action against a ~~licensee-broker~~ holding a license on inactive status for any violation of G.S. 93A or any rule adopted by the Commission, including the offense of engaging in an activity for which a license is required while a license is on inactive status.

(b) A license issued to a provisional broker shall, upon initial licensure, be assigned to inactive status. A license issued to a firm or a broker other than a provisional broker shall be assigned to active status. Except for persons licensed under the provisions of Section .1800 of this Subchapter, a broker may change the status of his or her license from active to inactive status by submitting a written request to the Commission. A provisional broker's license shall be assigned by the Commission to inactive status when the provisional broker is not under the active, direct supervision of a broker-in-charge. A firm's license shall be assigned by the Commission to inactive status when the firm does not have a qualifying broker with an active license. Except for persons licensed under the provisions of Section .1800 of this Subchapter, a broker shall also be assigned to inactive status if, upon the second renewal of his or her license

following initial licensure, or upon any subsequent renewal, he or she has not satisfied the continuing education requirement described in Rule .1702 of this Subchapter.

(c) A provisional broker with an inactive license who desires to have the license placed on active status must comply with the procedures prescribed in Rule .0506 of this Section.

(d) A broker, other than a provisional broker, with an inactive license who desires to have the license placed on active status shall file with the Commission a request for license activation on a form provided by the Commission containing identifying information about the broker, a statement that the broker has satisfied the continuing education requirements prescribed by Rule .1703 of this Subchapter, the date of the request, and the signature of the broker. Upon the mailing or delivery of this form, the broker may engage in real estate brokerage activities requiring a license; broker's status will be considered to be active. Upon affiliation with a firm and broker-in-charge, the broker-in-charge shall notify the Commission of the affiliation on a form prescribed by the Commission. however, if If the broker and broker-in-charge do does not receive from the Commission a written acknowledgment of the license activation or affiliation within 30 days of the date shown on the form, the broker shall immediately terminate his or her real estate brokerage activities pending receipt of the written acknowledgment from the Commission. If the broker and broker-in-charge are is notified that he or she is not eligible for license activation due to a continuing education deficiency, the broker must terminate all real estate brokerage activities until such time as the continuing education deficiency is satisfied and a new request for license activation is-and affiliation are submitted to the Commission.

(e) A firm with an inactive license which desires to have its license placed on active status shall file with the Commission a request for license activation containing identifying information about the firm and its qualifying broker and satisfy the requirements of Rule .0110 of this Subchapter. If the qualifying broker has an inactive license, he or she must satisfy the requirements of Paragraph (d) of this Rule. Upon the mailing or delivery of the completed form by the qualifying broker, the firm may engage in real estate brokerage activities requiring a license; however, if the firm's qualifying broker does not receive from the Commission a written acknowledgment of the license activation within 30 days of the date shown on the form, the firm shall immediately terminate its real estate brokerage activities pending receipt of the written acknowledgment from the Commission. If the qualifying broker is notified that the firm is not eligible for license activation due to a continuing education deficiency on the part of the qualifying broker, the firm must terminate all real estate brokerage activities until such time as the continuing education deficiency is satisfied and a new request for license activation is submitted to the Commission.

(f) A person licensed as a broker under Section .1800 of this Subchapter shall maintain his or her license on active status at all times as required by Rule .1804 of this Subchapter.

Authority G.S. 93A-3(c); 93A-4(d); 93A-4.1; 93A-6; 93A-9.

21 NCAC 58A .0506 PROVISIONAL BROKER TO BE SUPERVISED BY BROKER

(a) This Rule shall apply to all real estate provisional brokers.

(b) A provisional broker may engage in or hold himself or herself out as engaging in activities requiring a real estate license only while his or her license is on active status and he or she is supervised by the broker-in-charge of the real estate firm or office where the provisional broker is associated. A provisional broker may be supervised by only one broker-in-charge at a time.

(c) Upon a provisional broker's association with a real estate broker or brokerage firm, the ~~provisional broker and the broker-in-charge of the office where the provisional broker will be engaged in the real estate business shall immediately file with the Commission a provisional broker supervision notification on a form provided by the Commission containing identifying information about the provisional broker and the broker-in-charge, a statement from the broker-in-charge certifying that he or she will supervise the provisional broker in the performance of all acts for which a license is required, the date that the broker-in-charge assumes responsibility for such supervision, and the signatures of the provisional broker and signature of the broker-in-charge.~~ If the provisional broker is on inactive status at the time of associating with a broker or brokerage firm, the ~~provisional broker and broker-in-charge shall also file, along with the provisional broker supervision notification, the provisional broker's a request for license activation on a form provided by the Commission containing identifying information about the provisional broker, the provisional broker's statement of the broker-in-charge that he or she has verified that the provisional broker has~~ satisfied the continuing education requirements prescribed by Rule .1703 of this Subchapter, ~~the provisional broker's statement that he or she has satisfied and~~ the postlicensing education requirements, if applicable, prescribed by Rule .1902 of this Subchapter, the date of the request, and the ~~signatures signature of the provisional broker and the provisional broker's proposed broker-in-charge.~~ Upon the mailing or delivery of the required form(s), the provisional broker may engage in real estate brokerage activities requiring a license under the supervision of the broker-in-charge; however, if the provisional broker and broker-in-charge do not receive from the Commission a written acknowledgment of the provisional broker supervision notification and, if appropriate, the request for license activation, within 30 days of the date shown on the form, the broker-in-charge shall immediately terminate the provisional broker's real estate brokerage activities pending receipt of the written acknowledgment from the Commission. If the provisional broker and broker-in-charge are notified that the provisional broker is not eligible for license activation due to a continuing education or postlicensing education deficiency, the broker-in-charge shall cause the provisional broker to immediately cease all activities requiring a real estate license until such time as the continuing education or postlicensing education deficiency is satisfied and a new provisional broker supervision notification and request for license activation is submitted to the Commission.

(d) A broker-in-charge who certifies to the Commission that he or she will supervise a provisional broker shall actively and directly supervise the provisional broker in a manner which

reasonably assures that the provisional broker performs all acts for which a real estate license is required in accordance with the Real Estate License Law and Commission rules. A supervising broker who fails to supervise a provisional broker as prescribed in this Rule may be subject to disciplinary action by the Commission.

(e) Upon the termination of the supervisory relationship between a provisional broker and his or her broker-in-charge, the provisional broker and the broker-in-charge shall provide written notification of the date of termination to the Commission not later than 10 days following said termination.

Authority G.S. 93A-2(b); 93A-3; 93A-9.

21 NCAC 58A .0511 LICENSING OF PERSONS LICENSED IN ANOTHER JURISDICTION

~~(a) The Commission shall fully exempt from its license examination requirement and issue broker licenses by reciprocity to applicants who have otherwise satisfied the requirements of G.S. 93A-4 and who are residents of and hold active licenses in the following jurisdictions:~~

- ~~(1) Arkansas,~~
- ~~(2) Connecticut,~~
- ~~(3) Georgia,~~
- ~~(4) Iowa,~~
- ~~(5) Louisiana,~~
- ~~(6) Mississippi,~~
- ~~(7) Nebraska,~~
- ~~(8) South Carolina,~~
- ~~(9) Tennessee, and~~
- ~~(10) West Virginia.~~

~~The Commission shall discontinue broker licensing by reciprocity effective February 29, 2012. On and after March 1, 2012, licensees who were licensed in North Carolina by reciprocity shall be entitled to retain such license indefinitely, unless suspended, revoked or surrendered pursuant to G.S. 93A-6, so long as the license is continuously renewed or is reinstated within six months of expiration. A person who was previously licensed in North Carolina by reciprocity and who seeks reinstatement of that license after the license has been expired for more than six months, suspended, revoked or surrendered shall satisfy the requirements described in Rule .0505 of this Subchapter.~~

~~(b)(a) Effective March 1, 2012, persons~~ Persons applying for a North Carolina broker license who hold a current real estate license that has been on active status within the previous three years in another state of the United States, a United States territory or possession of a Canadian jurisdiction shall meet the licensing requirements prescribed in G.S. 93A-4 except that such persons shall be exempt from the "national" section of the North Carolina real estate license examination, but shall pass the "state" section of that examination. A person qualifying for licensure under this provision shall be issued a North Carolina broker license on a status comparable to the category of license held by the person in the jurisdiction where the qualifying license is held.

(b) Brokers who were licensed in North Carolina by reciprocity shall be entitled to retain such license indefinitely, unless suspended, revoked or surrendered pursuant to G.S. 93A-6, so

long as the license is continuously renewed or is reinstated within six months of expiration. A person who was previously licensed in North Carolina by reciprocity and who seeks reinstatement of that license after the license has been expired for more than six months, suspended, revoked or surrendered shall satisfy the requirements described in Rule .0505 of this Subchapter.

Authority G.S. 93A-3(c); 93A-4(b),(c),(d); 93A-4.1; 93A-9(a).

SECTION .0600 – REAL ESTATE COMMISSION HEARINGS

21 NCAC 58A .0616 PROCEDURES FOR REQUESTING HEARINGS WHEN APPLICANT'S CHARACTER IS IN QUESTION

- (a) When the moral character of an applicant for licensure or approval is in question, the applicant shall not be licensed or approved until the applicant has affirmatively demonstrated that the applicant possesses the requisite truthfulness, honesty, and integrity-honesty, truthfulness, integrity, good moral character, and general fitness, including mental and emotional fitness, necessary to protect the public interest and promote public confidence in the real estate brokerage business. For the purposes of this Rule, applicant means any person or entity making application for licensure as a real estate broker or for licensure or approval as a prelicensing or continuing education instructor, director, coordinator, school or sponsor. When the applicant is an entity, it shall be directed and controlled by persons who are truthful and honest and who possess integrity.
- (b) When the character of an applicant is in question, the Commission shall defer action upon the application until the applicant is notified by letter. The letter informing the applicant that his or her moral character is in question shall be sent by certified mail, return receipt requested, to the address shown upon the application. The applicant shall have 60 days from the date of receipt of this letter to request a hearing before the Commission. If the applicant fails to request a hearing within this time or if a properly addressed letter is returned to the Commission undelivered, applicant's right to a hearing shall be considered waived and the application shall be deemed denied. If the applicant makes a timely request for a hearing in accordance with the provisions of this Rule, the Commission shall provide the applicant with a Notice of Hearing and hearing as required by G.S. 150B, Article 3A.
- (c) Nothing in this Rule shall be interpreted to prevent an unsuccessful applicant from reapplying for licensure or approval if such application is otherwise permitted by law.

Authority G.S. 93A-4.

SECTION .1400 – REAL ESTATE EDUCATION AND RECOVERY FUND

21 NCAC 58A .1401 APPLICATION FOR PAYMENT

- (a) Any person or entity desiring to obtain payment from the Real Estate Education and Recovery Fund shall file an application with the Commission on a prescribed form. The form shall require information concerning the applicant and the

claim including but not limited to the applicant's name and address, the amount of the claim, a description of the acts of the ~~licensee-broker~~ which constitute the grounds for the claim and a statement that all court proceedings are concluded. With the form, the applicant shall submit copies of the civil complaint, judgment, and the return of execution marked as unsatisfied. If the application is incomplete or not filed in correct form, or if the Commission is without jurisdiction over the claim or the parties, Counsel for the Commission may file a motion to dismiss the application. The Commission shall conduct a hearing on the motion at which the only issues to be determined shall be whether the application is complete or in correct form or whether the Commission has jurisdiction over the claim or the parties.

(b) Forms for application for payment from the Real Estate Education and Recovery Fund shall be available from the Commission on request.

(c) The Commission, in its discretion, may accept an application for payment which is not submitted on the form prescribed by the Commission, provided that the application describes a meritorious claim and otherwise fulfills the requirements of G.S. 93A, Article 2.

Authority G.S. 93A-3(c); 93A-17.

21 NCAC 58A .1402 MULTIPLE CLAIMS

- (a) If at any time the Commission has notice of more than one application or potential claim for payment from the Real Estate Education and Recovery Fund arising out of the conduct of a single ~~licensee-broker~~, the Commission may, in its discretion, direct that all applications filed before a date determined by the Commission be consolidated for hearing and payment.
- (b) When consolidation is appropriate, the Commission shall issue to the ~~licensee-broker~~ and the applicants and potential claimants an Order of Consolidation setting forth the deadline for filing all applications to be consolidated. Upon the passing of the deadline, the Commission may, in its discretion, either extend the deadline or issue to the ~~licensee-broker~~ and all applicants a notice of the time, date and place set for the hearing on the consolidated applications.

Authority G.S. 93A-16(d); 93A-17; 93A-20.

21 NCAC 58A .1403 NOTICE OF HEARING: ORDER/PAYT FROM/REAL ESTATE EDUCATION AND RECOVERY FUND

- (a) The Commission shall give notice of the time, place and date of a hearing on a claim for payment from the Real Estate Education and Recovery Fund to any applicant and the ~~licensee-broker~~.
- (b) After conducting a hearing, the Commission shall issue an order either authorizing payment or denying the claim, in whole or in part. This order shall be served upon the ~~licensee-broker~~ and any applicant.
- (c) The existence of subsequent notices of potential claims or subsequent applications shall not be considered by the Commission in the issuance of an Order for Payment in those cases where the award is allowable but must be reduced pursuant to the provisions of G.S. 93A-21.

Authority G.S. 93A-16(d); 93A-20.

21 NCAC 58A .1404 EXHAUSTED LIABILITY LIMITS

Applications for payment from the Real Estate Education and Recovery Fund received or considered by the Commission after the liability of the Real Estate Education and Recovery Fund as described in G.S. 93A-21 has been exhausted shall be dismissed.

Authority G.S. 93A-3(c); 93A-21.

SECTION .2200 - BROKER PRICE OPINIONS AND COMPARATIVE MARKET ANALYSES

21 NCAC 58A .2201 APPLICABILITY

This Section applies to broker price opinions and comparative market analyses provided for a fee by a real estate broker whose license is not on provisional status pursuant to Article 6, Chapter 93A of the General Statutes.

Authority G.S. 93A-83(d).

21 NCAC 58A .2202 STANDARDS

(a) A broker performing a broker price opinion or comparative market analysis for a fee shall comply with all the requirements in G.S. 93A-83 and in this Rule.

(b) A broker shall only accept an assignment to provide a broker price opinion or comparative market analysis for a property if the broker has knowledge of the real estate market, direct access to real estate market sales or leasing data, and brokerage or appraisal experience in the subject property's geographic location.

(c) A broker shall not provide a broker price opinion or comparative market analysis for a property unless the broker can exercise objective, independent judgment free of any influence from any interested party in the performance of his or her analysis of the facts relevant to determination of a probable selling or leasing price.

(d) A broker shall not provide a broker price opinion or comparative market analysis for a property unless the broker has personally inspected the exterior and interior of that property, provided, however, that an inspection of the exterior or interior is not required if this is waived in writing by the party for whom the opinion or analysis is being performed.

(e) When developing a broker price opinion or comparative market analysis for a property or interest therein, a broker shall utilize methodology such as analysis of sales or income of sold or leased properties comparable to the subject property or capitalization as is appropriate for the assignment and type of subject property.

(f) When analyzing sales or income of properties comparable to the property that is the subject of a broker price opinion or comparative market analysis assignment, a broker shall comply with the following standards:

- (1) The broker shall select from reliable information sources a minimum of three sold or leased comparable properties for use in his or her analysis that are similar to the subject property with regard to characteristics such as

property type, use, location, age, size, design, physical features, amenities, utility, property condition and conditions of sale. The comparable properties selected shall reflect the prevailing factors or market conditions influencing the sale or lease prices of similar properties in the subject property's local market.

- (2) The broker shall make adjustments to the selling or leasing price of selected comparable properties for differences between the characteristics of the comparable properties and the subject property as necessary to produce a credible estimate of the probable selling or leasing price. Adjustments shall be considered for differences in property characteristics such as location, age, size, design, physical features, amenities, utility, condition, economic or functional obsolescence and conditions of sale. The amounts of adjustments shall reflect the values that the local real estate market places on the differences in the characteristics in question.

(g) A broker price opinion or comparative market analysis provided to a client shall address, in addition to matters required to be addressed by G.S. 93A-83 and other provisions of this Rule, the following items:

- (1) a description of the comparable properties used in the analysis (including any unsold properties listed for sale or rent that were used as comparable properties),
- (2) the adjustments made to the selling or leasing prices of comparable properties,
- (3) local real estate market conditions, and
- (4) each method used in deriving the estimate of probable selling or leasing price.

(h) In connection with a broker price opinion or comparative market analysis, an estimated probable leasing price may be reported by a broker as a lease rate and an estimated probable selling or leasing price may be reported by a broker either as a single figure or as a price range. When the estimated probable selling or leasing price is stated as a price range and the higher figure exceeds the lower figure by more than ten percent, the broker shall include an explanation of why the higher figure exceeds the lower figure by more than ten percent.

Authority G.S. 93A-83(d).

SUBCHAPTER 58B – TIME SHARES

SECTION .0100 – TIME SHARE PROJECT REGISTRATION

21 NCAC 58B .0102 REGISTRATION FEE

(a) Every application for time share project registration must be accompanied by a certified check made payable to the North Carolina Real Estate Commission. For the initial registration of any time share project, or for a subsequent registration of a time share project by a developer proposing to sell or develop time

~~shares equivalent to at least 20 per cent of the original time share project, 16 or more time shares, the fee is one thousand dollars (\$1,000). For a subsequent registration of a previously or presently registered time share project by a developer proposing to sell or develop time shares equivalent to less than 20 per cent of the original time share project, the fee is eight hundred dollars (\$800.00). For an initial or subsequent registration of a time share project consisting of a single family dwelling unit or a single dwelling unit in a multiple dwelling unit property and in which 10 or less the developer proposes to sell 15 or less fewer time shares shares, will be or have been created, the fee is six hundred dollars (\$600). seven hundred dollars (\$700.00). For any time share registration by a homeowner association for the purpose of re-selling time shares in its own project which it has acquired in satisfaction of unpaid assessments by prior owners, the fee is four hundred dollars (\$400.00). four hundred fifty dollars (\$450.00).~~

(b) Applications for registration not accompanied by the appropriate fee shall not be considered by the Commission.

(c) In the event a properly completed application filed with the Commission is denied for any reason, or if an incomplete application is denied by the Commission or abandoned by the developer prior to a final decision by the Commission, the amount of two hundred fifty dollars (\$250.00) shall be retained by the Commission from the application fee and the balance refunded to the applicant developer.

Authority G.S. 93A-51; 93A-52.

21 NCAC 58B .0103 RENEWAL OF TIME SHARE PROJECT REGISTRATION

(a) Every developer desiring the renewal of a time share project registration shall apply for the same in writing upon a form prescribed by the Commission during the month of June. Every such renewal application shall be accompanied by a certified check made payable to the North Carolina Real Estate Commission in the amount of ~~seven hundred fifty dollars (\$750).~~ eight hundred dollars (\$800.00). To renew the time share project registration, the properly completed renewal application accompanied by the prescribed fee must be received at the Commission's office prior to the expiration of the certificate of registration.

(b) Applications for the renewal of a time share project registration shall be signed by the developer, by two executive officers of the developer, or by the developer's attorney at law and shall certify that the information contained in the registration filed with the Commission is accurate and current on the date of the renewal application. Making a false certification on a time share project registration renewal application shall be grounds for disciplinary action by the Commission.

Authority G.S. 93A-51; 93A-52(d).

This Section contains information for the meeting of the Rules Review Commission on Thursday October 18 and November 15, 2012 at 1711 New Hope Church Road, RRC Commission Room, Raleigh, NC. Anyone wishing to submit written comment on any rule before the Commission should submit those comments to the RRC staff, the agency, and the individual Commissioners. Specific instructions and addresses may be obtained from the Rules Review Commission at 919-431-3000. Anyone wishing to address the Commission should notify the RRC staff and the agency no later than 5:00 p.m. of the 2nd business day before the meeting. Please refer to RRC rules codified in 26 NCAC 05.

RULES REVIEW COMMISSION MEMBERS**Appointed by Senate**

Addison Bell
Margaret Currin
Pete Osborne
Bob Rippy
Faylene Whitaker

Appointed by House

Ralph A. Walker
Anna Baird Choi
Jeanette Doran
Garth K. Dunklin
Stephanie Simpson

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RULES REVIEW COMMISSION MEETING DATES

December 20, 2012 January 17, 2013
February 17, 2013 March 21, 2013

RULES REVIEW COMMISSION**October 18, 2012****MINUTES**

The Rules Review Commission met on Thursday, October 18, 2012, in the Commission Room at 1711 New Hope Church Road, Raleigh, North Carolina. Commissioners present were: Addison Bell, Anna Baird Choi, Margaret Currin, Jeanette Doran, Garth Dunklin, Pete Osborne, Bob Rippy, Stephanie Simpson, Ralph Walker, Faylene Whitaker.

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

The meeting was called to order at 10:02 a.m. with Chairman Walker presiding. He reminded the Commission members that they have a duty to avoid conflicts of interest and the appearances of conflicts as required by NCGS 138A-15(e).

APPROVAL OF MINUTES

Chairman Walker asked for any discussion, comments, or corrections concerning the minutes of the September 20, 2012 meeting. There were none and the minutes were approved as distributed.

Margaret Currin recognized Matt Meding, one of her students from Campbell Law School.

FOLLOW-UP MATTERS

10A NCAC 09 .0901, .0902, .1702, .1706, .1718 – Child Care Commission –The agency has not yet met and responded to the objection and no action was taken.

21 NCAC 52 .0205 – Board of Podiatry Examiners – The agency has not yet met and responded to the objection and no action was taken.

LOG OF FILINGS

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

Alcoholic Beverage Control Commission

All rules were approved unanimously.

The Commission displaced the Industrial Commission rules to the end of meeting.

Child Care Commission

Jani Kozlowski from the agency addressed the Commission.

All rules were approved unanimously with the following exceptions:

10A NCAC 09 .3004 was objected to based on lack of statutory authority and ambiguity. The agency has not cited specific authority for the restrictions in this rule which prohibit "[a]ctivities, instruction, or communications, which promote religious beliefs" from being "directed toward children participating in the NC Pre-K program (formerly the "More at Four" program) during the NC Pre-K day." It appears these programs can be operated by any child care facility that is subject to these rules, including child care programs run by religious groups, and the rules are not restricted to programs operated by a public school system. If that is so, then there needs to be explicit authority to restrict any religious component of a school curriculum that might normally be offered by the child care program. If "religious sponsored child care facilities are eligible to operate under the NC Pre-K program and receive funding under it, then this rule would seem to violate G.S. 110-106. In addition this rule is ambiguous in that it is not clear what constitutes "activities, instruction, or communications which promote religious beliefs."

10A NCAC 09 .3007 was objected to based on lack of statutory authority or ambiguity. It is unclear what constitutes the "Early Learning and Development Standards." There is no authority to adopt them outside the rulemaking process and the NCAC.

10 NCAC 09 .3008 was objected to based on ambiguity. In this rule it is unclear what an "approved assessment instrument" is or how the approval is made. There is no authority to make the "approved" determination outside rulemaking.

Commission for Mental Health

10A NCAC 27G .0813 was approved unanimously.

Environmental Management Commission

All rules were approved unanimously.

Prior to the discussion of these rules, Commissioner Osborne recused himself and did not participate in any discussion or vote concerning these rules because he owns property on the Dan River which is part of the Roanoke River.

Wildlife Resources Commission

All rules were approved unanimously.

Department of Transportation

Betsy Strickland from the agency addressed the Commission.

Craig Justice attorney for the Outdoor Advertising Association addressed the Commission.

John Nance with the agency addressed the Commission.

All rules were approved unanimously with the following exceptions:

19A NCAC 02E .0609 and .0610 - The Commission objected to these rules based on lack of statutory authority and ambiguity. The provision in (b)(9) allowing the agency to deny a selective vegetative removal (SVR) permit if there are conditions or restrictions upon the state which the state "agrees in writing to subject itself" is either outside its authority or ambiguous.

While the billboards in question are on private property, trees and other vegetation screening the billboards would be on state property in state highways' right-of-ways. If the DOT grants a permit to construct a billboard along a roadside it is also required [under Article 11, The Outdoor Advertising Control Act (OACA), in Chapter 136 governing the DOT, GS. 136-126 (and following sections), as amended] to allow billboard owners or their agents access along the state right-of-ways to perform maintenance and vegetative removal.

Obviously any easement or restriction which is in place at the time a permit is granted would and should control. I don't believe the SVR portions of the law were intended nor could they undermine a property interest in that easement that existed prior to the granting of any permit to erect a billboard. The existing easement would preclude the operation of the OACA and its selective vegetation removal permissions.

By the same token the state would have no authority to undermine the intent of the OACA by being able to create an easement that would restrict a billboard owner's right to remove vegetation in front of a billboard granted by the SVR provisions.

If this rule provision is intended to apply to a piece of land for which there is an existing billboard or a permit to build a billboard and then the easement is granted, that is beyond the DOT's authority.

If this provision is not intended to be used in that manner but apply only to easements granted prior to the issuing of any permit then the rule is unclear.

For much the same reasons the provision applying to any state permits should also be treated the same way.

Prior to the discussion of these rules, Commissioner Whitaker recused herself and did not participate in any discussion or vote concerning these rules because she owns billboards.

Prior to the discussion of these rules, Commissioner Walker recused himself and did not participate in any discussion or vote concerning these rules because he owns land that has billboards on it.

Licensing Board for General Contractors

21 NCAC 12 .0204 was approved unanimously.

Prior to the discussion of these rules, Commissioner Bell recused himself and did not participate in any discussion or vote concerning these rules because he is a licensed general contractor.

Prior to the discussion of these rules, Commissioner Choi recused herself and did not participate in any discussion or vote concerning these rules because her law firm represents the Board.

Prior to the discussion of these rules, Commissioner Doran recused herself and did not participate in any discussion or vote concerning these rules because her husband works for a general contractor.

Prior to the discussion of these rules, Commissioner Osborne recused himself and did not participate in any discussion or vote concerning these rules because he is employed by and participates in ownership of a General Contractor Licensed by the state of North Carolina.

Onsite Wastewater Contractors and Inspectors Certification Board

All rules were approved unanimously.

Prior to discussion of these rules, Commissioner Choi recused herself and did not participate in any discussion or vote concerning these rules because her law firm represents the Board.

Commissioner Doran was not present during the vote on these rules.

Board of Pharmacy

21 NCAC 46 .1601 was approved unanimously

Appraisal Board

Roberta Ouelette from the agency addressed the Commission.

All rules were approved unanimously.

North Carolina Housing Finance Agency

All rules were approved unanimously.

Office of Administrative Hearings

Commissioner Currin reviewed the rules from the Office of Administrative Hearings.

All rules were approved unanimously.

RRC CERTIFICATION

Private Protective Services Board

The Commission certified that the agency adhered to the principles in G.S. 150B-19.1 for proposed rule 12 NCAC 07D .0707.

Industrial Commission

Connie Wilson addressed the Commission.

Victor Farah addressed the Commission.

Larry Baker with the NC Association of Defense Attorneys addressed the Commission.

Mike Carpenter with the Home Builders Association addressed the Commission.

John McMillan with the American Insurance Association addressed the Commission.

Connor Brockett with the NC Medical Society addressed the Commission.

Staci Meyer, Abigail Hammond, Amber Cronk, Meredith Henderson and Wanda Taylor from the agency addressed the Commission.

The meeting recessed at 12:30 p.m. and reconvened at 1:05 p.m.

Subchapter 10A Rules

All rules were approved unanimously with the following exceptions:

04 NCAC 10A .0301 - The Commission extended the period of review so that it could request information from the Office of State Budget and Management about how it determined that there was no substantial economic impact as defined in G.S. 150B-21.4(b1) resulting from the change in Paragraph (a) of the Rule such that the Industrial Commission will no longer accept a notice from the North Carolina Rate Bureau as proof that an employer has obtained workers' compensation insurance. The Commission would like this information to help it determine whether the agency adopted the rule in accordance with the Administrative Procedure Act.

04 NCAC 10A .0404 - The Commission objected to this Rule based on lack of statutory authority and ambiguity. In (f), it is not clear what is meant by "good cause shown." Twice when it is used, it modifies a requirement set by rule without the specific guidelines required by G.S. 150B-19(6). The first time it is used, it repeats the statutory standard and is therefore acceptable. In addition, in (d), there is no authority cited for the requirement that the Industrial Commission refuse to accept a filing that specifies the number of pages. The Commission also requested that the agency change "set without delay" back to "peremptorily set" as a technical change in (g).

Commissioner Doran left the meeting prior to the review of 04 NCAC 10A .0405 and did not participate in the discussion or vote on the remaining Industrial Commission rules.

04 NCAC 10A .0502 - The Commission objected to this Rule based on ambiguity. In (b)(4), it is not clear what about the "issues in dispute" will result in the Industrial Commission approving the non-payment of unpaid medical bills by an employer, carrier or administrator.

04 NCAC 10A .0617 - The Commission objected to this Rule based on ambiguity. In (c), it is not clear what would constitute "good cause shown" for the Commission to allow an attorney to withdraw from representation.

04 NCAC 10A .0801 - The Commission objected to this Rule due to lack of statutory authority. "In the interests of justice or to promote judicial economy" is not sufficient specific guideline for the agency to use in determining whether to waive or modify a requirement set by rule as required by G.S. 150B-19(6).

04 NCAC 10A .0802 - The Commission objected to this Rule due to lack of statutory authority. There is no authority cited for the agency to impose sanctions for violations of every rule in this Subchapter.

04 NCAC 10A .0102, .0105, .0405, .0406, .0408, .0601, .0603, .0604, .0605, .0607, .0608, .0609, .0609A, .0612, .0613, .0616, .0701, .0702, .0704 received 10 letters of objection and are subject to legislative review.

Prior to the discussion of the specific rules, Commissioner Simpson recused herself and did not participate in any discussion or vote concerning rules 10A .0613(c), .0614 and .1001 because her husband's law firm represents the NC Medical Society and many physician clients.

Subchapter 10B Rules

All rules were approved unanimously with the following exceptions:

04 NCAC 10B .0201 - The Commission objected to this Rule due to lack of necessity. This rule repeats G.S. 143-300 and is thus unnecessary.

04 NCAC 10B .0203 - The Commission objected to this Rule due to lack of statutory authority. G.S. 143-300 requires that the North Carolina Rules of Civil Procedure be followed in Tort Claim proceedings if they are not in conflict with the Tort Claims Act. Rule 17(b) of the Rules of Civil Procedure requires general and testamentary guardians to appear for infants and incompetents if they have any. By requiring the use of a guardian *ad litem*, the rule is not consistent with the statute and thus outside the authority of the agency.

04 NCAC 10B .0203 - The Commission objected to this Rule due to lack of statutory authority. "In the interests of justice or to promote judicial economy" is not sufficient specific guideline for the agency to use in determining whether to waive or modify a requirement set by rule as required by G.S. 150B-19(6).

Subchapter 10C Rules

All the rules were approved unanimously with the following exceptions:

04 NCAC 10C .0108 - The Commission objected to this Rule due to ambiguity. In (e)(1), it is not clear what is meant by the requirement that a rehabilitation professional not "initiate" a request for impairment ratings, second opinions or independent medical examinations. It is also possible that this requirement conflicts with the requirement in 04 NCAC 10C .0106(a) that a rehabilitation professional shall exercise independent professional judgment in making and documenting recommendations for medical and vocational rehabilitation for an injured worker.

04 NCAC 10C .0201 - The Commission objected to this Rule due to lack of statutory authority. "In the interests of justice or to promote judicial economy" is not sufficient specific guideline for the agency to use in determining whether to waive or modify a requirement set by rule as required by G.S. 150B-19(6).

04 NCAC 10C .0202 - The Commission objected to this Rule due to lack of statutory authority. There is no authority cited for the agency to impose sanctions for violations of every rule in this Subchapter.

04 NCAC 10C .0101, .0103, .0107, .0109 received 10 letters of objection and are subject to legislative review.

Prior to the discussion of the 10C .0108, Commissioner Simpson recused herself and did not participate in any discussion or vote concerning the rule because her husband's law firm represents the NC Medical Society and many physician clients.

Subchapter 10D Rules

All rules were approved unanimously with the following exceptions:

04 NCAC 10D .0104 - The Commission objected to this Rule due to ambiguity. It is not clear what is meant by "change the provision of medical compensation" in this context. "Medical compensation" is defined in G.S. 97-2(19) as services. If "provision" read "provider" this rule might be clear, but it is not clear why what is provided would be changed because of problems with the provider.

04 NCAC 10D .0110 - The Commission objected to this Rule due to lack of statutory authority. "In the interests of justice or to promote judicial economy" is not sufficient specific guideline for the agency to use in determining whether to waive or modify a requirement set by rule as required by G.S. 150B-19(6).

04 NCAC 10D .0111 - The Commission objected to this Rule due to lack of statutory authority. There is no authority cited for the agency to impose sanctions for violations of every rule in this Subchapter.

Subchapter 10E Rules

All rules were approved unanimously with the following exceptions:

04 NCAC 10E .0101 - The Commission objected to this Rule due to lack of statutory authority. There is no authority cited for the Chair to independently decide whether to grant or deny a petition for rulemaking. G.S. 150B-20 gives that responsibility to the agency, the full Commission. There is no authority cited for the agency to delegate that responsibility to a single member.

04 NCAC 10E .0301 - The Commission objected to this Rule due to lack of statutory authority. "In the interests of justice or to promote judicial economy" is not sufficient specific guideline for the agency to use in determining whether to waive or modify a requirement set by rule as required by G.S. 150B-19(6).

04 NCAC 10E .0302 - The Commission objected to this Rule due to lack of statutory authority. There is no authority cited for the agency to impose sanctions for violations of every rule in this Subchapter.

04 NCAC 10E .0201, .0202, .0203 received 10 letters of objection and are subject to legislative review.

Subchapter 10F Rules

All rules were approved unanimously with the following exceptions:

04 NCAC 10F .0105 - The Commission objected to this Rule due to ambiguity. In (a)(1)(C), it is not clear what is meant by "support methods." In (a)(2)(D), it is not clear what is meant by "process." In (b)(4)(F), it is not clear what this "companion guide" is or who publishes it.

04 NCAC 10F .0108 - The Commission objected to this Rule due to lack of statutory authority. There is no authority cited for the agency to impose sanctions for violations of every rule in this Subchapter.

Subchapter 10G Rules

All rules were approved unanimously with the following exceptions:

04 NCAC 10G .0105 - The Commission objected to this Rule due to ambiguity. This rule references 04 NCAC 10A .0802. The Commission objected to that rule due to lack of statutory authority. The reference to that rule makes this rule unclear.

04 NCAC 10G .0107 - The Commission objected to this Rule due to ambiguity. In (b)(3), it is not clear what constitutes "good cause." The comparable rule of the Rules Implementing Statewide Mediated Settlement Conference in Superior Court Civil Actions contains a definition of "good cause." These rules are required by statute to be substantially similar to those rules. It is not clear if the agency intends the same definition to apply or if some other definition applies.

04 NCAC 10G .0108 - The Commission objected to this Rule due to ambiguity. In (a), it is not clear what constitutes "good cause" for the Commission to bar any person from holding himself out as a mediator, etc. There does not appear to be a comparable provision in the Mediated Settlement Conference rules. In (c), it is not clear what constitutes "good cause" for the failure of a mediator to appear. There does not appear to be a comparable provision in the Mediated Settlement Conference rules.

04 NCAC 10G .0110 - The Commission objected to this Rule due to lack of statutory authority. "In the interests of justice or to promote judicial economy" is not sufficient specific guideline for the agency to use in determining whether to waive or modify a requirement set by rule as required by G.S. 150B-19(6).

04 NCAC 10G .0101, .0103, .0104A received 10 letters of objection and are subject to legislative review.

Subchapter 10H Rules

All rules were approved unanimously expectations:

04 NCAC 10H .0201 - The Commission objected to this Rule due to ambiguity. In (b), it is not clear if the standard here also applies in Rule .0202(b).

04 NCAC 10H .0202 - The Commission objected to this Rule due to ambiguity. In (b), it is not clear what factors or standards the Commission will use in ordering a hearing or rehearing. It is also not clear if the Commission will use a different standard than that set out in .0201(b).

04 NCAC 10H .0206 - The Commission objected to this Rule due to lack of statutory authority. "In the interests of justice or to promote judicial economy" is not sufficient specific guideline for the agency to use in determining whether to waive or modify a requirement set by rule as required by G.S. 150B-19(6).

04 NCAC 10H .0207 - The Commission objected to this Rule due to lack of statutory authority. There is no authority cited for the agency to impose sanctions for violations of every rule in this Subchapter.

Subchapter 10I Rules

All rules were unanimously approved with the following exceptions:

04 NCAC 10I .0201 - The Commission objected to this Rule due to lack of necessity. This rule repeats the contents of G.S. 130A-425(d) and is thus unnecessary.

04 NCAC 10I .0204 - The Commission objected to this Rule due to lack of statutory authority. "In the interests of justice or to promote judicial economy" is not sufficient specific guideline for the agency to use in determining whether to waive or modify a requirement set by rule as required by G.S. 150B-19(6).

Subchapter 10J Rules

04 NCAC 10J .0101 - The Commission objected to this Rule due to ambiguity. In (d), it is not clear what the amount of the fees to be paid to hospitals is. There is also other potentially ambiguous language in the Rule that the agency may want to clarify if it submits a rewritten rule.

This Rule also received 10 letters of objection and is subject to legislative review, if it is later approved.

Prior to the discussion of 04 NCAC 10J .0101, Commissioner Simpson recused herself and did not participate in any discussion or vote concerning this Rule because her husband's law firm represents the NC Medical Society and many physician clients.

The meeting adjourned at 6:56 p.m.

The next scheduled meeting of the Commission is Thursday, November 15th at 10:00 a.m.

There is a digital recording of the entire meeting available from the Office of Administrative Hearings / Rules Division.

Respectfully Submitted,

Julie Edwards
Editorial Assistant

Minutes approved by the Rules Review Commission

Judge Ralph A. Walker/Chair

Rules Review Commission

Meeting

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OCTOBER 18, 2012

Name	Agency
Michelle Frasier	Manning Fulton
Elizabeth Robinson	NCRMA
David McGowan	NC Realtors
Craig Justus	Van Winkle
Paul Hickman	Fairway / NCOAA
Tina Hlabse	NCDOJ
AMAR MASUMDAR	NC DOT
John McMillan	Manning Fulton
Larry Baker	Crafty Sumner
Julia Dixon	Young Moore
John Tucker	MVA
Tommy Sevier	MVA
Elizabeth Courtis	NC DENR
Amanda Puder	NC DMHDDPHE
Jack Nichols	Ally, Plummer & McHolis
JOHN GOODMAN	NC CHAMBER
Roberta Ouellette	NC Appraisal Board
Eric David	NC. Bd. of Pharm.
Jani Kozlowski	DCDEE
Dick Ann	DCDEE
Robert Simpson	NC DOT

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OCTOBER 18, 2012

Name	Agency
Abigail Hammond	Indust. Comm
Pamela Young	
Connie Stephens	NCOWCEB
Staci Meyer	NC IND. COMM
Betsy Strickland	DOJ
Chris Evans	BOBNC
Norman Young	DOJ / WRC
Helen Landi	NCDOT
Phyllis Traversese	AG
Connie Wilson	ECNC
Vernon Summit	NCAT
Michael McEvilly	Seam NC (for NCDOT)
Dan J. [unclear]	NCSTA
[unclear]	NCEC
Robert Hamilton	ABC Commission
Victor Farah	Farah / [unclear] PA
Matt Meany	Campbell Univ.
Tony Adams	NC Outdoor Advertising Association
Henry Patterson	Patterson Hinkley LLP
MARK Acosta	NC G.C. BOARD, GEN. CONTRACTORS
Conor Brackett	NC Medical Society

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Name	Agency
Don C. Smith	NCDOT
Jon Nance	NCDOT
Don Lee	NCDOT
Jennifer Everett	DENR
Harvey Guyton	NCOAA
Robert L. Price	Adams Outdoor
Robert Sykes	CHAIR Outdoor
Mark Swartz	NextMedia
Mark Russell	NEXT MEDIA Outdoor
Ann Christian	atly
Amber Chmiele	NCIC
Meredith Henderson	NCIC
Wanda Taylor	NZIC
Mark Odell	Lamar
Shelly Green	Scenic NC
Anthony Wayne	NCDOT
Diana Casper	NCAIA
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**LIST OF APPROVED PERMANENT RULES
October 18, 2012 Meeting**

ALCOHOLIC BEVERAGE CONTROL COMMISSION

<u>Guest Room Cabinets; Inventory and Records</u>	04	NCAC 02S .0525
<u>Types of Permits Required</u>	04	NCAC 02S .0708
<u>Tastings Held by Retailers for Consumers</u>	04	NCAC 02S .0901
<u>Advertising of Spirituous Liquors</u>	04	NCAC 02S .1011
<u>Wine Product Brand</u>	04	NCAC 02T .0104
<u>Transactions with Government and Special One-Time Permittees</u>	04	NCAC 02T .0714
<u>Tournaments</u>	04	NCAC 02T .0715

INDUSTRIAL COMMISSION

<u>Location of Offices and Hours of Business</u>	04	NCAC 10A .0101
<u>Official Forms</u>	04	NCAC 10A .0102
<u>Notice of Accident and Claim of Injury or Occupational Di...</u>	04	NCAC 10A .0103
<u>Employer's Requirement to File a Form 19</u>	04	NCAC 10A .0104
<u>Electronic Payment of Costs</u>	04	NCAC 10A .0105
<u>Filing of Annual Report Requirement</u>	04	NCAC 10A .0106
<u>Computation of Time</u>	04	NCAC 10A .0107
<u>Posting Requirement for Employers</u>	04	NCAC 10A .0201
<u>Required Contact Information from Carriers</u>	04	NCAC 10A .0302
<u>Calculating the Seven-Day Waiting Period</u>	04	NCAC 10A .0401
<u>Submission of Earnings Statement Required</u>	04	NCAC 10A .0402
<u>Manner of Payment of Compensation</u>	04	NCAC 10A .0403
<u>Trial Return to Work</u>	04	NCAC 10A .0404A
<u>Reinstatement of Compensation</u>	04	NCAC 10A .0405
<u>Discount Rate to be Used in Determining Commuted Values</u>	04	NCAC 10A .0406
<u>Fees for Medical Compensation</u>	04	NCAC 10A .0407
<u>Application for or Stipulation to Additional Medical Comp...</u>	04	NCAC 10A .0408
<u>Claims for Death Benefits</u>	04	NCAC 10A .0409
<u>Communication for Medical Information</u>	04	NCAC 10A .0410
<u>Agreements for Prompt Payment of Compensation</u>	04	NCAC 10A .0501
<u>Notice of Last Payment Filing Requirement</u>	04	NCAC 10A .0503
<u>Employer's Obligations Upon Notice; Denial of Liability; ...</u>	04	NCAC 10A .0601
<u>Request for Hearing</u>	04	NCAC 10A .0602
<u>Responding to a Party's Request for Hearing</u>	04	NCAC 10A .0603
<u>Appointment of Guardian Ad Litem</u>	04	NCAC 10A .0604
<u>Discovery</u>	04	NCAC 10A .0605
<u>Discovery - Post Hearing</u>	04	NCAC 10A .0606
<u>Discovery of Records and Reports</u>	04	NCAC 10A .0607
<u>Statement of Incident Leading to Claim</u>	04	NCAC 10A .0608
<u>Motions Practice in Contested Cases</u>	04	NCAC 10A .0609
<u>Medical Motions and Emergency Medical Motions</u>	04	NCAC 10A .0609A
<u>Pre-Trial Agreement</u>	04	NCAC 10A .0610
<u>Hearings Before the Commission</u>	04	NCAC 10A .0611

<u>Depositions and Additional Hearings</u>	04	NCAC 10A .0612
<u>Expert Witnesses and Fees</u>	04	NCAC 10A .0613
<u>Medical Provider Fee Dispute Procedure</u>	04	NCAC 10A .0614
<u>Cases Removed from a Hearing Calendar</u>	04	NCAC 10A .0615
<u>Dismissals</u>	04	NCAC 10A .0616
<u>Disqualification of a Commissioner or Deputy Commissioner</u>	04	NCAC 10A .0618
<u>Foreign Language Interpreters</u>	04	NCAC 10A .0619
<u>Review by the Full Commission</u>	04	NCAC 10A .0701
<u>Review of Administrative Decisions</u>	04	NCAC 10A .0702
<u>Remand from the Appellate Courts</u>	04	NCAC 10A .0702A
<u>Appeal to the Court of Appeals</u>	04	NCAC 10A .0703
<u>Remand from the Appellate Courts</u>	04	NCAC 10A .0704
<u>Rulemaking</u>	04	NCAC 10A .0803
<u>Check Endorsement</u>	04	NCAC 10A .0901
<u>Notice</u>	04	NCAC 10A .0902
<u>Employee's Obligation to Report Earnings</u>	04	NCAC 10A .0903
<u>Preauthorization for Surgery and Inpatient Treatment</u>	04	NCAC 10A .1001
<u>Location of Offices and Hours of Business</u>	04	NCAC 10B .0101
<u>Official Forms</u>	04	NCAC 10B .0102
<u>Filing Fees</u>	04	NCAC 10B .0103
<u>Filing by Facsimile Transmission</u>	04	NCAC 10B .0104
<u>Medical Malpractice Claims by Prison Inmates</u>	04	NCAC 10B .0202
<u>Motions</u>	04	NCAC 10B .0204
<u>Mediation</u>	04	NCAC 10B .0205
<u>Hearings</u>	04	NCAC 10B .0206
<u>Hearings of Claims by Prison Inmates</u>	04	NCAC 10B .0207
<u>Hearing Costs</u>	04	NCAC 10B .0208
<u>Scope</u>	04	NCAC 10B .0301
<u>Notice of Appeal to the Full Commission</u>	04	NCAC 10B .0302
<u>Proposed Issues on Appeal</u>	04	NCAC 10B .0303
<u>Dismissals of Appeals</u>	04	NCAC 10B .0304
<u>Briefs to the Full Commission</u>	04	NCAC 10B .0305
<u>Motion for New Hearing</u>	04	NCAC 10B .0306
<u>Motions Before the Full Commission</u>	04	NCAC 10B .0307
<u>Stays</u>	04	NCAC 10B .0308
<u>New Evidence</u>	04	NCAC 10B .0309
<u>Waiver of Oral Argument</u>	04	NCAC 10B .0310
<u>Scope</u>	04	NCAC 10B .0401
<u>Stays</u>	04	NCAC 10B .0402
<u>Motions for Court of Appeals Cases</u>	04	NCAC 10B .0403
<u>Remand from Appellate Courts</u>	04	NCAC 10B .0404
<u>Rulemaking</u>	04	NCAC 10B .0502
<u>Sanctions</u>	04	NCAC 10B .0503
<u>Applicability of the Rules</u>	04	NCAC 10C .0101
<u>Purpose of the Rules</u>	04	NCAC 10C .0102
<u>Definitions</u>	04	NCAC 10C .0103

<u>Qualifications Required</u>	04 NCAC 10C .0105
<u>Professional Responsibility of the Rehabilitation Profess...</u>	04 NCAC 10C .0106
<u>Communication</u>	04 NCAC 10C .0107
<u>Vocational Rehabilitation Services Return to Work</u>	04 NCAC 10C .0109
<u>Change of Rehabilitation Professional</u>	04 NCAC 10C .0110
<u>Purpose</u>	04 NCAC 10D .0101
<u>Definitions</u>	04 NCAC 10D .0102
<u>Qualification by the Department of Insurance</u>	04 NCAC 10D .0103
<u>Notice to Commission</u>	04 NCAC 10D .0105
<u>Contract Provisions</u>	04 NCAC 10D .0106
<u>Information for Employee</u>	04 NCAC 10D .0107
<u>Inclusive Provider Panels</u>	04 NCAC 10D .0108
<u>Quality Assurance and Utilization Review</u>	04 NCAC 10D .0109
<u>Mailing List</u>	04 NCAC 10E .0102
<u>Document and Record Fees</u>	04 NCAC 10E .0201
<u>Hearing Costs or Fees</u>	04 NCAC 10E .0202
<u>Fees Set by the Commission</u>	04 NCAC 10E .0203
<u>Accident Prevention and Safety Educational Program Fees</u>	04 NCAC 10E .0204
<u>Electronic Medical Billing and Payment Requirement</u>	04 NCAC 10F .0101
<u>Definitions</u>	04 NCAC 10F .0102
<u>Formats for Electronic Medical Bill Processing</u>	04 NCAC 10F .0103
<u>Billing Code Sets</u>	04 NCAC 10F .0104
<u>Employer, Insurance Carrier, Managed Care Organization, o...</u>	04 NCAC 10F .0106
<u>Communication Between Health Care Providers and Payers</u>	04 NCAC 10F .0107
<u>Effective Date</u>	04 NCAC 10F .0109
<u>Order for Mediated Settlement Conference</u>	04 NCAC 10G .0101
<u>Selection of Mediator</u>	04 NCAC 10G .0102
<u>The Mediated Settlement Conference</u>	04 NCAC 10G .0103
<u>Duties of Parties, Representatives, and Attorneys</u>	04 NCAC 10G .0104
<u>Foreign Language Interpreters</u>	04 NCAC 10G .0104A
<u>Authority and Duties of Mediators</u>	04 NCAC 10G .0106
<u>Neutral Evaluation</u>	04 NCAC 10G .0109
<u>Motions</u>	04 NCAC 10G .0111
<u>Miscellaneous</u>	04 NCAC 10G .0112
<u>Location of Offices and Hours of Business</u>	04 NCAC 10H .0101
<u>Appointment of Guardian Ad Litem</u>	04 NCAC 10H .0203
<u>Written or Recorded Statement</u>	04 NCAC 10H .0204
<u>Review by the Full Commission</u>	04 NCAC 10H .0205
<u>Locations of Office and Hours of Business</u>	04 NCAC 10I .0101
<u>Official Form</u>	04 NCAC 10I .0102
<u>Procedure</u>	04 NCAC 10I .0202
<u>Attorneys' Fees</u>	04 NCAC 10I .0203
<u>Sanctions</u>	04 NCAC 10I .0205

CHILD CARE COMMISSION

<u>Scope</u>	10A NCAC 09 .3001
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<u>Facility Requirements</u>	10A NCAC 09 .3002
<u>Program Attendance Policy</u>	10A NCAC 09 .3003
<u>Child Health Assessments</u>	10A NCAC 09 .3005
<u>Developmental Screening</u>	10A NCAC 09 .3006
<u>Staff-to-Child Ratio and Class Size</u>	10A NCAC 09 .3009
<u>Family Engagement</u>	10A NCAC 09 .3010
<u>NC Pre-K Site-Level</u>	10A NCAC 09 .3011
<u>NC Pre-K Teacher Education, Licensure and Credentials</u>	10A NCAC 09 .3012
<u>NC Pre-K Teacher Assistant Education and Credentials</u>	10A NCAC 09 .3013
<u>NC Pre-K Substitute Staff</u>	10A NCAC 09 .3014
<u>Instructional Staff Standards</u>	10A NCAC 09 .3015
<u>Professional Development Requirements</u>	10A NCAC 09 .3016

MENTAL HEALTH, COMMISSION FOR

<u>Waiver of Licensure Rules</u>	10A NCAC 27G .0813
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ENVIRONMENTAL MANAGEMENT COMMISSION

<u>Roanoke River Basin</u>	15A NCAC 02B .0313
<u>Form and Contents of Petition</u>	15A NCAC 02I .0501

WILDLIFE RESOURCES COMMISSION

<u>Open Seasons</u>	15A NCAC 10B .0303
<u>Bag Limits</u>	15A NCAC 10B .0304

TRANSPORTATION, DEPARTMENT OF

<u>Revocation of Outdoor Advertising Permit</u>	19A NCAC 02E .0210
<u>Denial of Permit</u>	19A NCAC 02E .0211
<u>Permit to Remove Vegetation</u>	19A NCAC 02E .0601
<u>Requests for Permits for a Facility</u>	19A NCAC 02E .0602
<u>Issuance or Denial of Permit for a Facility</u>	19A NCAC 02E .0603
<u>Conditions of Selective Vegetation Removal Permit for Fac...</u>	19A NCAC 02E .0604
<u>Requests for Selective Vegetation Removal Permits for Out...</u>	19A NCAC 02E .0608
<u>Requirements for Beautification and Replanting Conditions...</u>	19A NCAC 02E .0611

GENERAL CONTRACTORS, LICENSING BOARD FOR

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

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

PHARMACY, BOARD OF

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

<u>Qualifications for Trainee Registration and Appraiser Cer...</u>	21	NCAC 57A .0201
<u>Fitness for Registration or Certification</u>	21	NCAC 57A .0202
<u>Registration, License and Certificate Renewal</u>	21	NCAC 57A .0203
<u>Continuing Education</u>	21	NCAC 57A .0204
<u>Applicants Certified in Another State</u>	21	NCAC 57A .0211
<u>Time and Place</u>	21	NCAC 57A .0301
<u>Subject Matter and Passing Scores</u>	21	NCAC 57A .0302
<u>Re-examination</u>	21	NCAC 57A .0303
<u>Cleaning and Related Misconduct</u>	21	NCAC 57A .0304
<u>Supervision of Trainees</u>	21	NCAC 57A .0407
<u>Appraisal Standards</u>	21	NCAC 57A .0501
<u>Registered Trainee Course Requirements</u>	21	NCAC 57B .0101
<u>Certified Residential Real Estate Appraiser Course Requir...</u>	21	NCAC 57B .0102
<u>Certified General Real Estate Appraiser Course Requirements</u>	21	NCAC 57B .0103
<u>Course Records</u>	21	NCAC 57B .0210
<u>Continuing Education Credit Hours</u>	21	NCAC 57B .0605
<u>Course Operational Requirements</u>	21	NCAC 57B .0606
<u>Certification of Course Completion</u>	21	NCAC 57B .0607
<u>Renewal of Approval and Fees</u>	21	NCAC 57B .0611
<u>Filing and Fees</u>	21	NCAC 57D .0102
<u>Removal of an Appraiser from an Appraiser Panel</u>	21	NCAC 57D .0311
<u>Requesting Additional Information from an Appraiser</u>	21	NCAC 57D .0312

NORTH CAROLINA HOUSING FINANCE AGENCY

<u>Purpose of Assistance</u>	24	NCAC 01F .0101
<u>Background of Assistance</u>	24	NCAC 01F .0102
<u>Project Planning Loans</u>	24	NCAC 01F .0201
<u>Site Development and Off-Site Improvements Grants</u>	24	NCAC 01F .0202
<u>Technical Assistance Grants</u>	24	NCAC 01F .0203
<u>Eligible Housing Programs</u>	24	NCAC 01F .0301
<u>Eligible Counties</u>	24	NCAC 01F .0302
<u>State Appalachian Development Plan</u>	24	NCAC 01F .0401
<u>Identification in Annual Investment Program</u>	24	NCAC 01F .0402
<u>Approval of Individual Projects</u>	24	NCAC 01F .0403
<u>Duties and Functions of State Implementing Agency</u>	24	NCAC 01F .0501
<u>Requirements for Accounting: Audits: and Reports</u>	24	NCAC 01F .0502
<u>Reports on Disposition of Funds</u>	24	NCAC 01F .0503
<u>Waiver of Loan Repayment</u>	24	NCAC 01F .0504
<u>Agreement Between Agency and Sponsor</u>	24	NCAC 01F .0505
<u>Objectives</u>	24	NCAC 01H .0101
<u>Persons and Families of Lower Income</u>	24	NCAC 01H .0102
<u>Persons and Families of Moderate Income</u>	24	NCAC 01H .0103
<u>Method</u>	24	NCAC 01H .0104
<u>Notice of Funds Availability</u>	24	NCAC 01H .0105

<u>Eligible Projects</u>	24	NCAC 01H .0201
<u>Application Procedure</u>	24	NCAC 01H .0202
<u>Fair Market Rents</u>	24	NCAC 01H .0203
<u>Local Government Request</u>	24	NCAC 01H .0204
<u>Public Housing Agency</u>	24	NCAC 01H .0205
<u>Mortgage Insurance Commitment</u>	24	NCAC 01H .0206
<u>Funds Availability</u>	24	NCAC 01H .0301
<u>Project Feasibility</u>	24	NCAC 01H .0302
<u>Agency Approval</u>	24	NCAC 01H .0303
<u>Federal Approval</u>	24	NCAC 01H .0304
<u>Project Evaluation</u>	24	NCAC 01H .0305
<u>Interim Financing</u>	24	NCAC 01H .0401
<u>Permanent Financing</u>	24	NCAC 01H .0402
<u>Mortgage Purchase Procedure</u>	24	NCAC 01H .0403
<u>Mortgage Loan Servicing</u>	24	NCAC 01H .0404
<u>Creation of Fund</u>	24	NCAC 01H .0501
<u>Eligibility</u>	24	NCAC 01H .0502
<u>Fund Operation and Administration</u>	24	NCAC 01H .0503
<u>Objectives</u>	24	NCAC 01J .0101
<u>Income Eligible Persons and Families</u>	24	NCAC 01J .0102
<u>Eligible Borrower</u>	24	NCAC 01J .0103
<u>Eligible Property</u>	24	NCAC 01J .0104
<u>Eligible Loan</u>	24	NCAC 01J .0105
<u>Compliance with Tax Act</u>	24	NCAC 01J .0107
<u>Eligible Lender Contract Forms</u>	24	NCAC 01J .0201
<u>Servicing Agreement</u>	24	NCAC 01J .0202
<u>Objectives</u>	24	NCAC 01K .0101
<u>Definitions</u>	24	NCAC 01K .0102
<u>Method</u>	24	NCAC 01K .0103
<u>Eligible Projects</u>	24	NCAC 01K .0201
<u>Local Government Request</u>	24	NCAC 01K .0202
<u>Resident Certification</u>	24	NCAC 01K .0203
<u>Rent Requirements</u>	24	NCAC 01K .0204
<u>Interim Financing</u>	24	NCAC 01K .0301
<u>Financing</u>	24	NCAC 01K .0302
<u>Mortgage Purchase Procedure</u>	24	NCAC 01K .0303
<u>Mortgage Loan Servicing</u>	24	NCAC 01K .0304
<u>Notification of Proposed Financing</u>	24	NCAC 01K .0401
<u>Application Procedure</u>	24	NCAC 01K .0402
<u>Project Feasibility</u>	24	NCAC 01K .0403
<u>Project Evaluation</u>	24	NCAC 01K .0404
<u>Agency Approval</u>	24	NCAC 01K .0405
<u>Purpose</u>	24	NCAC 01K .0501
<u>Distressed Rental Housing Project Defined</u>	24	NCAC 01K .0502
<u>Determination by Board of Directors</u>	24	NCAC 01K .0503
<u>Procedure</u>	24	NCAC 01K .0504

<u>General Information</u>	24	NCAC 01K .0601
<u>Objectives</u>	24	NCAC 01K .0602
<u>Types of Assistance</u>	24	NCAC 01K .0603
<u>Requirements</u>	24	NCAC 01K .0604
<u>Procedures</u>	24	NCAC 01K .0605
<u>Objectives</u>	24	NCAC 01L .0101
<u>Administration by the Agency</u>	24	NCAC 01L .0102
<u>Adoption of HUD Program by Reference</u>	24	NCAC 01L .0201
<u>Memorandum of Understanding</u>	24	NCAC 01L .0202
<u>Purpose</u>	24	NCAC 01O .0101
<u>Eligibility</u>	24	NCAC 01O .0102
<u>Application Procedures</u>	24	NCAC 01O .0201
<u>Selection Procedures</u>	24	NCAC 01O .0202
<u>Purpose</u>	24	NCAC 01P .0101
<u>Eligibility</u>	24	NCAC 01P .0102
<u>Types of Assistance</u>	24	NCAC 01P .0103
<u>Application Procedures</u>	24	NCAC 01P .0201
<u>Selection Procedure</u>	24	NCAC 01P .0202
<u>Disbursement of Funds</u>	24	NCAC 01P .0203

ADMINISTRATIVE HEARINGS, OFFICE OF

<u>Employee Insurance Committee</u>	26	NCAC 01 .0104
<u>Declaratory Rulings: Availability</u>	26	NCAC 01 .0202
<u>General</u>	26	NCAC 03 .0101
<u>Definitions and Construction</u>	26	NCAC 03 .0102
<u>Duties of the Administrative Law Judge</u>	26	NCAC 03 .0105
<u>Administrative Law Judge's Decision</u>	26	NCAC 03 .0127
<u>Final Decisions in Contested Cases</u>	26	NCAC 03 .0131
<u>Order Designating Complex Contested Cases</u>	26	NCAC 03 .0301
<u>Factors to be Considered</u>	26	NCAC 03 .0302
<u>Venue</u>	26	NCAC 03 .0303
<u>Expedited Hearing Procedures for Complex Contested Cases</u>	26	NCAC 03 .0304
<u>Rules and Procedures</u>	26	NCAC 03 .0305
<u>Hearing Procedures Rules</u>	26	NCAC 03 .0401
<u>Expedited Hearings Procedures for Complex Contested Cases</u>	26	NCAC 03 .0403
<u>Introduction</u>	26	NCAC 04 .0101
<u>Content and Procedure</u>	26	NCAC 04 .0102
<u>Notification of Investigation</u>	26	NCAC 04 .0103
<u>Additional Information</u>	26	NCAC 04 .0104
<u>Investigation</u>	26	NCAC 04 .0105
<u>Investigation Report</u>	26	NCAC 04 .0106
<u>Conciliation and Settlement</u>	26	NCAC 04 .0107
<u>Contested Case Hearing</u>	26	NCAC 04 .0108
<u>Authority to Administer Oaths or Affirmations</u>	26	NCAC 04 .0109

AGENDA
RULES REVIEW COMMISSION
Thursday, November 15, 2012 10:00 A.M.
1711 New Hope Church Rd., Raleigh, NC 27609

- I. Ethics reminder by the chair as set out in G.S. 138A-15(e)
- II. Approval of the minutes from the last meeting
- III. Follow-Up Matters:
 - A. Industrial Commission – 04 NCAC 10A .0301 (Bryan)
 - B. Industrial Commission – 04 NCAC 10A .0404, .0502, .0617, .0801, .0802 (Bryan)
 - C. Industrial Commission – 04 NCAC 10B .0201, .0203, .0501 (Bryan)
 - D. Industrial Commission – 04 NCAC 10C .0108, .0201, .0202 (Bryan)
 - E. Industrial Commission – 04 NCAC 10D .0104, .0110, .0111 (Bryan)
 - F. Industrial Commission – 04 NCAC 10E .0101, .0301, .0302 (Bryan)
 - G. Industrial Commission – 04 NCAC 10F .0105, .0108 (Bryan)
 - H. Industrial Commission – 04 NCAC 10G .0105, .0107, .0108, .0110 (Bryan)
 - I. Industrial Commission – 04 NCAC 10H .0201, .0202, .0206, .0207 (Bryan)
 - J. Industrial Commission – 04 NCAC 10I .0201, .0204 (Bryan)
 - K. Industrial Commission – 04 NCAC 10J .0101 (Bryan)
 - L. Child Care Commission – 10A NCAC 09 .0901, .0902, .1702, .1706, .1718 (DeLuca)
 - M. Child Care Commission – 10A NCAC 09 .3004, .3007, .3008 (DeLuca)
 - N. Department of Transportation – 19A NCAC 02E .0609, .0610 (DeLuca)
 - O. Board of Podiatry Examiners – 21 NCAC 52 .0205 (DeLuca)
- IV. Review of Log of Filings (Permanent Rules) for rules filed between September 21, 2012 and October 22, 2012
- V. Review of Log of Filings (Temporary Rules) for any rule filed within 15 business days of the RRC Meeting
- VI. G.S. 150B-19.1 Certification
- VII. Commission Business
 - Next meeting: December 20, 2012

Commission Review
Log of Permanent Rule Filings
September 21, 2012 through October 22, 2012

ADMINISTRATION, DEPARTMENT OF

The rules in Chapter 1 are departmental rules concerning personnel procedures (.0300).

<u>Interviewing</u>	01	NCAC	01A	.0303
Repeal/*				
<u>Vacancy Lists</u>	01	NCAC	01A	.0304
Repeal/*				

The rules in Chapter 09 concern the division of intergovernmental relations including the balanced growth policy (.0400); and the state clearinghouse (.0500).

<u>Purpose</u>	01	NCAC	09	.0401
Repeal/**				
<u>Definitions</u>	01	NCAC	09	.0402
Repeal/**				
<u>Organization</u>	01	NCAC	09	.0403
Repeal/**				
<u>Criteria for Designation of Growth Centers</u>	01	NCAC	09	.0404
Repeal/**				
<u>Application for Growth Center Designation</u>	01	NCAC	09	.0405
Repeal/**				
<u>Review of Application</u>	01	NCAC	09	.0406
Repeal/**				

The rules in Chapter 11 concern the human relations council including fair housing (.2100); and fair employment (.2200).

<u>Definitions</u>	01	NCAC	11	.2102
Repeal/**				
<u>Complaints: Form: Contents: Filing</u>	01	NCAC	11	.2103
Repeal/**				
<u>Amendment for Complaint</u>	01	NCAC	11	.2104
Repeal/**				
<u>Withdrawal of Complaint</u>	01	NCAC	11	.2105
Repeal/**				
<u>Investigation: Subpoenas</u>	01	NCAC	11	.2111
Repeal/**				
<u>Conciliation Agreements</u>	01	NCAC	11	.2116
Repeal/**				
<u>Definitions</u>	01	NCAC	11	.2201
Repeal/**				
<u>Filing of Complaint</u>	01	NCAC	11	.2202
Repeal/**				
<u>Notice of Respondent</u>	01	NCAC	11	.2203
Repeal/**				
<u>Investigation: Opinion: and Conciliation</u>	01	NCAC	11	.2204
Repeal/**				

The rules in Chapter 13 are from the Office of Citizen Participation including general provisions (.0100); information collection and dissemination (.0200); and other programs (.0300).

<u>Organization</u>	01	NCAC	13	.0101
Repeal/*				
<u>Commission of Citizen Participation</u>	01	NCAC	13	.0102
Repeal/*				
<u>Purpose</u>	01	NCAC	13	.0103
Repeal/*				
<u>Instructional Material</u>	01	NCAC	13	.0201
Repeal/*				
<u>Newsletter</u>	01	NCAC	13	.0202
Repeal/*				
<u>Resource Library</u>	01	NCAC	13	.0203
Repeal/*				
<u>Rights of Volunteers</u>	01	NCAC	13	.0301

Repeal/*				
<u>Training</u>	01	NCAC	13	.0302
Repeal/*				
<u>Program Evaluation</u>	01	NCAC	13	.0303
Repeal/*				
<u>Methods of Evaluation</u>	01	NCAC	13	.0304
Repeal/*				
<u>Field Work</u>	01	NCAC	13	.0305
Repeal/*				

The rules in Subchapter 19A are from the state youth advisory council under the state youth involvement office.

<u>Election of Youth Members</u>	01	NCAC	19A	.0103
Repeal/*				

The rules in Subchapter 19B are from the state youth involvement office including general provisions (.0100); selection of recipients for grants (.0200); and application process and schedule (.0300).

<u>Authority and Purpose</u>	01	NCAC	19B	.0101
Repeal/*				
<u>Requests for Information by the Public</u>	01	NCAC	19B	.0102
Repeal/*				
<u>Confidentiality of Client Information</u>	01	NCAC	19B	.0103
Repeal/*				
<u>Selection Criteria</u>	01	NCAC	19B	.0201
Repeal/*				
<u>Schedule</u>	01	NCAC	19B	.0301
Repeal/*				
<u>Response</u>	01	NCAC	19B	.0302
Repeal/*				
<u>Audit</u>	01	NCAC	19B	.0303
Repeal/*				

The rules in Chapter 21 are from the Administrative Analysis Division.

The rules in Subchapter 21F concern the N.C. State Employee Suggestion System including general provisions (.0100); eligibility requirements: employee eligibility: suggestion eligibility and suggester eligibility (.0200); types of awards: monetary: non-monetary and special awards (.0300); protection criteria: employee protection (.0400); and protection criteria: state protection (.0500).

<u>Purpose</u>	01	NCAC	21F	.0101
Repeal/*				
<u>Definitions</u>	01	NCAC	21F	.0102
Repeal/*				
<u>Full Time Employees</u>	01	NCAC	21F	.0201
Repeal/*				
<u>Part-time and Temporary Employees</u>	01	NCAC	21F	.0202
Repeal/*				
<u>Suggestion Eligibility</u>	01	NCAC	21F	.0203
Repeal/*				
<u>Suggester Eligibility</u>	01	NCAC	21F	.0204
Repeal/*				
<u>Responsibility of Executive Secretary</u>	01	NCAC	21F	.0205
Repeal/*				

<u>General Provisions</u>	01	NCAC	21F	.0301
Repeal/*				
<u>Monetary Awards</u>	01	NCAC	21F	.0302
Repeal/*				
<u>Non-Monetary Awards</u>	01	NCAC	21F	.0303
Repeal/*				
<u>Special Awards</u>	01	NCAC	21F	.0304
Repeal/*				
<u>Employment Status</u>	01	NCAC	21F	.0401
Repeal/*				
<u>Administrative Review</u>	01	NCAC	21F	.0402
Repeal/*				
<u>Discrimination</u>	01	NCAC	21F	.0403
Repeal/*				
<u>Taxes</u>	01	NCAC	21F	.0404
Repeal/*				
<u>File Review and Copy</u>	01	NCAC	21F	.0405
Repeal/*				
<u>Policy Changes</u>	01	NCAC	21F	.0501
Repeal/*				
<u>Claims Against the State</u>	01	NCAC	21F	.0502
Repeal/*				
<u>Termination Rights</u>	01	NCAC	21F	.0503
Repeal/*				
<u>Use of Ideas</u>	01	NCAC	21F	.0504
Repeal/*				

The rules in Chapter 22 concern the clean water bond act including general provisions (.0100); grants (.0200); public notices and hearings (.0300); criteria for evaluation of eligible applications (.0400); priority criteria for wastewater treatment work projects (.0500); priority criteria for wastewater collection system projects (.0600); priority criteria for water supply systems projects (.0700); review of applications and assignment of priorities (.0800); grant awards (.0900); inspection and audit of projects (.1000); and reports and severability (.1100).

<u>Purpose</u>	01	NCAC	22	.0101
Repeal/**				
<u>Definitions</u>	01	NCAC	22	.0102
Repeal/**				
<u>General</u>	01	NCAC	22	.0201
Repeal/**				
<u>Pollution Control Account</u>	01	NCAC	22	.0202
Repeal/**				
<u>Water Supply Systems Account</u>	01	NCAC	22	.0203
Repeal/**				
<u>Grant Limitations</u>	01	NCAC	22	.0204
Repeal/**				
<u>Eligible Applicants</u>	01	NCAC	22	.0205
Repeal/**				
<u>Eligible Projects and Project Costs</u>	01	NCAC	22	.0206
Repeal/**				
<u>Applicants</u>	01	NCAC	22	.0207
Repeal/**				
<u>Environmental Assessment</u>	01	NCAC	22	.0208
Repeal/**				

<u>Determination of Eligibility</u>	01	NCAC	22	.0209
Repeal/**				
<u>Public Notices</u>	01	NCAC	22	.0301
Repeal/**				
<u>Hearings</u>	01	NCAC	22	.0302
Repeal/**				
<u>Consideration of Information Presented at Hearing</u>	01	NCAC	22	.0303
Repeal/**				
<u>General Criteria</u>	01	NCAC	22	.0401
Repeal/**				
<u>Criteria for Water Conservation</u>	01	NCAC	22	.0402
Repeal/**				
<u>Criteria for Grant Increases</u>	01	NCAC	22	.0403
Repeal/**				
<u>Water Pollution Control Needs</u>	01	NCAC	22	.0501
Repeal/**				
<u>Applicable Conditions</u>	01	NCAC	22	.0502
Repeal/**				
<u>Service Area Need</u>	01	NCAC	22	.0503
Repeal/**				
<u>Financial Need of Applicant</u>	01	NCAC	22	.0504
Repeal/**				
<u>Fiscal Responsibility of the Applicant</u>	01	NCAC	22	.0505
Repeal/**				
<u>Status of Project</u>	01	NCAC	22	.0506
Repeal/**				
<u>Public Need</u>	01	NCAC	22	.0601
Repeal/**				
<u>Public Health Need</u>	01	NCAC	22	.0602
Repeal/**				
<u>Financial Need of the Applicant</u>	01	NCAC	22	.0603
Repeal/**				
<u>Fiscal Responsibility of the Applicant</u>	01	NCAC	22	.0604
Repeal/**				
<u>Financing of the Project</u>	01	NCAC	22	.0605
Repeal/**				
<u>Status of Project</u>	01	NCAC	22	.0606
Repeal/**				
<u>Public Necessity: Health: Safety and Welfare</u>	01	NCAC	22	.0701
Repeal/**				
<u>Compatibility with State, Regional and Local Planning</u>	01	NCAC	22	.0702
Repeal/**				
<u>Financial Considerations</u>	01	NCAC	22	.0703
Repeal/**				
<u>Environmental Assessment</u>	01	NCAC	22	.0704
Repeal/**				
<u>Review Periods</u>	01	NCAC	22	.0801
Repeal/**				
<u>Assignment of Priorities</u>	01	NCAC	22	.0802
Repeal/**				
<u>Determination of Grant Awards</u>	01	NCAC	22	.0901
Repeal/**				

<u>Certificate of Eligibility for Grant Awards</u> Repeal/**	01	NCAC	22	.0902
<u>Failure to Qualify for Grant Awards</u> Repeal/**	01	NCAC	22	.0903
<u>Restrictions: Grants Relating to Federal Grants and Loans</u> Repeal/**	01	NCAC	22	.0904
<u>Payment of Grants</u> Repeal/**	01	NCAC	22	.0905
<u>Application of Federal, State and Local Laws</u> Repeal/**	01	NCAC	22	.0906
<u>General Provisions</u> Repeal/**	01	NCAC	22	.1001
<u>Audit of Projects</u> Repeal/**	01	NCAC	22	.1002
<u>Annual Reports to the Advisory Budget Commission</u> Repeal/**	01	NCAC	22	.1101
<u>Information and Application Forms</u> Repeal/**	01	NCAC	22	.1102
<u>Severability</u> Repeal/**	01	NCAC	22	.1103

The rules in Chapter 23 concern the regional water supply planning act of 1971.

<u>Definitions</u> Repeal/*	01	NCAC	23	.0101
<u>Submission of Application Forum</u> Repeal/*	01	NCAC	23	.0102
<u>Processing Application Forms</u> Repeal/*	01	NCAC	23	.0103
<u>Execution of Planning Advances</u> Repeal/*	01	NCAC	23	.0104
<u>Submission of the Engineering Report</u> Repeal/*	01	NCAC	23	.0105
<u>Administration of Outstanding Planning and Advance Accounts</u> Repeal/*	01	NCAC	23	.0106
<u>Responsibilities of State Agencies</u> Repeal/*	01	NCAC	23	.0107
<u>Severability</u> Repeal/*	01	NCAC	23	.0108

The rules in Chapter 24 concern the regional sewage disposal planning act of 1971.

<u>Definitions</u> Repeal/*	01	NCAC	24	.0101
<u>Submission and Processing of Application: Eligibility</u> Repeal/*	01	NCAC	24	.0102
<u>Execution of Planning Advances</u> Repeal/*	01	NCAC	24	.0103
<u>Submission of Regional Sewage Disposal Plan</u> Repeal/*	01	NCAC	24	.0104
<u>Administration of Outstanding Planning Advance Accounts</u> Repeal/*	01	NCAC	24	.0105
<u>Responsibilities of State Agencies</u>	01	NCAC	24	.0106

Repeal/*

Severability

01 NCAC 24 .0107

Repeal/*

The rules in Chapter 30 are from the State Construction Office.

The rules in Subchapter 30C concern energy development authority including general provisions (.0100); and rulemaking and administrative hearing procedures (.0200).

Requests for Information by the Public

01 NCAC 30C .0104

Repeal/*

Function

01 NCAC 30C .0105

Repeal/*

Rule-Making and Administrative Hearing Procedures

01 NCAC 30C .0201

Repeal/*

The rules in Chapter 33 concern the administrative procedures manual for federal block grant funds including general provisions (.0100); planning and budgeting (.0200); application (.0300); accounting standards (.0400); audit standards (.0500); reimbursement standards (.0600); procurement standards and procedures (.0700); property management (.0800); contract standards (.0900); reports, data systems, and evaluation (.1000); personnel standards (.1100); civil rights of individual clients, recipients and intended beneficiaries (.1200); general standards/procedures (.1300); recipient compliance and liability (.1400); and state agency compliance (.1500).

Definitions

01 NCAC 33 .0101

Repeal/*

Applicability

01 NCAC 33 .0102

Repeal/*

Grant Work Plans

01 NCAC 33 .0201

Repeal/*

Grant Work Plans for Private Contractors

01 NCAC 33 .0202

Repeal/*

Review by Governing Boards or Commissions

01 NCAC 33 .0203

Repeal/*

Budget Standards

01 NCAC 33 .0204

Repeal/*

State Agency Approval

01 NCAC 33 .0205

Repeal/*

Finance Officer

01 NCAC 33 .0206

Repeal/*

Grant-Subgrantee and Contractor-Subcontractor Relationship

01 NCAC 33 .0207

Repeal/*

Application: General

01 NCAC 33 .0301

Repeal/*

Grantee Criteria

01 NCAC 33 .0302

Repeal/*

Application Form

01 NCAC 33 .0305

Repeal/*

Effect of Acceptance of Grant Funds

01 NCAC 33 .0306

Repeal/*

Requirements for Efficient Administration

01 NCAC 33 .0301

Repeal/*

Confidentiality of Client Information

01 NCAC 33 .0302

Repeal/*

Governmental Grantee Compliance

01 NCAC 33 .0401

Repeal/*				
<u>Contractors Compliance</u>	01	NCAC	33	.0402
Repeal/*				
<u>Additional Rules and Regulations</u>	01	NCAC	33	.0403
Repeal/*				
<u>Annual Financial and Compliance Audit Required</u>	01	NCAC	33	.0501
Repeal/*				
<u>Single Audit Concept</u>	01	NCAC	33	.0502
Repeal/*				
<u>Cost Reporting for Reimbursement</u>	01	NCAC	33	.0601
Repeal/*				
<u>Allowable Costs</u>	01	NCAC	33	.0602
Repeal/*				
<u>Procedures for Advance Funding and Reimbursement</u>	01	NCAC	33	.0603
Repeal/*				
<u>Indirect Cost Reimbursement</u>	01	NCAC	33	.0604
Repeal/*				
<u>Administrative Cost</u>	01	NCAC	33	.0605
Repeal/*				
<u>General Procurement Standards</u>	01	NCAC	33	.0701
Repeal/*				
<u>Prohibit/Procurements: Non-Government Grantees/Contractors</u>	01	NCAC	33	.0702
Repeal/*				
<u>Procurement Procedure: Non-Government Grantees/Contractors</u>	01	NCAC	33	.0703
Repeal/*				
<u>Applicable Property Standards for Governmental Grantees</u>	01	NCAC	33	.0801
Repeal/*				
<u>Applicable Property Standards for Private Contractors</u>	01	NCAC	33	.0802
Repeal/*				
<u>Property Inventory Systems</u>	01	NCAC	33	.0803
Repeal/*				
<u>Applicability of Federal Statutes</u>	01	NCAC	33	.0804
Repeal/*				
<u>Scope</u>	01	NCAC	33	.0901
Repeal/*				
<u>Requirement of a Contract</u>	01	NCAC	33	.0902
Adopt/*				
<u>Reporting</u>	01	NCAC	33	.1001
Repeal/*				
<u>Automated Data Systems</u>	01	NCAC	33	.1002
Repeal/*				
<u>Evaluation</u>	01	NCAC	33	.1003
Repeal/*				
<u>Assurance of Confidentiality for Evaluation and Reporting</u>	01	NCAC	33	.1004
Repeal/*				
<u>General Personnel Standards</u>	01	NCAC	33	.1101
Repeal/*				
<u>Federal Personnel Standards</u>	01	NCAC	33	.1102
Repeal/*				
<u>State Standards</u>	01	NCAC	33	.1103
Repeal/*				
<u>Personnel Standards for Public School Employees</u>	01	NCAC	33	.1104

Repeal/*				
<u>State Agency Personnel Standards</u>	01	NCAC	33	.1105
Repeal/*				
<u>Certain Political Activities Prohibited</u>	01	NCAC	33	.1106
Repeal/*				
<u>Non-Discrimination: Equal Employment/Affirmative Action</u>	01	NCAC	33	.1107
Repeal/*				
<u>State Policy on Civil Rights</u>	01	NCAC	33	.1201
Repeal/*				
<u>Federal Nondiscrimination Requirements</u>	01	NCAC	33	.1202
Repeal/*				
<u>Compliance Assurances</u>	01	NCAC	33	.1203
Repeal/*				
<u>Recipient Compliance Required</u>	01	NCAC	33	.1401
Repeal/*				
<u>Joint Compliance Reviews</u>	01	NCAC	33	.1402
Repeal/*				
<u>Standards Intended to be Uniform</u>	01	NCAC	33	.1403
Repeal/*				
<u>Funds Withheld</u>	01	NCAC	33	.1404
Repeal/*				
<u>Additional Procedures</u>	01	NCAC	33	.1501
Repeal/*				
<u>Schedule for Grant Application</u>	01	NCAC	33	.1502
Repeal/*				

The rule in Chapter 36 is from the agency for public telecommunications.

<u>Public Radio: General Support System</u>	01	NCAC	36	.0101
Repeal/*				

The rules in Chapter 37 concern the N.C. Low-Level Radioactive Waste Management Authority including general information (.0100); site selection criteria (.0200); and site selection procedure (.0300).

<u>Purpose</u>	01	NCAC	37	.0101
Repeal/*				
<u>Definitions</u>	01	NCAC	37	.0102
Repeal/*				
<u>Mailing List</u>	01	NCAC	37	.0103
Repeal/*				
<u>Introduction</u>	01	NCAC	37	.0201
Repeal/*				
<u>Hydrological and Geological Factors</u>	01	NCAC	37	.0202
Repeal/*				
<u>Environmental and Public Health Factors</u>	01	NCAC	37	.0203
Repeal/*				
<u>Natural and Cultural Resources</u>	01	NCAC	37	.0204
Repeal/*				
<u>Local Land Uses</u>	01	NCAC	37	.0205
Repeal/*				
<u>Transportation</u>	01	NCAC	37	.0206
Repeal/*				
<u>Aesthetic Factors</u>	01	NCAC	37	.0207

Repeal/*				
<u>Additional Criteria Applicable Only to Selection of Prefe...</u>	01	NCAC	37	.0208
Repeal/*				
<u>General</u>	01	NCAC	37	.0301
Repeal/*				
<u>Identification of Potentially Suitable Areas</u>	01	NCAC	37	.0302
Repeal/*				
<u>Public Meetings in Potentially Suitable Areas</u>	01	NCAC	37	.0303
Repeal/*				
<u>Selection of Potentially Suitable Sites</u>	01	NCAC	37	.0304
Repeal/*				
<u>Site Designation Review Committee</u>	01	NCAC	37	.0305
Repeal/*				
<u>Preferred Site</u>	01	NCAC	37	.0306
Repeal/*				
<u>Preferred Site Local Advisory Committee</u>	01	NCAC	37	.0307
Repeal/*				

ALCOHOLIC BEVERAGE CONTROL COMMISSION

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

The rules in Subchapter 2R are organizational rules, policies and procedures including general provisions (.0100); structure (.0200); publications, records and copies (.0300); rule-making (.0400); emergency rules (.0500); declaratory rulings (.0600); personnel policies: commission (.0700); adjudication: contested cases (.0800); fiscal rules for local boards (.0900); local abc board: personnel policies (.1000); local ABC Boards: relationship with state commission (.1100); opening and discontinuance of stores (.1200); storage and distribution of spirituous liquors: commercial transportation (.1300); purchase of alcoholic beverages by local boards (.1400); pricing of spirituous liquor (.1500); warehouse storage of spirituous liquors (.1600); retail sales of alcoholic beverages (.1700); purchase-transportation permits for individuals and mix beverages for permittees (.1800); and sales of liquor to mixed beverages permittees (.1900).

<u>Location and Address</u>	04	NCAC	02R	.0102
Amend/*				

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

<u>Keg Purchase-Transportation Permit</u>	04	NCAC	02S	.0237
Amend/*				

PRIVATE PROTECTIVE SERVICES BOARD

The rules in Subchapter 7D cover organization and general provisions (.0100); licenses and trainee permits (.0200); security guard patrol and guard dog service (.0300); private investigator and counterintelligence (.0400); polygraph (.0500); psychological stress evaluator (PSE) (.0600); unarmed security guard registration (.0700); armed security guard firearm registration permit (.0800); trainer certificate (.0900); recovery fund (.1000); training and supervision for private investigator associates (.1100); courier (.1200); continuing education (.1300); unarmed armored car service guard registration requirements (.1400); and armed armored car service guard registration permit requirements (.1500).

<u>Uniform and Equipment</u>	12	NCAC	07D	.0105
Amend/**				

<u>Application for Firearms Trainer Certificate</u> Amend/**	12	NCAC	07D	.0902
<u>Renewal of Firearms Trainer Certificate</u> Amend/**	12	NCAC	07D	.0904
<u>Unarmed Trainer Certificate</u> Amend/*	12	NCAC	07D	.0909
<u>Application for an Unarmed Trainer Certificate</u> Amend/*	12	NCAC	07D	.0910
<u>Renewal of an Unarmed Trainer Certificate</u> Amend/*	12	NCAC	07D	.0911
<u>Rosters of Unarmed Trainer Classes</u> Adopt/*	12	NCAC	07D	.0912
<u>Time Limits of Experience</u> Amend/*	12	NCAC	07D	.1106
<u>Grandfather Clause</u> Repeal/*	12	NCAC	07D	.1108
<u>Application for Unarmed Armored Car Service Guard Registr...</u> Adopt/**	12	NCAC	07D	.1401
<u>Fees for Unarmed Armored Car Service Guard Registration</u> Adopt/*	12	NCAC	07D	.1402
<u>Minimum Standards for Unarmed Armored Car Service Guard R...</u> Adopt/**	12	NCAC	07D	.1403
<u>Investigation for Unarmed Armored Car Service Guard Regis...</u> Adopt/*	12	NCAC	07D	.1404
<u>Unarmed Armored Car Service Guard Registration Identifica...</u> Adopt/*	12	NCAC	07D	.1405
<u>Renewal or Reissue of Unarmed Armored Car Service Guard R...</u> Adopt/**	12	NCAC	07D	.1406
<u>Training Requirements for Unarmed Armored Car Service Guards</u> Adopt/*	12	NCAC	07D	.1407
<u>Application/Armed Car Service Guard Firearms Registration...</u> Adopt/**	12	NCAC	07D	.1501
<u>Fees for Armed Armored Car Service Guard Firearm Registra...</u> Adopt/*	12	NCAC	07D	.1502
<u>Minimum Standards for Armed Armored Car Service Guard Fir...</u> Adopt/**	12	NCAC	07D	.1503
<u>Investigation for Armed Armored Car Service Guard Firearm...</u> Adopt/*	12	NCAC	07D	.1504
<u>Armed Armored Car Service Guard Registration Identificati...</u> Adopt/*	12	NCAC	07D	.1505
<u>Renewal of Armed Armored Car Service Guard Firearm Regist...</u> Adopt/**	12	NCAC	07D	.1506
<u>Training Requirement for Armed Armored are Service Guards</u> Adopt/*	12	NCAC	07D	.1507

SHERIFFS EDUCATION AND TRAINING STANDARDS COMMISSION

Rules in Subchapter 10B are from the N. C. Sheriffs' Education and Training Standards Commission. These rules govern the commission organization and procedure (.0100); enforcement rules (.0200); minimum standards for employment as a justice officer (deputy or jailer) (.0300); certification of justice officers (.0400); standards and accreditation for justice officers schools, training programs, and the instructors (.0500-.0900); certificate and awards programs for sheriffs, deputies, justice officers, jailers, reserve officers, and telecommunicators (.1000-.1700); in-service training (.2000); and firearms in-service training and re-qualification (.2100).

<u>Location</u>	12	NCAC	10B	.0101
Amend/*				
<u>Period of Suspension: Revocation: or Denial</u>	12	NCAC	10B	.0205
Amend/*				
<u>Summary Suspensions: or Denials</u>	12	NCAC	10B	.0206
Amend/*				
<u>Agency Reporting of Drug Screening Results</u>	12	NCAC	10B	.0410
Amend/*				
<u>Admission of Trainees</u>	12	NCAC	10B	.0713
Amend/*				
<u>Cert/Instructors/Basic Law Enforcement Training Course</u>	12	NCAC	10B	.0901
Amend/*				
<u>General Provisions</u>	12	NCAC	10B	.1002
Amend/*				
<u>Intermediate Law Enforcement Certificate</u>	12	NCAC	10B	.1004
Amend/*				
<u>Advanced Law Enforcement Certificate</u>	12	NCAC	10B	.1005
Amend/*				
<u>General Provisions</u>	12	NCAC	10B	.1202
Amend/*				
<u>Intermediate Detention Officer Professional Certificate</u>	12	NCAC	10B	.1204
Amend/*				
<u>Advanced Detention Officer Professional Certificate</u>	12	NCAC	10B	.1205
Amend/*				
<u>General Provisions</u>	12	NCAC	10B	.1602
Amend/*				
<u>Intermediate Telecommunicator Certificate</u>	12	NCAC	10B	.1604
Amend/*				
<u>Advanced Telecommunicator Certificate</u>	12	NCAC	10B	.1605
Amend/*				
<u>In-Service Training Coordinator</u>	12	NCAC	10B	.2003
Amend/*				
<u>Instructors</u>	12	NCAC	10B	.2004
Amend/**				
<u>Minimum Training Requirements</u>	12	NCAC	10B	.2005
Amend/*				
<u>In-Service Training Program Specifications</u>	12	NCAC	10B	.2006
Amend/*				
<u>Sheriff/Agency Head Responsibilities</u>	12	NCAC	10B	.2007
Amend/*				
<u>Training Delivery</u>	12	NCAC	10B	.2009
Adopt/*				
<u>Instructors</u>	12	NCAC	10B	.2102
Amend/**				
<u>Minimum Training Requirements</u>	12	NCAC	10B	.2103
Amend/*				

ALARM SYSTEMS LICENSING BOARD

The rules in Chapter 11 are from the N.C. Alarm Systems Licensing Board and cover the organization and general provisions (.0100); license applications and requirements (.0200); registration of employees of licensees (.0300); the recovery fund (.0400); and continuing education for licensees (.0500).

<u>Location</u>	12	NCAC	11	.0102
Amend/*				
<u>Application for License</u>	12	NCAC	11	.0201
Amend/*				
<u>Application for Registration</u>	12	NCAC	11	.0301
Amend/*				
<u>Suspension of Authority to Expend Funds</u>	12	NCAC	11	.0307
Amend/*				

TRANSPORTATION, DEPARTMENT OF

The rules in Chapter 1 are departmental rules of the Department of Transportation.

The rules in Subchapter 1C concern administrative hearing procedures including general provisions (.0100); and initiating administrative hearings (.0200).

<u>Informal Negotiations</u>	19A	NCAC	01C	.0201
Amend/**				

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

The rules in Subchapter 2A concern the general administration of the division of highways.

<u>Duties of Chief Engineer</u>	19A	NCAC	02A	.0102
Amend/**				

The rules in Subchapter 2B concern highway planning including right of way (.0100); traffic engineering (.0200); chief engineer-programs (.0300); relocation assistance procedures (.0400); utility encroachments (.0500); and driveway entrances (.0600).

<u>Construction of Railroad Tracks Across Right of Way</u>	19A	NCAC	02B	.0150
Amend/*				
<u>Use of Right of Way Consultants</u>	19A	NCAC	02B	.0164
Amend/**				
<u>Asbestos Contracts With Private Firms</u>	19A	NCAC	02B	.0165
Amend/**				
<u>Placement of Historical Markers in Row</u>	19A	NCAC	02B	.0241
Amend/*				
<u>Implementation of Roadway Corridor Official Maps</u>	19A	NCAC	02B	.0317
Amend/*				

The rules in Subchapter 2D concern highway operations including standards for design and construction (.0100); landscape (.0200); field operations-maintenance and equipment (.0400); ferry operations (.0500); oversize-overweight permits (.0600); highway design branch (.0700); prequalification advertising and bidding regulations (.0800); regulations for informal construction and repair contracts (.0900); adopt-a-highway program (.1000); and disadvantaged business enterprise, minority business enterprise and women business enterprise programs for highway and bridge construction contracts (.1100).

<u>Location of Garbage Collection Containers</u>	19A	NCAC	02D	.0414
Amend/**				
<u>Permits-Authority, Application and Enforcement</u>	19A	NCAC	02D	.0601
Amend/*				
<u>Denial: Revocation: Refusal to Review: Appeal: Invalidation</u>	19A	NCAC	02D	.0633
Amend/*				
<u>Application Procedures</u>	19A	NCAC	02D	.0704
Amend/**				

<u>Review Procedures</u>	19A NCAC 02D .0705
Amend/*	
<u>Permit Form</u>	19A NCAC 02D .0707
Amend/*	
<u>Appeal Procedures</u>	19A NCAC 02D .0709
Amend/*	

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

<u>Agreement</u>	19A NCAC 02E .0202
Amend/*	
<u>Local Zoning Authorities</u>	19A NCAC 02E .0204
Amend/*	
<u>Moving Vehicles Which Damage Surface or Shoulder</u>	19A NCAC 02E .0405
Amend/*	
<u>Aircraft Landing and Taking Off On Highways</u>	19A NCAC 02E .0412
Amend/*	
<u>Fencing Within the Right of Way</u>	19A NCAC 02E .0418
Amend/*	
<u>Cultivating Crops and Maintaining Pastures Within Row</u>	19A NCAC 02E .0419
Amend/*	
<u>Construction Within the Right of Way</u>	19A NCAC 02E .0420
Amend/*	
<u>Solicitation and Award of Contract</u>	19A NCAC 02E .0702
Amend/*	
<u>Permits Required</u>	19A NCAC 02E .0802
Amend/*	
<u>Solicitation Restriction and Requirements</u>	19A NCAC 02E .0803
Amend/*	

The rules in Subchapter 4A concern the duties and responsibilities of the secretary of transportation.

<u>Bridge Weight Limitation</u>	19A NCAC 04A .0105
Amend/*	

MEDICAL BOARD

The rules in Subchapter 32M regulate the approval, registration and practice of nurse practitioners (.0100).

<u>Prescribing Authority</u>	21 NCAC 32M .0109
Amend/*	

The rules in Subchapter 32S regulate physician assistants including physician assistant registration (.0200).

<u>Limited Volunteer License</u>	21 NCAC 32S .0208
Repeal/*	
<u>Limited Volunteer License</u>	21 NCAC 32S .0221
Adopt/*	
<u>Retired Limited Volunteer License</u>	21 NCAC 32S .0222
Adopt/*	
<u>Scope</u>	21 NCAC 32S .0223

Adopt/*

NURSING, BOARD OF

The rules in Chapter 36 include rules relating to general provisions (.0100); licensure (.0200); approval of nursing programs (.0300); unlicensed personnel and nurses aides (.0400); professional corporations (.0500); articles of organization (.0600); nurse licensure compact (.0700); and approval and practice parameters for nurse practitioners (.0800).

Prescribing Authority 21 NCAC 36 .0809
Amend/*

BUILDING CODE COUNCIL

2012 NC Building Code/Minimum Required Egress Width 1005.1
Amend/*

2012 NC Fire Code/Alcohol-Based Hand Rubs 3405.5
Amend/*

2012 NC Fuel Gas Code/Corrugated Stainless Steel Tubing 310.1.1
Amend/*

Commission Review*Log of Temporary Rule Filings**October 24, 2012 through November 15, 2012*

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

CULTURAL RESOURCES, DEPARTMENT OF

The rules in Chapter 4 are from the Division of Archives and History.

The rules in Subchapter 4N concern historic sites (.0100); site hours and admission fees (.0200); and Elizabeth II, voyages policy (.0300).

Admission Fees 07 NCAC 04N .0202
Amend/**

CONTESTED CASE DECISIONS

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

OFFICE OF ADMINISTRATIVE HEARINGS

Chief Administrative Law Judge
JULIAN MANN, III

Senior Administrative Law Judge
FRED G. MORRISON JR.

ADMINISTRATIVE LAW JUDGES

Beecher R. Gray
Selina Brooks
Melissa Owens Lassiter
Don Overby

Randall May
A. B. Elkins II
Joe Webster

<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>DATE</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
<u>ALCOHOLIC BEVERAGE CONTROL COMMISSION</u>			
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 Restaurant	12 ABC 05312	09/25/12	
ABC Commission v. Tecleab Maasho	12 ABC 01294	07/05/12	27:09 NCR 902
<u>DEPARTMENT OF CRIME CONTROL AND PUBLIC SAFETY</u>			
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	
<u>DEPARTMENT OF HEALTH AND HUMAN SERVICES</u>			
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	
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