

NORTH CAROLINA REGISTER

VOLUME 28 • ISSUE 07 • Pages 595 – 727

October 1, 2013

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Contact List for Rulemaking Questions or Concerns

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

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

Office of Administrative Hearings
Rules Division
1711 New Hope Church Road (919) 431-3000
Raleigh, North Carolina 27609 (919) 431-3104 FAX

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Rule Review and Legal Issues

Rules Review Commission
1711 New Hope Church Road (919) 431-3000
Raleigh, North Carolina 27609 (919) 431-3104 FAX

contact: Joe DeLuca Jr., Commission Counsel joe.deluca@oah.nc.gov (919) 431-3081
Amanda Reeder, Commission Counsel amanda.reeder@oah.nc.gov (919) 431-3079

Fiscal Notes & Economic Analysis and Governor's Review

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

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

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

Legislative Process Concerning Rule-making

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

contact: Karen Cochrane-Brown, Staff Attorney Karen.cochrane-brown@ncleg.net
Jeff Hudson, Staff Attorney Jeffrey.hudson@ncleg.net

NORTH CAROLINA REGISTER
Publication Schedule for January 2013 – December 2013

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
27:13	01/02/13	12/06/12	01/17/13	03/04/13	03/20/13	05/01/13	05/2014	09/29/13
27:14	01/15/13	12/19/12	01/30/13	03/18/13	03/20/13	05/01/13	05/2014	10/12/13
27:15	02/01/13	01/10/13	02/16/13	04/02/13	04/22/13	06/01/13	05/2014	10/29/13
27:16	02/15/13	01/25/13	03/02/13	04/16/13	04/22/13	06/01/13	05/2014	11/12/13
27:17	03/01/13	02/08/13	03/16/13	04/30/13	05/20/13	07/01/13	05/2014	11/26/13
27:18	03/15/13	02/22/13	03/30/13	05/14/13	05/20/13	07/01/13	05/2014	12/10/13
27:19	04/01/13	03/08/13	04/16/13	05/31/13	06/20/13	08/01/13	05/2014	12/27/13
27:20	04/15/13	03/22/13	04/30/13	06/14/13	06/20/13	08/01/13	05/2014	01/10/14
27:21	05/01/13	04/10/13	05/16/13	07/01/13	07/22/13	09/01/13	05/2014	01/26/14
27:22	05/15/13	04/24/13	05/30/13	07/15/13	07/22/13	09/01/13	05/2014	02/09/14
27:23	06/03/13	05/10/13	06/18/13	08/02/13	08/20/13	10/01/13	05/2014	02/28/14
27:24	06/17/13	05/24/13	07/02/13	08/16/13	08/20/13	10/01/13	05/2014	03/14/14
28:01	07/01/13	06/10/13	07/16/13	08/30/13	09/20/13	11/01/13	05/2014	03/28/14
28:02	07/15/13	06/21/13	07/30/13	09/13/13	09/20/13	11/01/13	05/2014	04/11/14
28:03	08/01/13	07/11/13	08/16/13	09/30/13	10/21/13	12/01/13	05/2014	04/28/14
28:04	08/15/13	07/25/13	08/30/13	10/14/13	10/21/13	12/01/13	05/2014	05/12/14
28:05	09/03/13	08/12/13	09/18/13	11/04/13	11/20/13	01/01/14	05/2014	05/31/14
28:06	09/16/13	08/23/13	10/01/13	11/15/13	11/20/13	01/01/14	05/2014	06/13/14
28:07	10/01/13	09/10/13	10/16/13	12/02/13	12/20/13	02/01/14	05/2014	06/28/14
28:08	10/15/13	09/24/13	10/30/13	12/16/13	12/20/13	02/01/14	05/2014	07/12/14
28:09	11/01/13	10/11/13	11/16/13	12/31/13	01/21/14	03/01/14	05/2014	07/29/14
28:10	11/15/13	10/24/13	11/30/13	01/14/14	01/21/14	03/01/14	05/2014	08/12/14
28:11	12/02/13	11/06/13	12/17/13	01/31/14	02/20/14	04/01/14	05/2014	08/29/14
28:12	12/16/13	11/21/13	12/31/13	02/14/14	02/20/14	04/01/14	05/2014	09/12/14

EXPLANATION OF THE PUBLICATION SCHEDULE

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

GENERAL

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

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

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

FILING DEADLINES

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

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

NOTICE OF TEXT

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

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

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

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



State of North Carolina

PAT McCrory
GOVERNOR

September 3, 2013

EXECUTIVE ORDER NO. 24

GOVERNOR'S ADVISORY COUNCIL ON SMALL AND HISTORICALLY UNDERUTILIZED BUSINESSES

WHEREAS, the creation, growth and sustainability of small and historically underutilized businesses (hereinafter referred to as HUBs) are central to the economic growth and stability of the State of North Carolina; and

WHEREAS, it is the policy of the State of North Carolina to encourage and promote the use of small contractors, minority contractors, physically disabled contractors, and women contractors in State purchasing of goods and services and certain building contracts as set forth in the General Statutes section 143-48 and section 143-128.2; and

WHEREAS, it is a priority of the State to promote the recruitment and utilization of small and minority businesses and assure access to purchase and contract opportunities for small businesses, and for businesses owned by a minority, or a woman, or a disabled person, in an efficient and effective manner; and

WHEREAS, it is the policy of the State that North Carolina businesses be given an equal opportunity to participate in the provision of goods and services to the State of North Carolina; and

WHEREAS, it is my expectation, as the Governor of the State, that this will be accomplished without regard to race, gender, or physical disability; and

WHEREAS, it is my expectation that barriers are eliminated that may limit or lessen opportunities for small businesses and HUB firms to do business with the State of North Carolina.

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

Section 1. Established

The Governor's Advisory Council on Small and Historically Underutilized Businesses (hereinafter "HUB Advisory Council") is hereby established.

The HUB Advisory Council will provide support and guidance to the Governor, Secretary of the Department of Administration, and to the Department of Administration's Office of Historically Underutilized Businesses (hereinafter "HUB Office"), on matters specific to the furtherance of the objectives of this Executive Order.

Section 2. Membership

The HUB Advisory Council shall consist of thirteen (13) members, each appointed for a term of two (2) years. All members shall be appointed by the Governor and shall serve at the pleasure of the Governor. The Governor shall appoint a Chair from among the membership of the HUB Advisory Council.

The Governor shall appoint members from the following categories:

- A. Two representatives of minority owned business enterprises.
- B. Two representatives of women owned business enterprises.
- C. Two representatives of small business enterprises.
- D. Two representatives of physically disabled business enterprises.
- E. Five at-large members.

Section 3. Meetings

The HUB Advisory Council shall meet on a monthly basis for the first six months after the effective date of this order, and quarterly thereafter.

Section 4. Goals of the HUB Advisory Council

The HUB Advisory Council shall be responsible for providing advisory guidance and direction in the accomplishment of the following:

- A. The identification of opportunities for small businesses and HUBs to do business with each of the cabinet agencies.
- B. The identification of barriers that inhibit access to state contract and procurement opportunities, and to provide recommendations to remedy such barriers.
- C. To review reports on HUB utilization by the respective agencies and to offer recommendations from the evaluations of such reports.
- D. Monitor and offer recommendations in the utilization of technology in the identification of small businesses and HUBs, as well as the certification and registration of such firms.

The Advisory Council shall issue an annual report to the Governor in December of each year for the prior fiscal year.

Section 5. Administration

The HUB Office shall provide administrative and staff services to the HUB Advisory Council.

Members of the Advisory Council shall neither receive compensation nor travel reimbursement for their service on the Council.

Section 6. State Contracts and Purchasing

For purposes of this order a “small businesses” must meet United States Small Business Administration’s size standards for its primary industry classification as defined in 13 C.F.R. § 121.201.

Each cabinet agency shall work to achieve the objectives and address remedies as identified in the respective disparity studies conducted for the State and any of its agencies. Each cabinet agency should strive to increase the amount of goods and services acquired by it from small and HUB vendors, whether directly as principal contractors or indirectly as subcontractors or otherwise. It is expected that each agency will issue an aspirational goal of at least ten percent (10%), by dollar amount, of the State’s purchases of goods and services that will be derived from small and HUB firms. It is further expected that such aspirational goals shall be adjusted per any disparity study findings as recommended by HUB Office and the North Carolina Department of Transportation, Business Opportunity and Workforce Development Office, and the Office of Civil Rights.

The HUB Advisory Council and the HUB Office shall assist each agency in developing a plan and should provide technical assistance to reach the recommended objectives related to the purchases of goods and services. The HUB Office may work in coordination with local, regional, and non-profit economic development organizations to engage in outreach and assistance that encourages State and local units of government to provide opportunities to small and HUB firms.

Each cabinet agency shall be expected to work towards identifying market opportunities within the agency, and shall assure that such information is provided to the HUB Office for outreach to small and HUB vendors.

Each cabinet agency shall report on challenges and accomplishments during meetings of the HUB Advisory Council as determined by the Chair.

Each cabinet agency shall coordinate with the HUB Office and the DOA Division of Purchase and Contract in outreach to HUB vendors to share information on the procurement process and the contact persons within the cabinet agencies.

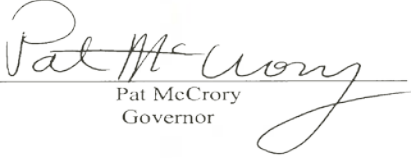
The State Purchasing Office, the Director of the State Construction Office, the Secretary of the Department of Transportation, the Director of the State Property Office, and all State agencies shall continue to implement guidelines and procedures that ensure that the State’s contracts contain specific requirements that compel contractors doing business with the State to comply with federal and state equal employment opportunity and non-discrimination requirements or their equivalents.

Section 7. Effect and Duration

The Board of Governors of the University of North Carolina System, the State Board of Community Colleges, local boards of education, and each head of the Council of State agencies are encouraged and invited to participate in this Executive Order.

This Executive Order is effective immediately and shall remain in effect until September 5, 2017, pursuant to N.C. Gen. Stat. § 147-16.2(b), or until earlier rescinded. It supersedes and replaces all other executive orders on this subject and specifically rescinds Executive Order No. 13, dated May 7, 2009.

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 third day of September, in the year of our Lord two thousand thirteen, and of the Independence of the United States of America the two hundred and thirty-eighth.


Pat McCrory
Governor

ATTEST:


Elaine F. Marshall
Secretary of State





State of North Carolina

PAT McCRORY
GOVERNOR

September 3, 2013

EXECUTIVE ORDER NO. 25

GOVERNOR'S TASK FORCE ON SAFER SCHOOLS

WHEREAS, on March 19, 2013, the Secretary of Public Safety was charged with making schools in North Carolina safer places and creating the Center for Safer Schools to be the primary point of contact for and a comprehensive resource on school safety issues; and

WHEREAS, the Center for Safer Schools hosted public forums to collect information from parents, students, teachers, school administrators, law enforcement officers, juvenile justice professionals, mental health professionals, and concerned citizens about how North Carolinians can make our schools safer learning environments; and

WHEREAS, the Center for Safer Schools recommends a multidisciplinary advisory board comprised of stakeholders including parents, students, teachers, school administrators, law enforcement officers, juvenile justice professionals, and mental health professionals to provide guidance to the Center for Safer Schools and to consider future policy and legislative action that is needed to improve school safety in North Carolina; and

WHEREAS, the 2011 North Carolina Youth Risk Behavior Survey found that nearly 23% of middle school students and nearly 40% of high school students reported gang activity on their school campuses and that 30% of North Carolina's high school students have been offered, sold, or given illegal drugs on school property.

WHEREAS, the General Assembly, through Session Law 2013-360, charged multiple state agencies with setting standards and guidelines for school safety exercises, providing schematic diagrams of school facilities to local law enforcement, providing anonymous tip lines so anyone can report concerns about school safety, developing school safety plans and crisis kits, creating and teaching emergency and crisis training to people who may need to respond to such a situation at a school, and implementing a volunteer school safety officers program.

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

Section 1. Established

The Governor's Task Force for Safer Schools (hereinafter "Task Force") is hereby established.

Section 2. Membership

The Task Force shall consist of up to twenty (20) voting members.

The Governor shall appoint members from among the following categories:

1. The Secretary of the Department of Public Safety or their designee.
2. The Secretary of the Department of Health and Human Services or their designee.
3. A member of the State Board of Education.
4. A member of the Governor's Crime Commission.
5. Two members of local school boards.
6. Two local law enforcement officers.
7. Two public school administrators.
8. A public school teacher.
9. A public school psychologist.
10. A public school resource officer.
11. A high school student attending a public high school.
12. The parent of a currently enrolled public school student.
13. A juvenile justice professional.
14. A licensed social worker.
15. Three at-large members.

The Governor shall appoint a Chair and Vice-Chair from among the membership of the Task Force.

All members shall be appointed for a term of two years and may be reappointed to successive terms. The terms of membership of the Task Force shall be staggered so that the terms of approximately one-half of the members shall expire in a single calendar year. A vacancy occurring during a term of appointment shall be filled by the Governor for the balance of the unexpired term.

Section 3. Meetings

The Task Force shall meet quarterly or upon the call of the Governor or the Chair. The Chair shall set the agenda for the Task Force's meetings. The Task Force may establish such committees or other working groups as are necessary to assist in performing its duties.

Section 4. Duties

The Task Force shall have the following duties:

- A. Serve as an Advisory Board to the newly formed Center for Safer Schools.
- B. Provide guidance and recommendations to improve statewide policy for the Governor and the General Assembly to enhance statewide and local capacities to create safer schools.
- C. Encourage interagency collaboration among state and local government agencies to achieve effective policies and streamline efforts to create safer schools.
- D. Assist the Center for Safer Schools in collecting and disseminating information on recommended best practices and community needs related to creating safer schools in North Carolina.
- E. Other duties as assigned by the Governor.


Section 5. Administration

The Department of Public Safety and the Center for Safer Schools shall provide administrative and staff support services to the Task Force. Members shall serve without compensation, but may receive necessary travel and subsistence expenses in accordance with State law and the policies and regulations of the Office of State Budget and Management.

Section 6. Effect and Duration

This Executive Order is effective immediately and shall remain in effect until September 30, 2017, pursuant to N.C. Gen. Stat. § 147-16.2(b), or until earlier 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 third day of September, in the year of our Lord two thousand thirteen, and of the Independence of the United States of America the two hundred and thirty-eight.


Pat McCrory
Governor

ATTEST:


Elaine F. Marshall
Secretary of State





State of North Carolina

PAT McCrory
GOVERNOR

September 3, 2013

EXECUTIVE ORDER NO. 26

GOVERNOR'S TEACHER ADVISORY COMMITTEE

WHEREAS, teachers are essential to the successes of student achievement and job creation for North Carolina; and

WHEREAS, teachers are committed to the day when all children, regardless of circumstance, have access to an excellent education; and

WHEREAS, teachers are the most direct link to our students and are the best ambassadors for their schools and districts, providing vital feedback to policymakers regarding what works and what doesn't regarding assessments, school innovation, teacher compensation and digital solutions; and

WHEREAS, teachers are the drivers of educational outcomes and therefore the drivers of our economic development; and

WHEREAS, education is one of the "3 E's" and is therefore a top priority of this administration.

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

Section 1. Establishment

The Governor's Teacher Advisory Committee (hereinafter "Committee") is hereby re-established.

Section 2. Membership

The Committee shall be composed of up to twenty members (20) appointed by the Governor. All members shall serve at the pleasure of the Governor. All appointed members shall serve a one year term and may be reappointed to successive terms.

All members shall be active classroom teachers serving in a North Carolina public school.

The North Carolina Teacher(s) of the Year shall serve as ex officio, voting members.

Members should represent diverse, demographic and geographic regions of the state, grade levels and subject areas, including public charter schools.

The Governor shall appoint a Chair. The Committee shall select the Vice Chair from among its membership.

Section 3. Meetings

The Committee shall meet quarterly and at other times at the call of the Governor or the Chair. The Committee is encouraged to conduct meetings using electronic conferencing and other electronic means.

A simple majority of Committee members shall constitute a quorum for conducting the business of the Committee.

Section 4. Duties

The Committee shall advise the Governor on best practices to improve student outcomes and therefore drive economic development in North Carolina.

The Committee shall advise the Governor in his efforts to improve teaching and learning in North Carolina's public schools.

The Committee shall identify, recognize and celebrate innovative schools and school systems in North Carolina.

The Committee shall recommend strategies for recruiting and retaining quality educators who drive results for their students.

The Committee shall advise the Governor on effective strategies for rewarding, supporting and compensating teachers so that they may pursue a meaningful career in the teaching profession in the service of students, especially the highest need students of North Carolina.

Section 5. Administration

The Governor shall attend at least half of the Committee meetings annually.

The Governor's Senior Education Advisor and the Office of the Governor staff shall provide administrative and staff services to the Committee.

Members shall serve without compensation, but may receive necessary travel and subsistence expenses in accordance with State law and the policies and regulations of the Office of State Budget and Management.

Section 6. Effect and Duration

This Executive Order is effective immediately and shall remain in effect until September 10, 2018, pursuant to N.C. Gen. Stat. § 147-16.2(b), or until earlier rescinded. It supersedes and replaces all other executive orders on this subject and specifically rescinds Executive Order No. 51, dated March 2, 2010.

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 third day of September, in the year of our Lord two thousand thirteen, and of the Independence of the United States of America the two hundred and thirty-eighth.


Pat McCrory
Governor

ATTEST:


Elaine F. Marshall
Secretary of State



Publication Correction
State Board of Education

Please note the following corrected information to the Notice of Text published by the State Board of Education for rule **16 NCAC 06D .0508** in the NC Register, September 16, 2013, starting on page 532:

Fiscal impact (check all that apply).

- X State funds affected
 - Environmental permitting of DOT affected
 - Analysis submitted to Board of Transportation
- X Local funds affected
 - Date submitted to OSBM: *March 15, 2013*
- X Substantial economic impact (\geq \$500,000)
- X Approved by OSBM: *August 21, 2013*~~August 20, 2013~~
- No fiscal note required

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 10A – DEPARTMENT OF HEALTH AND HUMAN SERVICES

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Medical Care Commission intends to amend the rule cited as 10A NCAC 13D .2210.

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

- ☒ **OSBM certified on:** March 19, 2013
- ☐ **RRC certified on:**
- ☐ **Not Required**

Link to agency website pursuant to G.S. 150B-19.1(c):
<http://www.ncdhhs.gov/dhsr/ruleactions.html>

Proposed Effective Date: April 1, 2014

Public Hearing:

Date: November 19, 2013

Time: 10:00 a.m.

Location: Dorothea Dix Campus, 1201 Umstead Drive, Wright Building, Room 131, Raleigh, NC 27601

Reason for Proposed Action: The purpose of the proposed rule amendment is to clarify and correct the reporting requirement for nursing homes in reporting allegations of abuse, neglect and misappropriation of resident property. As written, the current rule is not in compliance with the federal Centers for Medicare & Medicaid Services regulations.

Comments may be submitted to: Megan Lamphere, 2719 Mail Service Center, Raleigh, NC 27699-2719; fax (919) 733-3207; email DHSR.RulesCoordinator@dhhs.nc.gov

Comment period ends: December 2, 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**
- ☐ **Substantial economic impact (≥\$1,000,000)**
- ☒ **No fiscal note required by G.S. 150B-21.4**

CHAPTER 13 – NC MEDICAL CARE COMMISSION

SUBCHAPTER 13D – RULES FOR THE LICENSING OF NURSING HOMES

SECTION .2200 – GENERAL STANDARDS OF ADMINISTRATION

10A NCAC 13D .2210 REPORTING AND INVESTIGATING ABUSE, NEGLECT OR MISAPPROPRIATION

(a) A facility shall take measures to prevent patient abuse, patient neglect, or misappropriation of patient property, including orientation and instruction of facility staff on patients' rights, and the screening of and requesting of references for all prospective employees.

(b) The facility shall ensure that the Health Care Personnel Registry Section of the Division of Health Service Regulation is notified within ~~one working day~~ 24 hours of the facility's becoming aware of any allegation against health care personnel as defined in G.S. 131E-256(a)(1).

(c) The facility shall investigate allegations as defined in G.S. 131E-256(a)(1) and shall document all relevant information pertaining to such investigation and shall take the necessary steps to prevent further incidents of abuse, neglect or misappropriation of patient property while the investigation is in progress.

(d) The facility shall ensure that the report of investigation is printed or typed and postmarked to the Health Care Personnel Registry Section of the Division of Health Service Regulation within five working days of the allegation. The report shall include:

- (1) the date and time of the alleged incident;
- (2) the patient's full name and room number;
- (3) details of the allegation and any injury;
- (4) names of the accused and any witnesses;
- (5) names of the facility staff who investigated the allegation;
- (6) results of the investigation;

- (7) and any corrective action that may have been taken by the facility.

Authority G.S. 131E-104; 131E-131; 131E-255; 131E-256.

Notice is hereby given in accordance with G.S. 150B-21.2 that the Commission for Public Health intends to adopt the rule cited as 10A NCAC 39C .0104.

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

- ☒ **OSBM certified on:** September 18, 2013
☐ **RRC certified on:**
☐ **Not Required**

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

Proposed Effective Date: August 1, 2014

Public Hearing:

Date: October 23, 2013

Time: 10:00 a.m.

Location: 5605 Six Forks Road, Cardinal Room, Raleigh, NC 27609

Reason for Proposed Action: *The recent legislative session enacted and the Governor signed SL 2013-413, which directs the Commission for Public Health to "...amend and clarify its rules adopted pursuant to G.S. 130A-497 for the implementation of the prohibition on smoking in restaurants and bars. The rules shall ensure the consistent interpretation and enforcement of Part 1C of Article 23 of Chapter 130A of the General Statutes and shall specifically clarify the definition of enclosed areas for purposes of implementation of the Part."*

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

Comment period ends: December 2, 2013

Session Law 2013-413:

SECTION 23. No later than January 1, 2014, the Commission for Public Health shall amend and clarify its rules adopted pursuant to G.S. 130A-497 for the implementation of the prohibition on smoking in restaurants and bars. The rules shall ensure the consistent interpretation and enforcement of Part 1C of Article 23 of Chapter 130A of the General Statutes and shall specifically clarify the definition of enclosed areas for purposes of implementation of the Part. Rules adopted pursuant to this section (i) shall be exempt from the requirements of G.S. 150B-21.4, (ii) are not subject to Part 3 of Article 2A of Chapter 150B of the General Statutes, and (iii) shall become effective as provided in G.S. 150B-21.3(b1) as though 10 or more written objections had been received as provided by G.S. 150B-21.3(b2). No later than November 1, 2013, the Commission shall report to the Joint Legislative Oversight Committee on Health

and Human Services on its progress in amending and clarifying the rules.

Fiscal impact (check all that apply).

- ☐ **State funds affected**
☐ **Environmental permitting of DOT affected**
Analysis submitted to Board of Transportation
☐ **Substantial economic impact (≥\$1,000,000)**
☒ **No fiscal note required by G.S. 150B-21.4**

CHAPTER 39 – ADULT HEALTH

SUBCHAPTER 39C – SMOKING PROHIBITED IN RESTAURANTS AND BARS

SECTION .0100 – GENERAL

10A NCAC 39C .0104 CLARIFICATION OF THE DEFINITION OF ENCLOSED AREA

(a) An area is enclosed if it has

- (1) a roof or other overhead covering and
(2) permanent or temporary walls or side coverings on three or more sides that make up 55 percent or more of the total combined perimeter surface area.

(b) A roof, overhead covering, wall or side covering includes any permanent or temporary physical barrier or retractable divider. Examples of materials for a roof, overhead covering, wall or side covering include wood, metal, canvas, tarp, cloth, glass, tent material, plastic, vinyl sheeting, fabric shades, lattice, awning material, polyurethane sheeting or any other similar material. Walls or side coverings do not include mesh screening which is 0.011 gauge with an 18 by 16 mesh count or more open mesh size.

(c) An opening means a door, a window or any other aperture that is open to the outdoors.

(d) If the openings in an unenclosed area are covered, such that the area at that time meets the definition of being enclosed pursuant to Paragraph (a), then smoking must be prohibited in the area while the openings are so covered.

(e) If windows or doors form any part of the partition between an enclosed area and an unenclosed area that is used for smoking, these openings shall be closed at all times during the operation of the establishment except for ingress and egress to prevent migration of smoke into the enclosed area.

(f) Nothing in this Rule prohibits a restaurant or bar owner from making an unenclosed area smoke-free.

Authority G.S. 130A-497.

TITLE 12 – DEPARTMENT OF JUSTICE

Notice is hereby given in accordance with G.S. 150B-21.2 that the Sheriffs' Education and Training Standards Commission intends to adopt the rule cited as 12 NCAC 10B .1901 and amend rules cited as 12 NCAC 10B .0301, .0502, .0601, .0603, .0605, .1004, .1005, .1204, .1205, .1604, .1605, .2005.

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

- ☐ OSBM certified on:
☒ RRC certified on: *September 19, 2013*
☐ Not Required

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

<http://ncdoj.gov/About-DOJ/Law-Enforcement-Training-and-Standards/Sheriffs-Education-and-Training-Standards/All-Commission-Forms-and-Publications.aspx>

Fiscal Note if prepared posted at:

http://www.osbm.state.nc.us/files/pdf_files/DOJ09112013.pdf

Proposed Effective Date: *February 1, 2014*

Public Hearing:

Date: *December 3, 2013*

Time: *10:00 am*

Location: *1700 Tryon Park Drive, Raleigh, NC*

Reason for Proposed Action:

12 NCAC 10B .0301 - Revision corrects a missing word in paragraph (a)(8).

12 NCAC 10B .0502 - Revision corrects cite in paragraph (c) regarding rules promulgated by the Criminal Justice Commission regarding Basic Law Enforcement Training (BLET) that are incorporated by reference to Section .0200, which includes rule 12 NCAC 09B .0205, and removes language which is repetitive of that Commission's rules.

12 NCAC 10B .0601 and .0603 - Revision to adjust hours of instruction in the Detention Officer Certification Course (DOCC). Total hours of instruction is increased by 4 hours. In addition, the cost of the training materials has changed.

12 NCAC 10B .0605 - Revision to allow DOCC students with deficiencies a longer period of time to correct the deficiency.

12 NCAC 10B .1004; .1005; .1204; .1205; .1604; .1605 - Revision reinstates formulas for awarding professional certificates based on a combination of having earned college degrees, years of experience and training points.

12 NCAC 10B .1901 - Revision to allow military transferees and their spouses to obtain certifications.

12 NCAC 10B .2005 - The revisions set out what will be required for in-service training in 2014.

Comments may be submitted to: *Julia A. Lohman, PO Box 629, 1700 Tryon Park Dr., Raleigh, NC 27602, phone (919) 779-8213, and email jlohman@ncdoj.gov*

Comment period ends: *December 3, 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
☒ Substantial economic impact (\geq \$1,000,000)
☐ No fiscal note required by G.S. 150B-21.4

CHAPTER 10 - N.C. SHERIFFS' EDUCATION AND TRAINING STANDARDS COMMISSION

SUBCHAPTER 10B - N.C. SHERIFFS' EDUCATION AND TRAINING STANDARDS COMMISSION

SECTION .0300 – MINIMUM STANDARDS FOR EMPLOYMENT AND CERTIFICATION AS A JUSTICE OFFICER

12 NCAC 10B .0301 MINIMUM STANDARDS FOR JUSTICE OFFICERS

(a) Every Justice Officer employed or certified in North Carolina shall:

- (1) be a citizen of the United States;
- (2) be at least 21 years of age;
- (3) be a high school graduate, or the equivalent (GED);
- (4) have been fingerprinted by the employing agency;
- (5) have had a medical examination as set out in 12 NCAC 10B .0204; ~~by a licensed physician;~~
- (6) have produced a negative result on a drug screen administered according to the following specifications:
 - (A) the drug screen shall be a urine test consisting of an initial screening test using an immunoassay method and a confirmatory test on an initial positive result using a gas chromatography/mass spectrometry (GC/MS) or other reliable initial and confirmatory tests as may, from time to time, be authorized or mandated by the Department of Health and Human Services for Federal Workplace Drug Testing Programs; and
 - (B) a chain of custody shall be maintained on the specimen from collection to the eventual discarding of the specimen; and
 - (C) the drugs whose use shall be tested for shall include at least cannabis, cocaine, phencyclidine (PCP), opiates

- and amphetamines or their metabolites; and
- (D) the test threshold values established by the Department of Health and Human Services for Federal Workplace Drug Testing Programs [<http://workplace.samhsa.gov/>] are hereby incorporated by reference, and shall automatically include any later amendments and editions of the referenced materials. Copies of this information may be obtained from the National Institute on Drug Abuse, 5600 Fisher Lane, Rockville, Maryland 20857 [<http://www.drugabuse.gov/>] at no cost at the time of adoption of this Rule; and
- (E) the test ~~results must be no conducted~~ shall be not more than 60 days old, ~~calculated from the time when the laboratory reports the results to the date of before employment or certification,~~ whichever is earlier; ~~employment;~~ and
- (F) the laboratory conducting the test must be certified for federal workplace drug testing programs, and must adhere to applicable federal rules, regulations and guidelines pertaining to the handling, testing, storage and preservation of samples, except that individual agencies may specify other drugs to be tested for in addition to those drugs set out in Part (C) of this Subparagraph; and
- (G) every agency head shall make arrangements for the services of a medical review officer (MRO) for the purpose of review of drug tests reported by the laboratory and such officer shall be a licensed physician;
- (7) make the following notifications:
- (A) within five working days notify the Standards Division and the appointing department head in writing of all criminal offenses with which the officer is charged and all Domestic Violence Orders (50B) and Civil No Contact Orders (50C) which are issued by a judicial official against the justice officer and which provide an opportunity for both parties to be present. ~~present; and~~ This shall include all criminal offenses except minor traffic offenses. A minor traffic offense is any offense under G.S. 20 or similar laws of other jurisdictions; except
- those Chapter 20 offenses defined as either a Class A or B Misdemeanor as set out in 12 NCAC 10B .0103(10). The initial notification required must specify the nature of the offense, the date of offense, and the arresting agency.
- (B) within 20 days of the date the case was disposed notify shall also give notification, in writing, to the appointing department head following of the adjudication of these criminal charges—and charges, Domestic Violence Orders (50B), (50B) and Civil No Contact Orders (50C). The department head, provided he has knowledge of the officer's charge(s), Civil No Contact Orders (50C) and Domestic Violence Orders (50B) shall also notify the Division within 30 days of the date the case or order was disposed of in court. This shall include all criminal offenses except minor traffic offenses. A minor traffic offense is defined for purposes of this Subparagraph as any offense under G.S. 20 or similar laws of other jurisdictions; except those Chapter 20 offenses published in the Class B Misdemeanor Manual. The initial notification required must specify the nature of the offense, the date of offense, and the arresting agency.
- (C) within 30 days of the date the case was disposed notify the Standards Division of the adjudication of these criminal charges, Domestic Violence Orders (50B) and Civil No Contact Orders (50C).
- (D) The required notifications of adjudication required must specify the nature of the offense, the court in which the case was handled and the date of disposition, and must include a certified copy of the final disposition from the Clerk of Court in the county of adjudication. The notifications of adjudication must be received by the Standards Division within 30 days of the date the case was disposed of in court. Officers required to notify the Standards Division under this Subparagraph shall also make the same notification to their employing or appointing department head within 20 days of the date the case was disposed of in court. The department head, provided

~~he has knowledge of the officer's charge(s), Civil No Contact Orders (50C) and Domestic Violence Orders (50B) shall also notify the Division within 30 days of the date the case or order was disposed of in court.~~

(E) Receipt by the Standards Division of timely notification of the initial offenses charged and of adjudication of those offenses, from either the officer or the department head, is sufficient notice for compliance with this Subparagraph;

- (8) be of good moral ~~character~~ as defined in: In re Willis, 299 N.C. 1, 215 S.E.2d 771 appeal dismissed 423 U.S. 976 (1975); State v. Harris, 216 N.C. 746, 6 S.E.2d 854 (1940); In re Legg, 325 N.C. 658, 386 S.E.2d 174 (1989); In re Applicants for License, 143 N.C. 1, 55 S.E. 635 (1906); In re Dillingham, 188 N.C. 162, 124 S.E. 130 (1924); State v. Benbow, 309 N.C. 538, 308 S.E.2d 647 (1983); and their progeny;
- (9) have a background investigation conducted by the employing agency, to include a personal interview prior to employment;
- (10) not have committed or been convicted of a crime or crimes as specified in 12 NCAC 10B .0307.

(b) The requirements of this Rule shall apply to all applications for certification and shall also be applicable at all times during which the justice officer is certified by the Commission.

Authority G.S. 17E-7.

SECTION .0500 - MINIMUM STANDARDS OF TRAINING FOR DEPUTY SHERIFFS

12 NCAC 10B .0502 BASIC LAW ENFORCEMENT TRAINING COURSE FOR DEPUTIES

(a) The basic training course for deputy sheriffs consists of instruction designed to provide the trainee with the skills and knowledge to perform those tasks essential to function in law enforcement.

~~(b) The course entitled "Basic Law Enforcement Training" shall consist of a minimum of 620 hours of instruction and shall include the following identified topical areas and minimum instructional hours for each:~~

- (1) ~~LEGAL UNIT~~
- (A) ~~Motor Vehicle Laws 20 hours~~
- (B) ~~Preparing for Court and Testifying in Court 12 hours~~
- (C) ~~Elements of Criminal Law 24 hours~~
- (D) ~~Juvenile Laws and Procedures 10 hours~~
- (E) ~~Arrest, Search and Seizure/Constitutional Law 28 hours~~

- (F) ~~ABC Laws and Procedures 4 hours~~
- ~~UNIT TOTAL 98 hours~~

- (2) ~~PATROL DUTIES UNIT~~
- (A) ~~Techniques of Traffic Law Enforcement 24 hours~~
- (B) ~~Explosives and Hazardous Materials Emergencies 12 hours~~
- (C) ~~Traffic Accident Investigation 20 hours~~
- (D) ~~In Custody Transportation 8 hours~~
- (E) ~~Crowd Management 12 hours~~
- (F) ~~Patrol Techniques 26 hours~~
- (G) ~~Law Enforcement Communication and Information Systems 8 hours~~
- (H) ~~Anti Terrorism 4 hours~~
- (I) ~~Rapid Deployment 8 hours~~
- ~~UNIT TOTAL 122 hours~~
- (3) ~~LAW ENFORCEMENT COMMUNICATION UNIT~~
- (A) ~~Dealing with Victims and the Public 10 hours~~
- (B) ~~Domestic Violence Response 12 hours~~
- (C) ~~Ethics for Professional Law Enforcement 4 hours~~
- (D) ~~Individuals with Mental Illness and Mental Retardation 8 hours~~
- (E) ~~Crime Prevention Techniques 6 hours~~
- (F) ~~Communication Skills for Law Enforcement Officers 8 hours~~
- ~~UNIT TOTAL 48 hours~~
- (4) ~~INVESTIGATION UNIT~~
- (A) ~~Fingerprinting and Photographing Arrestee 6 hours~~
- (B) ~~Field Note taking and Report Writing 12 hours~~
- (C) ~~Criminal Investigation 34 hours~~
- (D) ~~Interviews: Field and In Custody 16 hours~~
- (E) ~~Controlled Substances 12 hours~~
- (F) ~~Human Trafficking 2 hours~~
- ~~UNIT TOTAL 82 hours~~
- (5) ~~PRACTICAL APPLICATION UNIT~~
- (A) ~~First Responder 32 hours~~
- (B) ~~Firearms 48 hours~~
- (C) ~~Law Enforcement Driver Training 40 hours~~
- (D) ~~Physical Fitness (classroom instruction) 8 hours~~
- (E) ~~Fitness Assessment and Testing 12 hours~~
- (F) ~~Physical Exercise 1 hour daily, 3 days a week 34 hours~~

(G)	Subject Control Arrest Techniques	40 hours
	UNIT TOTAL	214 hours
(6)	SHERIFF SPECIFIC UNIT	
(A)	Civil Process	24 hours
(B)	Sheriffs' Responsibilities: Detention Duties	4 hours
(C)	Sheriffs' Responsibilities: Court Duties	6 hours
	UNIT TOTAL	34 hours
(7)	COURSE ORIENTATION	2 hours
(8)	TESTING	20 hours
	TOTAL COURSE HOURS	620 HOURS

~~(e)~~ The "Basic Law Enforcement Training Manual" as published by the North Carolina Justice Academy shall be used as the basic curriculum for this Basic Law Enforcement Training Course. Copies of this manual may be obtained at cost by contacting the North Carolina Justice Academy, Post Office Box 99, Salemburg, North Carolina 28385-0099.

~~(d)~~ The Commission shall designate the developer of the Basic Law Enforcement Training Course curricula and such designation shall be deemed by the Commission as approval for the developer to conduct pilot Basic Law Enforcement Training Courses. Individuals who successfully complete such a pilot Basic Law Enforcement Training Course offering shall be deemed to have successfully complied with and satisfied the minimum training requirement.

~~(e)(b)~~ The rules governing Minimum Standards for Completion of Training, codified as Title 12, Subchapter 09B, Section ~~.0400~~ .0200 of the North Carolina Administrative Code [<http://reports.oah.state.nc.us/ncac.asp?folderName=\Title%2012%20-%20Justice\Chapter%2009%20-%20Criminal%20Justice%20Education%20and%20Training%20Standards\SubChapter%20B&lookUpError=12%20NCAC%2009B%20.0200>] Code, and previously adopted by the North Carolina Criminal Justice Education and Training Standards Commission, are hereby incorporated by reference, and shall, automatically include any later amendments and editions of the incorporated matter to apply to actions of the North Carolina Sheriffs' Education and Training Standards Commission. Copies of the incorporated materials may be obtained at no cost from the Criminal Justice Standards Division, North Carolina Department of Justice, 114 West Edenton Street, Post Office Drawer 149, Raleigh, North Carolina 27602.

Authority G.S. 17E-4(a).

SECTION .0600 - MINIMUM STANDARDS OF TRAINING FOR DETENTION OFFICERS

12 NCAC 10B .0601 DETENTION OFFICER CERTIFICATION COURSE

(a) This Section establishes the current standard by which Sheriffs' Office and district confinement personnel shall receive detention officer training. The Detention Officer Certification Course shall consist of a minimum of 168 hours of instruction designed to provide the trainee with the skills and knowledge

necessary to perform those tasks considered essential to the administration and operation of a confinement facility.

(b) Each Detention Officer Certification Course shall include the following identified topic areas and ~~approximate~~ minimum instructional hours for each area:

(1)	LEGAL UNIT	
(A)	Orientation	3 hours
(B)	Criminal Justice Systems	2 hours
(C)	Legal Aspects of Management and Supervision	14 hours
(D)	Introduction to Rules and Regulations	2 hours
(E)	Ethics	3 hours
	UNIT TOTAL	24 Hours
(2)	PHYSICAL UNIT	
(A)	Contraband/Searches	6 hours
(B)	Patrol and Security Function of the Jail	5 hours
(C)	Key and Tool Control	2 hours
(D)	Investigative Process in the Jail	8 hours
(E)	Transportation of Inmates	7 hours
	UNIT TOTAL	28 Hours
(3)	PRACTICAL APPLICATION UNIT	
(A)	Processing Inmates	78 hours
(B)	Supervision and Management of Inmates	5 hours
(C)	Suicides and Crisis Management	5 hours
(D)	Aspects of Mental Illness	6 hours
(E)	Fire Emergencies	4 hours
(F)	Notetaking and Report Writing	56 hours
(G)	Communication Skills	5 hours
	UNIT TOTAL	3739 hours
(4)	MEDICAL UNIT	
(A)	First Aid and CPR	408 hours
(B)	Medical Care in the Jail	6 hours
(C)	Stress	3 hours
(D)	Subject Control Techniques	2832 hours
(E)	Physical Fitness for Detention Officers	22 hours
	UNIT TOTAL	6971 hours
(5)	REVIEW AND TESTING	7 hours
(6)	STATE EXAM	3 hours
	TOTAL HOURS	468172 HOURS

(c) Consistent with the curriculum development policy of the Commission as published in the "Detention Officer Certification Course Management Guide", the Commission shall designate the developer of the Detention Officer Certification Course curricula and such designation shall be deemed by the Commission as approval for the developer to conduct pilot Detention Officer Certification Courses. Individuals who complete such a pilot Detention Officer Certification Course offering shall be deemed to have complied with and satisfied the minimum training requirement.

(d) The "Detention Officer Certification Training Manual" as published by the North Carolina Justice Academy shall be used

as the basic curriculum for the Detention Officer Certification Course. Copies of this manual may be obtained by contacting the North Carolina Justice Academy, Post Office Box 99, Salemburg, North Carolina 28385-0099. The cost of this ~~manual is forty dollars (\$40.00)~~ manual, CD, indexes and binder is fifty-one dollars and seventy-five cents (\$51.75) at the time of adoption of this Rule.

(e) The "Detention Officer Certification Course Management Guide" as published by the North Carolina Justice Academy is hereby incorporated by reference and shall automatically include any later ~~amendments~~ or editions of the incorporated matter to be used by school directors in planning, implementing and delivering basic detention officer training. The standards and requirements established by the "Detention Officer Certification Course Management Guide" must be adhered to by the school director. Each certified school director shall be issued a copy of the guide at the time of certification at no cost to the certified school.

Authority G.S. 17E-4(a).

12 NCAC 10B .0603 EVALUATION FOR TRAINING WAIVER

Applicants for certification with prior detention or correctional officer experience shall have been employed and certified as a detention or correctional officer in order to be considered for a training evaluation under this Rule. The following rules shall be used by division staff in evaluating a detention officer's training and ~~experience to determine eligibility for a waiver of training:~~ experience:

- (1) Persons who have separated from a detention officer position during the probationary period after having completed a commission-certified detention officer training course and who have been separated from a detention officer position for more than one year shall complete a subsequent commission-certified detention officer training course in its entirety and pass the State Comprehensive Examination within the 12 month probationary period as described in 12 NCAC 10B .0602(a).
- (2) Persons who separated from a detention officer position during their probationary period after having completed a commission-certified detention officer training course and who have been separated from a detention officer position for one year or less shall serve the remainder of the initial probationary period in accordance with G.S. 17E-7(b), but need not complete an additional training program.
- (3) Persons who separated from a detention officer position during the probationary period without having completed a detention officer training course or whose certification was suspended pursuant to 12 NCAC 10B .0204(b)(1) and who have remained separated or suspended for over one year shall complete a commission-certified detention officer training course in its entirety and pass the State

- (4) Comprehensive Examination, and shall be allowed a 12 month probationary period as prescribed in 12 NCAC 10B .0602(a).
Persons holding General Detention Officer Certification who have completed a commission-certified detention officer training course and who have separated from a detention officer position for more than one year shall complete a subsequent commission-certified detention officer training course in its entirety and pass the State Comprehensive Examination within the 12 month probationary period as prescribed in 12 NCAC 10B .0602(a).
- (5) Persons holding Grandfather Detention Officer Certification who separate from a detention officer position and remain separated from a detention officer position for more than one year shall complete a commission-certified detention officer training program in its entirety and pass the State Comprehensive Examination within the 12 month probationary period as prescribed in 12 NCAC 10B .0602(a).
- (6) Persons transferring to a sheriff's office from another law enforcement agency who hold a detention officer certification issued by the North Carolina Criminal Justice Education and Training Standards Commission are subject to evaluation of their prior training and experience on an individual basis. The Division staff shall determine the amount of training, which is comparable to that received by detention officers pursuant to 12 NCAC 10B .0601(b), required of these applicants.
- (7) Persons holding general certification as a correctional officer issued by the North Carolina Criminal Justice Education and Training Standards Commission and who:
 - (a) completed training as a correctional officer between January 1, 1981 and August 1, 2002;
 - (b) transfer to a sheriff's office or a district confinement facility in a detention officer position; and
 - (c) have had less than a one year break in service, or no break in service, shall serve a 12-month probationary period as prescribed in 12 NCAC 10B .0602(a) and shall complete the following topic areas in a commission-certified detention officer certification course and take the state examination in its entirety during that probationary period:
 - (i) Orientation 3 hours
 - (ii) Legal Aspects of Management & Supervision 14 hours

- (iii) Medical Care in the Jail
6 hours
 - (iv) Investigative Process in the Jail
8 hours
 - (v) Criminal Justice System
2 hours
 - (vi) Introduction to Rules and Regulations Governing Jails
2 hours
 - (vii) Subject Control Techniques
2832 hours
 - TOTAL HOURS**
~~(63)~~(67) hours
- (8) Persons holding general certification as a correctional officer issued by the North Carolina Criminal Justice Education and Training Standards ~~Commission~~ Commission: ~~and~~
- (a) who:
 - ~~(a)~~(i) completed training as a correctional officer after August 1, 2002;
 - ~~(b)~~(ii) transfer to a sheriff's office or a district confinement facility in a detention officer position; and
 - ~~(c)~~(iii) have had less than a one year break in service, or no break in service, shall serve a 12-month probationary period as prescribed in 12 NCAC 10B ~~.0602(a)~~; .0602(a).
 - (b) may apply for a waiver to the Division by submitting documentation of the training completed as a correctional officer. Division staff shall compare the completed correctional officer training to the existing Detention Officer Certification Course and determine whether any of the Detention Officer Certification Course blocks of instruction can be waived. Granting of a waiver is based on a showing of completion of comparable training. The Division shall notify the employing agency of the resulting training requirements. The detention officer and shall complete the required training in a commission-certified Detention Officer Certification Course and take the state examination in its entirety during the probationary period.

- 12 NCAC 10B .0605 COMPLETION OF DETENTION OFFICER CERTIFICATION COURSE**
- (a) Each delivery of an accredited "Detention Officer Certification Course" is considered to be a unit as set forth in 12 NCAC 10B .0601. Each trainee shall attend and satisfactorily complete a full course during a scheduled delivery. The school director may develop supplemental rules as set forth in 12 NCAC 10B .0704(a)(7), but may not add substantive courses, or change or expand the substance of the courses set forth in 12 NCAC 10B .0601. This Rule does not prevent the instruction on local agency rules or standards but such instruction shall not be considered or endorsed by the Commission for purposes of certification. The Director may issue prior written authorization for a specified trainee's limited enrollment in a subsequent delivery of the same course where the school director provides evidence that:
- (1) The trainee attended and satisfactorily completed specified class hours and topics of the "Detention Officer Certification Course" but through extended absence occasioned by illness, accident, or emergency was absent for more than 10 percent of the total class hours of the course offering; or
 - (2) The trainee was granted excused absences by the school director that did not exceed ten percent of the total class hours for the course offering and the school director could not schedule appropriate make-up work during the current course offering as specified in 12 NCAC 10B .0601(c); ~~.0604(e) due to valid reasons~~; or
 - (3) The trainee participated in an offering of the "Detention Officer Certification Course" but had an identified deficiency in essential knowledge or skill in either one, two or three, but no more than three, of the specified topic areas incorporated in the course content as prescribed under 12 NCAC 10B .0601(b).
- (b) An authorization of limited enrollment in a subsequent course delivery may not be used by the Director unless in addition to the evidence required by Paragraph (a) of this Rule:
- (1) The trainee submits a written request to the Director, justifying the limited enrollment and certifying that the trainee's participation shall be accomplished pursuant to Paragraph (c) of this Rule; and
 - (2) The school director of the previous school offering submits to the director a certification of the particular topics and class hours attended and satisfactorily completed by the trainee during the original enrollment.
- (c) An authorization of limited enrollment in a subsequent course delivery permits the trainee to attend an offering of the "Detention Officer Certification Course" commencing within ~~420~~ 180 calendar days from the last date of trainee participation in prior course delivery, but only if the trainee's enrollment with active course participation can be accomplished within the period of the trainee's probationary certification:

Authority G.S. 17E-4; 17E-7.

- (1) The trainee need ~~only~~ attend and satisfactorily complete only those portions of the course which were missed or identified by the school director as areas of trainee deficiency in the proper course participation.
- (2) Following proper enrollment in the subsequent course offering, scheduled class attendance and active participation with satisfactory achievement in the course, the trainee ~~would~~ shall be eligible for administration of the State Comprehensive Examination by the Commission and ~~possible~~ certification of successful course completion.
- (3) A trainee shall be enrolled as a limited enrollee in only one subsequent course offering within the ~~420~~ 180 calendar days from the last date of trainee participation in prior course delivery. A trainee who fails to complete those limited portions of the course after one retest shall

enroll in an entire delivery of the Detention Officer Certification Course.

- (d) A trainee who is deficient in four or more subject-matter or topical areas at the conclusion of the course delivery shall complete a subsequent program in its entirety.

Authority G.S. 17E-4; 17E-7.

SECTION .1000 - PROFESSIONAL CERTIFICATE PROGRAM FOR SHERIFFS AND DEPUTY SHERIFFS

12 NCAC 10B .1004 INTERMEDIATE LAW ENFORCEMENT CERTIFICATE

- (a) In addition to the qualifications set forth in Rule .1002, applicants for the Intermediate Law Enforcement Certificate shall possess or be eligible to possess the Basic Law Enforcement Certificate and shall have acquired the following combination of educational ~~points~~, points or degrees, law enforcement training and years of law enforcement training experience:

<u>Years of Law Enforcement Experience</u>	<u>8</u>	<u>6</u>	<u>4</u>
<u>Minimum Law Enforcement Training Points</u>	<u>20</u>	<u>35</u>	<u>50</u>
<u>Minimum Total Education and Training Points</u>	<u>39</u>	<u>69</u>	<u>99</u>

<u>Educational Degrees</u>	<u>None</u>	<u>None</u>	<u>None</u>	<u>Associate</u>	<u>Bachelor</u>
<u>Years of Law Enforcement Experience</u>	<u>8</u>	<u>6</u>	<u>4</u>	<u>4</u>	<u>2</u>
<u>Minimum Law Enforcement Training Points</u>	<u>20</u>	<u>35</u>	<u>50</u>	<u>24</u>	<u>23</u>
<u>Minimum Total Education and Training Points</u>	<u>39</u>	<u>69</u>	<u>99</u>	<u>24</u>	<u>23</u>

- (b) Educational points claimed shall have been earned at a technical institute, technical college, community college, junior college, college or university accredited as such by the Department of Education of the state in which the institution is located, a national or regional accrediting body, or the state university of the state in which the institution is located. No credit shall be given for any ~~correspondence~~ correspondence, on-line or vocational courses unless credited towards a degree by an accredited institution.

- (c) No more than 160 hours of training obtained by completing the commission-mandated basic law enforcement training course shall be credited toward training points.

Authority G.S. 17E-4.

12 NCAC 10B .1005 ADVANCED LAW ENFORCEMENT CERTIFICATE

- (a) In addition to the qualifications set forth in Rule .1002, applicants for the Advanced Law Enforcement Certificate shall possess or be eligible to possess the Intermediate Law Enforcement Certificate and shall have acquired the following combination of educational ~~points~~, points or degrees, law enforcement training points and years of law enforcement experience:

<u>Years of Law Enforcement Experience</u>	<u>12</u>	<u>9</u>
<u>Minimum Law Enforcement Training Points</u>	<u>35</u>	<u>50</u>
<u>Minimum Total Education and Training Points</u>	<u>69</u>	<u>99</u>

<u>Educational Degrees</u>	<u>None</u>	<u>None</u>	<u>Associate</u>	<u>Bachelor</u>	<u>Doctoral, Professional or Master</u>
<u>Years of Law Enforcement</u>	<u>12</u>	<u>9</u>	<u>9</u>	<u>6</u>	<u>4</u>

<u>Experience</u>					
<u>Minimum Law Enforcement Training Points</u>	<u>35</u>	<u>50</u>	<u>33</u>	<u>27</u>	<u>23</u>
<u>Minimum Total Education and Training Points</u>	<u>69</u>	<u>99</u>	<u>33</u>	<u>27</u>	<u>23</u>

(b) Educational points claimed shall have been earned at a technical institute, technical college, community college, junior college, college or university accredited as such by the Department of Education of the state in which the institution is located, a national or regional accrediting body, or the state university of the state in which the institution is located. No credit shall be given for any ~~correspondence~~ correspondence, on-line or vocational courses unless credited towards a degree by an accredited institution.

(c) No more than 160 hours of training obtained by completing the commission-mandated basic law enforcement training course shall be credited toward training points.

Authority G.S. 17E-4.

**SECTION .1200 - PROFESSIONAL CERTIFICATE
PROGRAM FOR DETENTION OFFICERS**

**12 NCAC 10B .1204 INTERMEDIATE DETENTION
OFFICER PROFESSIONAL CERTIFICATE**

(a) In addition to the qualifications set forth in Rule .1202 of this Section, applicants for the Intermediate Detention Officer Professional Certificate shall possess or be eligible to possess the Basic Detention Officer Professional Certificate and shall have acquired the following combination of educational ~~points, points or degrees,~~ detention officer or corrections training points and years of detention officer experience:

<u>Years of Detention Officer Experience</u>	<u>8</u>	<u>6</u>	<u>4</u>
<u>Minimum Detention Officer Training Points</u>	<u>6</u>	<u>12</u>	<u>16</u>
<u>Minimum Total Education and Training Points</u>	<u>13</u>	<u>23</u>	<u>33</u>

<u>Educational Degrees</u>	<u>None</u>	<u>None</u>	<u>None</u>	<u>Associate</u>	<u>Bachelor</u>
<u>Years of Detention Officer Experience</u>	<u>8</u>	<u>6</u>	<u>4</u>	<u>4</u>	<u>2</u>
<u>Minimum Detention Officer Training Points</u>	<u>6</u>	<u>12</u>	<u>16</u>	<u>24</u>	<u>23</u>
<u>Minimum Total Education and Training Points</u>	<u>13</u>	<u>23</u>	<u>33</u>	<u>24</u>	<u>23</u>

(b) Educational points claimed shall have been earned at a technical institute, technical college, community college, junior college, college or university accredited as such by the Department of Education of the state in which the institution is located, a national or regional accrediting body, or the state university of the state in which the institution is located. No credit shall be given for any ~~correspondence~~ correspondence, on-line or vocational courses unless credited towards a degree by an accredited institution.

(c) No more than 80 hours of training obtained by completing the commission-mandated detention certification course shall be credited toward training points.

Authority G.S. 17E-4.

**12 NCAC 10B .1205 ADVANCED DETENTION
OFFICER PROFESSIONAL CERTIFICATE**

(a) In addition to the qualifications set forth in Rule .1202 of this Section, applicants for the Advanced Detention Officer Professional Certificate shall possess or be eligible to possess the Intermediate Detention Officer Professional Certificate and shall have acquired the following combination of educational ~~points,~~ points or degrees, detention officer or corrections training points and years of detention officer experience:

<u>Years of Detention Officer Experience</u>	<u>12</u>	<u>9</u>
<u>Minimum Detention Officer Training Points</u>	<u>12</u>	<u>16</u>
<u>Minimum Total Education and Training Points</u>	<u>23</u>	<u>33</u>

<u>Educational Degrees</u>	<u>None</u>	<u>None</u>	<u>Associate</u>	<u>Bachelor</u>	<u>Doctoral, Professional or Master</u>
<u>Years of Detention Officer Experience</u>	<u>12</u>	<u>9</u>	<u>9</u>	<u>6</u>	<u>4</u>
<u>Minimum Detention Officer Training Points</u>	<u>12</u>	<u>16</u>	<u>27</u>	<u>26</u>	<u>26</u>
<u>Minimum Total Education and Training Points</u>	<u>23</u>	<u>33</u>	<u>27</u>	<u>26</u>	<u>26</u>

(b) Educational points claimed shall have been earned at a technical institute, technical college, community college, junior college, college or university accredited as such by the Department of Education of the state in which the institution is located, a national or regional accrediting body, or the state university of the state in which the institution is located. No credit shall be given for any ~~correspondence~~ correspondence, on-line or vocational courses unless credited towards a degree by an accredited institution.

(c) No more than 80 hours of training obtained by completing the commission-mandated detention certification course shall be credited toward training points.

SECTION .1600 - PROFESSIONAL CERTIFICATE PROGRAM FOR TELECOMMUNICATORS

12 NCAC 10B .1604 INTERMEDIATE TELECOMMUNICATOR CERTIFICATE

(a) In addition to the qualifications set forth in Rule .1602 of this Section, applicants for the Intermediate Telecommunicator Certificate shall possess or be eligible to possess the Basic Telecommunicator Certificate and shall have acquired the following combination of educational ~~points, points or degrees,~~ telecommunicator training points and years of telecommunicator training experience:

Authority G.S. 17E-4.

<u>Years of Telecommunicator Experience</u>	<u>8</u>	<u>6</u>	<u>4</u>
<u>Minimum Telecommunicator Training Points</u>	<u>5</u>	<u>10</u>	<u>14</u>
<u>Minimum Total Education and Training Points</u>	<u>12</u>	<u>20</u>	<u>28</u>

<u>Educational Degrees</u>	<u>None</u>	<u>None</u>	<u>None</u>	<u>Associate</u>	<u>Bachelor</u>
<u>Years of Telecommunicator Experience</u>	<u>8</u>	<u>6</u>	<u>4</u>	<u>4</u>	<u>2</u>
<u>Minimum Telecommunicator Training Points</u>	<u>5</u>	<u>10</u>	<u>14</u>	<u>12</u>	<u>10</u>
<u>Minimum Total Education and Training Points</u>	<u>12</u>	<u>20</u>	<u>28</u>	<u>12</u>	<u>10</u>

(b) Educational points claimed shall have been earned at a technical institute, technical college, community college, junior college, college or university accredited as such by the Department of Education of the state in which the institution is located, a national or regional accrediting body, or the state university of the state in which the institution is located. No credit shall be given for any ~~correspondence~~ correspondence, on-line or vocational courses unless credited towards a degree by an accredited institution.

(c) No more than 40 hours of training obtained by completing the commission-mandated telecommunicator certification course shall be credited toward training points.

Authority G.S. 17E-4.

12 NCAC 10B .1605 ADVANCED TELECOMMUNICATOR CERTIFICATE

(a) In addition to the qualifications set forth in Rule .1602, applicants for the Advanced Telecommunicator Certificate shall possess or be eligible to possess the Intermediate Telecommunicator Certificate and shall have acquired the following combination of educational ~~points, points or degrees,~~ telecommunicator training points and years of telecommunicator experience:

<u>Years of Telecommunicator Experience</u>	<u>12</u>	<u>9</u>
<u>Minimum Telecommunicator Training Points</u>	<u>10</u>	<u>12</u>
<u>Minimum Total Education and Training Points</u>	<u>20</u>	<u>23</u>

<u>Educational Degrees</u>	<u>None</u>	<u>None</u>	<u>Associate</u>	<u>Bachelor</u>	<u>Doctoral, Professional or Master</u>
<u>Years of Telecommunicator Experience</u>	<u>12</u>	<u>9</u>	<u>9</u>	<u>6</u>	<u>4</u>
<u>Minimum Telecommunicator Training Points</u>	<u>10</u>	<u>12</u>	<u>17</u>	<u>14</u>	<u>12</u>
<u>Minimum Total Education and Training Points</u>	<u>20</u>	<u>23</u>	<u>17</u>	<u>14</u>	<u>12</u>

(b) Educational points claimed shall have been earned at a technical institute, technical college, community college, junior college, college or university accredited as such by the Department of Education of the state in which the institution is located, a national or regional accrediting body, or the state university of the state in which the institution is located. No credit shall be given for any ~~correspondence~~ correspondence, on-line or vocational courses unless credited towards a degree by an accredited institution.

(c) No more than 40 hours of training obtained by completing the commission-mandated telecommunicator certification course shall be credited toward training points.

Authority G.S. 17E-4.

SECTION .1900 – MILITARY TRAINED APPLICANT AND MILITARY SPOUSE

12 NCAC 10B .1901 MILITARY AND MILITARY SPOUSE TRANSFEREES

(a) Any person who meets the definitions of Military Trained Applicant or Military Spouse as set out in G.S. 93B-15.1 who apply to the Division for a determination as to whether any certification issued by the Commission will be evaluated to determine what, if any, additional training is required. Specifically, the applicant will be evaluated to determine if:

- (1) the Military Trained Applicant:
 - (a) has been awarded military occupational specialty that is substantially equivalent to or exceeds the training requirements required for certification or completed a military program of training, completed testing or equivalent training;
 - (b) has engaged in the active practice of that occupational specialty for at least two of the five years predefining the date of appointment;
 - (c) has not committed any act in any jurisdiction that would have constituted grounds for refusal, suspension or revocation of a license to practice that occupation in this

State at the time the act was committed; and

The Military Trained Applicant shall submit documentation verifying his or her qualified status.

(2) the Military Spouse:

(a) holds a current license, certification, or registration from another jurisdiction which:

(i) is substantially equivalent to exceeds the training requirements required for certification;

(ii) is in good standing;

(iii) has not been disciplined by the agency that has the jurisdiction to issue the license, certification, certification or permit;

(b) can demonstrate competency in the occupation by:

(i) having completed continuing education units;

(ii) or has engaged in the active practice of that occupational specialty for at least two of the five years predefining the date of appointment;

(c) has not committed any act in any jurisdiction that would have constituted grounds for refusal, suspension or revocation of a license to practice that occupation in this State at the time the act was committed;

The Military Spouse shall submit documentation verifying his or her qualified status.

(b) The Commission shall waive a military spouse or military trained applicant's completion of Commission-certified training course upon receiving documentary evidence from the employing agency that the individual has satisfactorily completed equivalent training.

(c) Training received in the military or in states with laws governing or regulating law enforcement training shall, if subject to such review, have been approved or certified by the appropriate agency of the state in which the training was received.

(d) The Commission shall prescribe as a condition of certification, supplementary or remedial training deemed necessary to equate previous training with current standards.

(e) Where certifications issued by the Commission normally require satisfactory performance on a written examination, the Commission shall require such examinations for the certification sought as proof of equivalent training; however, such examination is in addition to the required equivalent training and not in lieu of said training.

Authority G.S. 17E-4; 17E-7; 93B-15.1.

SECTION .2000 - IN-SERVICE TRAINING FOR JUSTICE OFFICERS

12 NCAC 10B .2005 MINIMUM TRAINING REQUIREMENTS

(a) A Sheriff or Department Head may use a lesson plan developed by the North Carolina Justice Academy, or may use a lesson plan for any of the topical areas developed by another entity. The Sheriff or Department Head may also use a lesson plan developed by a certified instructor, provided that the instructor develops the lesson plan in accordance with the Instructional Systems Development model as taught in Criminal Justice Instructor Training in 12 NCAC 09B .0209. Lesson plans are designed to be delivered in hourly increments; however, a person who completed the training in less than or more than the hourly increment will receive the number of credits that correspond to the number of hours (e.g., Legal Update designed to be delivered in four hours, will yield four credits). With the exception of Firearms Training and Requalification, successful completion of training shall be demonstrated by passing tests as developed by the delivering agency or as written by the North Carolina Justice Academy. Firearms Training and Requalification shall be demonstrated qualification with a firearm as set out in Section .2100 of this Subchapter. A written test comprised of at least five questions per hour of training shall be developed by the delivering agency, or the agency may use the written test developed by the North Carolina Justice Academy, for each in-service training topic. A student shall pass each test by achieving 70 percent correct answers.

~~(b) The 2012 Law Enforcement In-Service Training Program requires 24 hours of training in the following topical areas:~~

- ~~(1) Legal Update;~~
- ~~(2) Juvenile Minority Sensitivity Training: Interactions Skills in Building Rapport;~~
- ~~(3) Career Survival: Social Networking and Digital Communications;~~
- ~~(4) Firearms Training and Requalification for deputy sheriffs as set out in Section .2100 of this Subchapter;~~
- ~~(5) Awareness of Issues Surrounding Returning Military Personnel; and~~

~~(6) Any topic areas of the Sheriff's choosing.~~

~~(c) The 2012 Detention Officer In-Service Training Program requires 16 hours of training in the following topical areas:~~

- ~~(1) Inmate Movement;~~
- ~~(2) Career Survival for Detention Officers; Social Networking and Digital Communications; and~~
- ~~(3) Any topic areas of the Sheriff's or Department Head's choosing.~~

~~(d) The 2012 Telecommunicator In-Service Training Program requires 16 hours of training in the following topical areas:~~

- ~~(1) Legal Update for Telecommunicators;~~
- ~~(2) Career Survival for Telecommunicators; Social Networking and Digital Communications; and~~
- ~~(3) Any topic areas of the Sheriff's or Department Head's choosing.~~

~~(e)(b) The 2013 Law Enforcement In-Service Training Program requires 24 credits of training and successful completion in the following topical areas:~~

- ~~(1) Legal Update;~~
- ~~(2) Juvenile Minority Sensitivity Training: Don't Press Send;~~
- ~~(3) Domestic Violence: The Children are Watching;~~
- ~~(4) Firearms Training and Requalification for deputy sheriffs as set out in Section .2100 of this Subchapter; and~~
- ~~(5) Any topic areas of the Sheriff's choosing.~~

~~(f)(c) The 2013 Detention Officer In-Service Training Program requires 16 credits of training and successful completion in the following topical areas:~~

- ~~(1) Inmate Sexual Assaults;~~
- ~~(2) Detention Officer Legal Update;~~
- ~~(3) Awareness of Issues Surrounding Returning Military Personnel; and~~
- ~~(4) Any topic areas of the Sheriff's or Department Head's choosing.~~

~~(g)(d) The 2013 Telecommunicator In-Service Training Program requires 16 credits of training and successful completion in the following topical areas:~~

- ~~(1) Officer Involved Shootings;~~
- ~~(2) Radio Demeanor and Broadcast Techniques; and~~
- ~~(3) Any topic areas of the Sheriff's or Department Head's choosing.~~

~~(e) The 2014 Law Enforcement In-Service Training Program requires 24 credits of training and successful completion in the following topical areas:~~

- ~~(1) Legal Update;~~
- ~~(2) Juvenile Minority Sensitivity Training: A Juvenile – What Now;~~
- ~~(3) Officer Safety: The First Five Minutes;~~
- ~~(4) Firearms Training and Requalification for deputy sheriffs as set out in Section .2100 of this Subchapter; and~~
- ~~(5) Any topic areas of the Sheriff's choosing.~~

~~(f) The 2014 Detention Officer In-Service Training Program requires 16 credits of training and successful completion in the following topical areas:~~

- (1) Surviving In Custody Death;
- (2) Detention Officer Intelligence Update;
- (3) Hidden in Plain Sight: Contraband
Concealment and Delivery; and
- (4) Any topic areas of the Sheriff's or Department
Head's choosing.

(g) The 2014 Telecommunicator In-Service Training Program
requires 16 credits of training and successful completion in the
following topical areas:

- (1) Hitting the Wall: Avoiding Complacency;
- (2) Customer Service and the 911 Professional;
and
- (3) Any topic areas of the Sheriff's or Department
Head's choosing.

Authority G.S. 17E-4; 17E-7.

TITLE 15A – DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

*Notice is hereby given in accordance with G.S. 150B-21.2 that
the Coastal Resources Commission intends to amend the rule
cited as 15A NCAC 07H .0304.*

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

- ☒ **OSBM certified on:** *August 20, 2013*
- ☐ **RRC certified on:**
- ☐ **Not Required**

Link to agency website pursuant to G.S. 150B-19.1(c):
<http://www.nccostalmanagement.net/Rules/proposed.htm>

Proposed Effective Date: *February 1, 2014*

Public Hearing:

Date: *November 6, 2013*

Time: *5:00 p.m.*

Location: *Sunset Beach Fire Station, 102 Shoreline Drive West,
Sunset Beach, NC 28468*

Public Hearing:

Date: *November 12, 2013*

Time: *5:00 p.m.*

Location: *Hatteras Village Community Building, 57689
Highway 12, Hatteras, NC 27943*

Reason for Proposed Action: *The Coastal Resources
Commission is proposing to amend its administrative rules in
order to reflect physical changes in the environment that
influence how and where oceanfront development is permitted.
These changes will serve the public interest by preventing
confusion of the regulated community, protecting life and
property from the destructive forces indigenous to the Atlantic
shoreline and by removing overly restrictive development
standards from areas where they are no longer necessary.
The proposed rule amendments will remove the temporary
Unvegetated Beach (UB) designation from the area in the*

*vicinity of Hatteras Village. The existing vegetation line has
exhibited recovery since 2004 and is deemed by the CRC to be
no longer necessary for permitting purposes. The proposed
changes will also remove the Inlet Hazard Area designation
from the site formerly occupied by Mad Inlet, which closed in
1997 and is not expected to reopen.*

Comments may be submitted to: *Braxton Davis, 400
Commerce Avenue, Morehead City, NC 28557; phone (252)
808-2808*

Comment period ends: *December 12, 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**
- ☐ **Substantial economic impact (≥\$1,000,000)**
- ☒ **No fiscal note required by G.S. 150B-21.4**

CHAPTER 07 – COASTAL MANAGEMENT COMMISSION

SUBCHAPTER 07H – STATE GUIDELINES FOR AREAS OF ENVIRONMENTAL CONCERN

SECTION .0300 – OCEAN HAZARD AREAS

15A NCAC 07H .0304 AECS WITHIN OCEAN HAZARD AREAS

The ocean hazard AECs contain all of the following areas:

- (1) Ocean Erodible Area. This is the area in
which there exists a substantial possibility of
excessive erosion and significant shoreline
fluctuation. The ~~seaward~~ oceanward boundary
of this area is the mean low water line. The
landward extent of this area is determined as
follows:
 - (a) a distance landward from the first line
of stable and natural vegetation as
defined in 15A NCAC 07H

.0305(a)(5) to the recession line that would be established by multiplying the long-term annual erosion rate times 60, provided that, where there has been no long-term erosion or the rate is less than two feet per year, this distance shall be set at 120 feet landward from the first line of stable natural vegetation. For the purposes of this Rule, the erosion rates are the long-term average based on available historical data. The current long-term average erosion rate data for each segment of the North Carolina coast is depicted on maps entitled "2011 Long-Term Average Annual Shoreline Rate Update" and approved by the Coastal Resources Commission on May 5, 2011 (except as such rates may be varied in individual contested cases, declaratory or interpretive rulings). In all cases, the rate of shoreline change shall be no less than two feet of erosion per year. The maps are available without cost from any ~~local permit officer~~ Local Permit Officer or the Division of Coastal Management; and

- (b) a distance landward from the recession line established in Sub-Item (1)(a) of this Rule to the recession line that would be generated by a storm having a one percent chance of being equaled or exceeded in any given year.
- (2) The High Hazard Flood Area. This is the area subject to high velocity waters (including hurricane wave wash) in a storm having a one percent chance of being equaled or exceeded in any given year, as identified as zone V1-30 on the flood insurance rate maps of the Federal Insurance Administration, U.S. Department of Housing and Urban Development.
- (3) Inlet Hazard Area. The inlet hazard areas are natural-hazard areas that are especially vulnerable to erosion, flooding and other adverse effects of sand, wind, and water because of their proximity to dynamic ocean inlets. This area extends landward from the ~~normal mean~~ low water line a distance sufficient to encompass that area within which the inlet ~~shall~~, shall migrate, based on statistical analysis, ~~migrate~~, and shall consider such factors as previous inlet territory, structurally weak areas near the inlet and external influences such as jetties and channelization. The areas identified as suggested Inlet Hazard Areas included in the

report entitled INLET HAZARD AREAS, The Final Report and Recommendations to the Coastal Resources Commission, 1978, as amended in 1981, by Loie J. Priddy and Rick Carraway are incorporated by reference ~~without future changes~~ and are hereby designated as Inlet Hazard Areas except ~~that the Cape Fear Inlet Hazard Area as shown on the map does not extend northeast of the Baldhead Island marina entrance channel. These areas are extensions for:~~

- (a) the Cape Fear Inlet Hazard Area as shown on the map does not extend northeast of the Bald Head Island marina entrance channel; and
- (b) the former location of Mad Inlet, which closed in 1997.

In all cases, the Inlet Hazard Area shall be an extension of the adjacent ocean erodible areas and in no case shall the width of the inlet hazard area ~~are not~~ be less than the width of the adjacent ocean erodible area. This report is available for inspection at the Department of Environment and Natural Resources, Division of Coastal Management, 400 Commerce Avenue, Morehead City, North Carolina. Photo copies are available at no charge.

- (4) Unvegetated Beach Area. Beach areas within the Ocean Hazard Area where no stable natural vegetation is present may be designated as an ~~unvegetated beach area~~ Unvegetated Beach Area on either a permanent or temporary basis as follows:

- (a) An area appropriate for permanent designation as an ~~unvegetated beach area~~ Unvegetated Beach Area is a dynamic area that is subject to rapid unpredictable landform change from wind and wave action. The areas in this category shall be designated following studies by the ~~Coastal Resources Commission~~, Division of Coastal Management. These areas shall be designated on maps approved by the Coastal Resources Commission and available without cost from any ~~local permit officer~~ Local Permit Officer or the Division of Coastal Management.
- (b) An area that is suddenly unvegetated as a result of a hurricane or other major storm event may be designated as an ~~unvegetated beach area~~ Unvegetated Beach Area for a specific period of time. At the expiration of the time specified by the Coastal Resources Commission, the area shall return to its pre-storm designation.

~~The Commission designates as temporary unvegetated beach areas those oceanfront areas on Hatteras Island west of the new inlet breach in Dare County in which the vegetation line as shown on Dare County orthophotographs dated 4 February 2002 through 10 February 2002 was destroyed as a result of Hurricane Isabel on September 18, 2003 and the remnants of which were subsequently buried by the construction of an emergency berm. This designation shall continue until such time as stable, natural vegetation has reestablished or until the area is permanently designated as an unvegetated beach area pursuant to Sub Item 4(a) of this Rule.~~

Authority G.S. 113A-107; 113A-113; 113A-124.

TITLE 21 – OCCUPATIONAL LICENSING BOARD AND COMMISSIONS

CHAPTER 07 – CEMETERY COMMISSION

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Cemetery Commission intends to amend the rules cited as 21 NCAC 07A .0101, .0106; 07B .0103, .0105; 07C .0103-.0105; 07D .0101-.0102, .0104-.0105, .0201-.0203 and repeal the rules cited as 21 NCAC 07A .0103-.0104, .0201-.0205; 07B .0104.

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.nccemetery.com

Proposed Effective Date: February 1, 2014

Public Hearing:

Date: October 16, 2013

Time: 9:00 a.m.

Location: 1100 Navaho Drive, Woodoak Building, Suite 242, Raleigh, NC

Reason for Proposed Action:

21 NCAC 07A .0101, 21 NCAC 07B .0103, 21 NCAC 07C .0103, 21 NCAC 07C .0105 – These rules are proposed for amendment due to recent legislation (SB443).

21 NCAC 07A .0106, 21 NCAC 07B .0105, 21 NCAC 07C .0104, 21 NCAC 07D .0101-.0102, 21 NCAC 07D .0104-.0105, 21 NCAC 07D .0201-.0203 – These rules are proposed for amendment to add clarity/remove redundant language and/or allow for electronic submission.

21 NCAC 07A .0103-.0104, 21 NCAC 07A .0201, 21 NCAC 07A .0203-.0205, 21 NCAC 07B .0104 – These rules are proposed for repeal due to redundancy.

21 NCAC 07A .0202 – This rule is proposed for repeal due to the passing of recent legislation (SB443).

Comments may be submitted to: Vickki Tollefsen, 1001 Navaho Drive, Suite 100, Raleigh, NC 27609; phone (919) 981-2536

Comment period ends: December 2, 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
- ☐ Substantial economic impact (≥\$1,000,000)
- ☒ No fiscal note required by G.S. 150B-21.4

SUBCHAPTER 07A - ORGANIZATION

SECTION .0100 - GENERAL INFORMATION

21 NCAC 07A .0101 NAME AND ADDRESS

The North Carolina Cemetery Commission of the Department of Commerce is located in Raleigh, North Carolina. The mailing address for the Cemetery Commission is 1001 Navaho Drive, Suite 100, Raleigh, North Carolina 27609. The office is open to the public Monday through Friday, 8:00 a.m. to 5:00 p.m., excluding scheduled state holidays.

Authority G.S. 65-49; 65-51; 150B-10.

21 NCAC 07A .0103 AREAS OF RESPONSIBILITY

~~The Cemetery Commission has the power and duty to adopt rules and regulations to be followed in the enforcement of the North Carolina Cemetery Act.~~

Authority G.S. 65-49; 150B-10.

21 NCAC 07A .0104 FUNCTIONS

~~The principal function of the Cemetery Commission is to conduct examinations of all licensed cemeteries. In addition to its examination function the Cemetery Commission authorizes the establishment of and licenses cemeteries, cemetery sales organizations, cemetery management organizations, cemetery brokers, and pre-need salespeople.~~

RECOMMEND REPEAL – G.S. 65-53 SPELLS OUT THE POWERS AND DUTIES OF COMMISSION

Authority G.S. 65-49; 150B-10.

21 NCAC 07A .0106 FEES

In addition to the licensing and penalty fees provided by statute to this commission, the following fees are provided after June 1, 2004:

- (1) Two dollars (\$2.00) per grave space, mausoleum crypt, and niche when ~~deeded~~; interment, entombment or inurnment rights are conveyed;
- (2) Five dollars (\$5.00) per pre-need vault when contracted;
- (3) Five dollars (\$5.00) per each crypt in a bank of below ground crypts or lawn crypt garden when contracted. An additional two dollars (\$2.00) shall be paid for each crypt ~~when deeded~~ as provided in Item (1) of this Rule;
- (4) Five dollars (\$5.00) per pre-need ~~memorial~~; memorial when contracted;
- (5) Five dollars (\$5.00) per pre-constructed mausoleum crypt or niche when contracted. An additional two dollars (\$2.00) shall be paid for each crypt or niche ~~when deeded~~ as provided in Item 1 of this Rule;
- (6) All at need merchandise, property or services, cash or credit sales, do not require any assessments;
- (7) Five dollars (\$5.00) per ~~preneed~~ pre-need opening and closing of a grave ~~space~~. Space when contracted.

Authority G.S. 65-49; 65-54; 150B-19.

SECTION .0200 - STRUCTURE

21 NCAC 07A .0201 CEMETERY COMMISSION MEMBERS

~~The Cemetery Commission is established within the North Carolina Department of Commerce by G.S. 65-49. The Cemetery Commission consists of seven members, appointed by the Governor pursuant to G.S. 65-50.~~

Authority G.S. 65-49; 65-50.

21 NCAC 07A .0202 ADMINISTRATOR OF CEMETERY COMMISSION

~~The Administrator of the Cemetery Commission is appointed by the Governor upon recommendation of the Cemetery Commission. The administrator shall act as administrative agent~~

~~for the commission and shall have the authority to perform any act delegated by the Commission.~~

Authority G.S. 65-53(1); 150B-10.

21 NCAC 07A .0203 CEMETERY COMMISSION EXAMINERS

~~Within the Cemetery Commission there will be a staff of cemetery examiners which, under the supervision of the administrator, conducts examinations of all licensed cemeteries.~~

Authority G.S. 65-49; 150B-10.

21 NCAC 07A .0204 CLERICAL STAFF

~~Within the Cemetery Commission there is a clerical staff which accomplishes the filing, typing and clerical duties within the Commission.~~

Authority G.S. 65-49; 150B-10.

21 NCAC 07A .0205 MEETINGS

~~The Commission shall meet at least once in each quarter and more often upon the call of the chairman or written request of at least four commission members.~~

Authority G.S. 65-52; 150B-10.

SUBCHAPTER 07B – RULE-MAKING: DECLARATORY RULINGS AND CONTESTED CASES

SECTION .0100 – RULE-MAKING AND DECLARATORY RULINGS

21 NCAC 07B .0103 HEARINGS

(a) Unless otherwise stated in the particular notice of text, hearings before the North Carolina Cemetery Commission shall be held at the offices of the North Carolina Department of Commerce in Raleigh, North Carolina.

(b) Any person wishing to make an oral presentation may submit a written copy of the presentation to the ~~administrator~~ Commission office prior to or at the hearing.

(c) A request to make an oral presentation must contain a brief summary of the individual's views with respect thereto, and a statement of the length of time the individual wants to speak. Presentations may not exceed 15 minutes.

(d) Upon receipt of a request to make an oral presentation, the ~~Administrator of the~~ Cemetery Commission shall acknowledge receipt of the request, and inform the requesting person of the imposition of any limitations deemed necessary to the end that a full and effective public hearing on the proposed rule may be held.

(e) Written submissions, except when otherwise stated in the particular notice of text must be sent to:

North Carolina Cemetery Commission
1001 Navaho Drive, Suite 100
Raleigh, North Carolina 27609.

Submission must clearly state the rule(s) or proposed rule(s) to which the comments are addressed.

(f) Upon receipt of written comments, the ~~Administrator of the~~ Cemetery Commission shall make prompt acknowledgement including a statement that the comments therein will be considered fully by the Cemetery Commission.

(g) The ~~chairman~~ president of the commission, or his designate, shall have complete control of the hearing proceedings, including extension of any time requirements, recognition of speakers, time allotments for presentation, direction of the flow of the discussion, and the time management of the hearing. The ~~chairman~~, president, or his designate, at all times, shall take care that each person participating in the hearing is given a fair opportunity to present views, data and comments.

(h) Any interested person desiring a statement of the principal reason(s) for and against the adoption of a rule by the Cemetery Commission and the factors that led to the overruling of the consideration urged for or against its adoption may submit a request addressed to:

North Carolina Cemetery Commission
1001 Navaho Drive, Suite 100
Raleigh, North Carolina 27609.

Authority G.S. 65-49; 150B-21.2.

21 NCAC 07B .0104 TEMPORARY RULES

~~The North Carolina Cemetery Commission may issue temporary rules in the circumstances described in G.S. 150B-13. A temporary rule shall continue in effect for the period specified in the rule, which in no event shall be in excess of 180 days.~~

Authority G.S. 65-49; 150B-13.

21 NCAC 07B .0105 DECLARATORY RULINGS

~~(a) The Cemetery Commission shall have the sole power to make declaratory rulings. All requests for declaratory rulings shall be written and mailed to: Any person wishing to submit a request for a declaratory ruling by the Cemetery Commission shall address a petition to:~~

North Carolina Cemetery Commission
1001 Navaho Drive, Suite 100
Raleigh, North Carolina 27609.

(b) All requests for a declaratory ruling must include the following information:

- (1) name and address of petitioner;
- (2) statute or rule to which petition relates;
- (3) concise statement of the manner in which petitioner is aggrieved by the rule or statute or its potential application to him;
- (4) a statement of whether an oral hearing is desired, and if so the reasons for such an oral hearing.

(c) Whenever the Cemetery Commission believes for good cause that the issuance of a declaratory ruling is undesirable, it may refuse to do so. When good cause for refusing to issue a declaratory ruling is deemed to exist, the Cemetery Commission shall notify the petitioner of its decision in writing, stating reasons for the denial of a declaratory ruling.

(d) For purposes of Paragraph (c) of this Rule, the Cemetery Commission shall not issue a declaratory ruling:

- (1) where there has been a similar controlling factual determination in a contested case, or
- (2) where the issue is pending in a current contested case, or
- (3) where the subject matter of the request is involved in pending litigation in any state or federal court in North Carolina.

(e) A declaratory ruling procedure may consist of written submissions, oral hearings, or such other procedures as may be appropriate in a particular case.

Authority G.S. 65-49; 150B-4.

SUBCHAPTER 07C – LICENSING

SECTION .0100 – CEMETERIES

21 NCAC 07C .0103 CHANGE OF CONTROL

(a) Any entity wishing to purchase or acquire control of an existing cemetery company shall first make written application to the Cemetery Commission on the commission's Application for Change of Control. This form provides space for the name and address of the present and proposed owner, along with the name of the corporation and the name of the cemetery. This form may be obtained by writing:

North Carolina Cemetery Commission
1001 Navaho Drive, Suite 100
Raleigh, North Carolina 27609.

(b) This form must be accompanied by a five hundred dollar (\$500.00) filing fee. The commission also requires the following:

- (1) an examination by the Commission's examiners be made to establish compliance ~~to~~ with trust fund requirements, with the actual cost of the examination to be paid by the applicant. ~~The actual cost of said exam is determined by the actual mileage used to conduct said examination, and this mileage is billed based on the Motor Fleet Mileage Rate set forth in the North Carolina Department of Commerce Travel Expense Policy number FM 1. Subsistence and lodging allowed by this policy as expenses necessary to conduct a Change of Control examination shall be billed according to the rates set forth in Policy number FM 1.~~
- (2) a signed certificate assuming liabilities of the existing cemetery company;
- (3) a financial statement of the existing cemetery company showing net worth;
- (4) certification by title insurance policy or by certificate of an attorney-at-law that the cemetery land, subject to appropriate acreage requirements of G.S. 65-55(f)(3), is owned in fee simple, free of all encumbrances;
- (5) a financial statement of proposed owner, showing net worth and a statement of the proposed owner's experience in the cemetery ~~business.~~ business;

- (6) where applicable, documentation satisfactory to the Commission establishing that the applicant is and will continue to be in compliance with all laws, rules and regulations relating to bonding and other insurance policies. Such documentation shall include all old bonding policies, all existing bonding policies and written proof of the terms of any future continuance of such bonding policies;
- (7) a true and correct copy of the most recent survey and, if it exists, recorded plat of the property that is the subject of the applicant's application for change of control.

(c) No one shall take over the operation of a cemetery company in anticipation of a change of control until all necessary information concerning that change of control has been submitted to ~~the administrator of~~ the Cemetery Commission. No one shall change control of a cemetery company without first obtaining approval of the Cemetery Commission. Once a change of control has been approved by the Cemetery Commission, the change of control must be completed within 90 days of the date of the Cemetery Commission's approval. If the change of control is not completed within 90 days of the date of the Cemetery Commission's approval, then the entity wishing to effect the change of control shall make a new application to the Cemetery Commission in accordance with provisions of this Rule. Upon completion of the change of control, the entity requesting the change of control shall notify in writing ~~the administrator of~~ the Cemetery Commission of the completion. A representative of the buyer and the seller shall be present at any meeting when the commission is going to consider the change of control application.

Authority G.S. 65-49; 65-53(2); 65-55; 65-59.

21 NCAC 07C .0104 QUALITY SPECIFICATIONS

All cemeteries must file ~~by September 1, 1979~~ plans and specifications showing minimum quality standards of any vaults, crypts or markers sold.

Authority G.S. 65-49; 65-53(7).

21 NCAC 07C .0105 MEETING REQUIREMENT

Any application and all related information for a new cemetery license or a change of control of a cemetery must be received by ~~the administrator of~~ the Commission 30 regular working days before the meeting date the item is to be heard.

Authority G.S. 65-49; 65-55.

SUBCHAPTER 07D - TRUST FUNDS

SECTION .0100 - MAINTENANCE AND CARE FUNDS (PERPETUAL CARE FUNDS)

21 NCAC 07D .0101 REPORT

Each licensed cemetery shall make a report of deposits to the perpetual care fund to be completed and ~~mailed~~ submitted to the office in Raleigh by the last day of each month. The form to be

used is the Report of Grave Spaces for the Month of _____. The form provides a space for ~~deed number,~~ interment, entombment or inurnment rights number, date of ~~deed,~~ conveyance, date of contract, purchaser, lot number, section, ~~number~~ quantity of spaces ~~deeded~~ conveyed and amount due trust fund. This form may be obtained and must be returned to:

North Carolina Cemetery Commission
1001 Navaho Drive, Suite 100
Raleigh, North Carolina 27609.

Authority G.S. 65-49.

21 NCAC 07D .0102 LOCATION OF FUND

No person will be allowed to withdraw or transfer all or any portion of the corpus of the care and maintenance trust funds of any cemetery to any depository outside the State of North Carolina. Also the Commission will not approve the creation of a new perpetual care trust fund as called for under Chapter 65-55 of the General Statutes unless same is deposited with a trustee in the State of North ~~Carolina.~~ Carolina or a national institution with a presence in the State of North Carolina.

Authority G.S. 65-49; 65-55; 65-61.

21 NCAC 07D .0104 FEE FOR LATE DEPOSITS

Any ~~fine fee~~ levied under G.S. 65-64(a) shall be one dollar (\$1.00) a day for each ~~grave space, niche, and mausoleum crypt~~ interment, entombment or inurnment space a deposit is delinquent on subject to a maximum ~~fine fee~~ of one hundred per cent of the amount that was or is late to the care and maintenance trust fund.

- (1) The first time a delinquency is found the cemetery will receive a 20 day notice in writing to cure the violation regardless of whether or not the delinquency was corrected before an examination by this Commission. The ~~fine fee~~ will start on the 21st day after notice of the violation if the money has not been deposited.
- (2) Once a cemetery has received one 20 day notice, the ~~fine fee~~ for any later delinquency will begin running on the first day of delinquency. No notice of delinquency need be sent before a ~~fine fee~~ is incurred, and the ~~fine fee~~ may reach the maximum amount of one hundred percent of the amount that was or is owed or deposited late to the care and maintenance trust fund before the delinquency is discovered.
- (3) A cemetery which has not been notified of or ~~fined~~ levied a fee for a delinquency within the last five years will receive a new 20 day notice in the event of any delinquency.
- (4) In the event a delinquency is found in a cemetery's care and maintenance trust fund and the cemetery does not make up the deposit, if still owed, and/or the ~~fine fee~~ within 20 days after notice from the Commission that

a fine fee is due, then the Commission will take immediate steps to revoke the cemetery's license.

- (5) ~~It is the intent and policy of this Commission to levy a fine only for substantial, flagrant, or repeated late or delinquent deposits.~~

Authority G.S. 65-49; 65-54(a).

21 NCAC 07D .0105 DEPOSIT FOR MULTIPLE BURIALS

(a) ~~Each grave space will require one care and maintenance trust fund deposit regardless of the number of interments to be made in the space.~~

(b) ~~Each mausoleum crypt will require one care and maintenance trust fund deposit for each casket space.~~

(c) ~~Each niche will require one care and maintenance trust fund deposit for each set of cremated remains to be inurned in the niche, except if two or more cremated remains are to be used there will be only one deposit if the niche was sold on one contract.~~

Each interment, entombment or inurnment right shall require a deposit to the care and maintenance trust fund.

Authority G.S. 65-49.

SECTION .0200 – PRE-NEED CEMETERY MERCHANDISE: PRE-CONSTRUCTED MAUSOLEUMS AND BELOW GROUND CRYPTS TRUST FUNDS

21 NCAC 07D .0201 REPORT

Each licensed cemetery shall make a report of deposits to the pre-need cemetery merchandise and pre-constructed mausoleum and below ground crypt trust fund to be completed and mailed submitted to the office in Raleigh by the last day of each month. The form to be used is the "Monthly Report and Deposit Record for Pre-need Cemetery Merchandise, Pre-Constructed Mausoleums and Services Not Delivered." This form provides space for trustee's name, fund account number and the name of the savings institution used. It also provides space for the name of the purchaser, date of the contract, number of the contract, the full sales price, the total amount required, the amount deposited, and the total amount deposited to date. Copies of this form may be obtained from and must be returned to:

North Carolina Cemetery Commission
1001 Navaho Drive, Suite 100
Raleigh, North Carolina 27609.

Authority G.S. 65-49.

21 NCAC 07D .0202 DELIVERY

(a) Vaults and crypts are not considered delivered unless installed or stored on the cemetery premises or stored off premises by a supplier. ~~If vaults are not to be installed, the contract between the cemetery and purchaser must so state in bold print that the purchaser has accepted above ground delivery. If a vault is to be installed, then the contract must be broken down into sales cost and installation cost. All vault sales~~

are considered to include installation unless installation cost is itemized in the contract.

(b) Markers, bases and vases are not considered delivered unless installed or stored at the cemetery or if stored off premises by a supplier, there shall be no additional charge for delivery or freight, unless specified in bold print in the contract. If vaults, crypts or other merchandise are stored off premises, the cemetery company must submit to the Cemetery Commission not less than annually a report by a certified public accountant of each item which has been purchased through a North Carolina cemetery company and which at the date of the report was then in storage and designated the property of the cemetery company's customer and not the property of the supplier. If vaults, crypts or other merchandise are stored at the cemetery, the cemetery company must submit to the Cemetery Commission not less than annually a report by ~~a certified public~~ an accountant of each item which has been purchased and which at the date of the report was then in storage and designated the property of the cemetery company's customer.

(c) ~~If opening and closing of crypts at the time of interment are not included in the cost of this merchandise, then that must be so stated in bold print on the contract between the cemetery and purchaser.~~

Authority G.S. 65-49; 65-66.

21 NCAC 07D .0203 TRUST ACCOUNTS

(a) ~~Trust accounts must be established pursuant to an agreement with a financial institution that withdrawals may be made only with the signature of both the cemetery company's designee and the North Carolina Cemetery Commission's authorized designee. Trust accounts must be clearly designated as trust accounts. For the purposes of withdrawal, the Administrator of the North Carolina Cemetery Commission shall be the cemetery commission's authorized designee. Withdrawal requests in accordance with G.S. 65-66(b)(4) shall be made no more frequently than once per month.~~

(b) ~~These trust accounts are not joint accounts, however, they are restricted accounts that require the Commission's authorized designee to sign before any withdrawal is made. Full disclosure of the amount in the trust account shall be made available within two business days upon request by the Commission, corporate trustee or financial institution.~~

(c) ~~The cemetery company must file a statement with the North Carolina Cemetery Commission setting out the name and the position or title of anyone who is authorized to sign for withdrawals from the account for the cemetery company. Interest earned on trust accounts may be used to fund future deposits or may be withdrawn with the prior written approval of the Commission.~~

(d) ~~These withdrawals can be made no more frequent than once a month. The cemetery company must give the North Carolina Cemetery Commission 20 days written notice of any proposed withdrawal, stating the amount to be withdrawn and the justification for withdrawal.~~

(e) ~~Full disclosure of the amount in the trust account must be made available to the North Carolina Cemetery Commission by the financial institution any time during the financial institution's normal business hours. A copy of each cemetery company's~~

~~pre-need contract must be on file with the Commission before any withdrawals can be authorized.~~

~~(f) Interest earned on trust accounts may be used to offset future deposits or may be withdrawn with the written approval of the Administrator.~~

Authority G.S. 65-49; 65-66(b)(4).

CHAPTER 16 – BOARD OF DENTAL EXAMINERS

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Board of Dental Examiners intends to amend the rules cited as 21 NCAC 16Q .0303.

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.ncdentalboard.org

Proposed Effective Date: February 1, 2014

Public Hearing:

Date: November 14, 2013

Time: 6:30 p.m.

Location: Dental Board office, 507 Airport Blvd., Ste. 105, Morrisville, NC 27560

Reason for Proposed Action: *The Dental Board proposes to amend 21 NCAC 16Q .0303 to clarify that applicants for sedation permits may obtain a temporary permit for up to 90 days only and that applicants who do not complete the requirements for a permanent permit within 90 days must reapply and will not be given another temporary permit.*

Comments may be submitted to: Bobby D. White, Chief Operations Officer, 507 Airport Blvd., Ste. 105, Morrisville, NC 27560

Comment period ends: December 2, 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
- ☐ Substantial economic impact (≥\$1,000,000)
- ☒ No fiscal note required by G.S. 150B-21.4

SUBCHAPTER 16Q – GENERAL ANESTHESIA AND SEDATION

SECTION .0300 – PARENTERAL CONSCIOUS SEDATION

21 NCAC 16Q .0303 TEMPORARY APPROVAL PRIOR TO SITE INSPECTION

(a) If a dentist meets the requirements of Paragraphs (a) – (e) of Rule .0301 of this Subchapter, he/she shall be granted temporary approval to administer moderate conscious ~~sedation~~ sedation, or moderate pediatric conscious sedation until a permit can be issued. If a dentist meets the requirements of Paragraph (j) of Rule .0301 of this Subchapter, he/she shall be granted temporary approval to administer moderate conscious sedation limited to oral routes and nitrous oxide inhalation. Temporary approval may be granted based solely on credentials until all processing and investigation has been completed. ~~Temporary approval may not exceed three months. The temporary approval will expire after 90 days. Extensions will not be granted. An applicant who fails to complete the requirements within the time allowed by this Rule must re-apply for a permit and will not be eligible for temporary approval.~~ An on-site evaluation of the facilities, equipment, procedures, and personnel shall be required prior to issuance of a permanent permit. The evaluation shall be conducted in accordance with Rules .0204 - .0205 of this Subchapter, except that evaluations of dentists applying for moderate conscious sedation permits may be conducted by dentists who have been issued moderate conscious sedation permits by the Board and who have been approved by the Board, as set out in these Rules. A two hundred seventy five dollar (\$275.00) inspection fee shall be collected for each site inspected pursuant to this Rule.

(b) An inspection may be made upon renewal of the permit or for cause.

(c) Temporary approval shall not be granted to a provisional licensee or applicants who are the subject of a pending Board disciplinary investigation or whose licenses have been revoked, suspended or are subject to an order of stayed suspension or probation.

Authority G.S. 90-28; 90-30.1.

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

Rules approved by the Rules Review Commission at its meeting on August 15, 2013.

**REGISTER CITATION TO THE
NOTICE OF TEXT**

HOME INSPECTOR LICENSURE BOARD

<u>Electrical</u>	11	NCAC	08	.1110*	27:18 NCR
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ENVIRONMENTAL MANAGEMENT COMMISSION

<u>Prevention of Significant Deterioration</u>	15A	NCAC	02D	.0530*	27:11 NCR
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<u>Sources In Nonattainment Areas</u>	15A	NCAC	02D	.0531*	27:11 NCR
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COASTAL RESOURCES COMMISSION

<u>General Use Standards for Ocean Hazard Areas</u>	15A	NCAC	07H	.0306*	27:18 NCR
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<u>Technical Standards for Beach Fill Projects</u>	15A	NCAC	07H	.0312*	27:19 NCR
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WILDLIFE RESOURCES COMMISSION

<u>Beaufort County</u>	15A	NCAC	10F	.0303*	27:20 NCR
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<u>Perquimans County</u>	15A	NCAC	10F	.0355*	27:20 NCR
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BARBER EXAMINERS, BOARD OF

<u>Office Hours</u>	21	NCAC	06A	.0103	27:15 NCR
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<u>Executive Director</u>	21	NCAC	06A	.0301*	27:15 NCR
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<u>Duties of Executive Director</u>	21	NCAC	06A	.0303*	27:15 NCR
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<u>Disqualification</u>	21	NCAC	06C	.0907*	27:15 NCR
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<u>Physical Structure</u>	21	NCAC	06F	.0101*	27:15 NCR
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<u>Students with Criminal Records</u>	21	NCAC	06F	.0116*	27:15 NCR
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<u>Duties and Responsibilities</u>	21	NCAC	06H	.0101*	27:15 NCR
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<u>Apprentice Barber</u>	21	NCAC	06I	.0105*	27:15 NCR
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<u>Registered Apprentice</u>	21	NCAC	06J	.0101*	27:15 NCR
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<u>Out-of-State Applicants</u>	21	NCAC	06K	.0104*	27:15 NCR
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<u>Equipment</u>	21	NCAC	06L	.0103*	27:15 NCR
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<u>Policy Prohibiting Pets</u>	21	NCAC	06L	.0114*	27:15 NCR
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<u>Sanitary Ratings and Posting of Ratings</u>	21	NCAC	06L	.0118*	27:15 NCR
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<u>Systems of Grading Barber Shops</u>	21	NCAC	06L	.0119*	27:15 NCR
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<u>Qualifications</u>	21	NCAC	06M	.0101*	27:15 NCR
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<u>Duties and Responsibilities</u>	21	NCAC	06M	.0102*	27:15 NCR
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<u>Form Bar-3</u>	21	NCAC	06N	.0104*	27:15 NCR
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<u>Form Bar-4</u>	21	NCAC	06N	.0105*	27:15 NCR
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<u>Form Bar-5</u>	21	NCAC	06N	.0106*	27:15 NCR
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<u>Form Bar-7</u>	21	NCAC	06N	.0108*	27:15 NCR
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<u>Form Bar-8</u>	21	NCAC	06N	.0109*	27:15 NCR
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TITLE 11 – DEPARTMENT OF INSURANCE

11 NCAC 08 .1110 ELECTRICAL

- (a) The home inspector shall inspect:
- (1) Electrical service entrance conductors;
 - (2) Electrical service equipment, grounding equipment, main overcurrent device, and main and distribution panels;
 - (3) Amperage and voltage ratings of the electrical service;
 - (4) Branch circuit conductors, their overcurrent devices, and the compatibility of their ampacities;
 - (5) The operation of a representative number of installed ceiling fans, lighting fixtures, switches and receptacles located inside the house, garage, and on the dwelling's exterior walls;
 - (6) The polarity and grounding of all receptacles within six feet of interior plumbing fixtures, and all receptacles in the garage or carport, and on the exterior of inspected structures;
 - (7) The operation of ground fault circuit interrupters; and
 - (8) Smoke detectors and permanently installed carbon monoxide alarms.
- (b) The home inspector shall describe:
- (1) Electrical service amperage and voltage;
 - (2) Electrical service entry conductor materials;
 - (3) The electrical service type as being overhead or underground; and
 - (4) The location of main and distribution panels.
- (c) The home inspector shall report in writing the presence of any readily accessible single strand aluminum branch circuit wiring.
- (d) The home inspector shall report in writing on the presence or absence of smoke detectors, and permanently installed carbon monoxide alarms in any homes with fuel fired appliances or attached garages, and operate their test function, if accessible, except when detectors are part of a central alarm system.
- (e) The home inspector is not required to:
- (1) Insert any tool, probe, or testing device inside the panels;
 - (2) Test or operate any overcurrent device except ground fault circuit interrupters;
 - (3) Dismantle any electrical device or control other than to remove the covers of the main and auxiliary distribution panels; or
 - (4) Inspect:
 - (A) Low voltage systems;
 - (B) Security systems and heat detectors;
 - (C) Telephone, security, cable TV, intercoms, or other ancillary wiring that is not a part of the primary electrical distribution system;
 - (D) Built-in vacuum equipment;
 - (E) Back up electrical generating equipment; or

- (F) Other alternative electrical generating or renewable energy systems such as solar, wind or hydro power.

History Note: Authority G.S. 143-151.49; 143-151.58; Codifier determined that agency findings did not meet criteria for temporary rule Eff. October 15, 1996; Temporary Adoption Eff. October 24, 1996; Eff. July 1, 1998; Amended Eff. September 1, 2013; February 1, 2007; April 1, 2005.

TITLE 15A – DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

15A NCAC 02D .0530 PREVENTION OF SIGNIFICANT DETERIORATION

- (a) The purpose of the Rule is to implement a program for the prevention of significant deterioration of air quality as required by 40 CFR 51.166.
- (b) For the purposes of this Rule, the definitions contained in 40 CFR 51.166(b) and 40 CFR 51.301 apply, except the definition of "baseline actual emissions." For the purposes of this Rule:
- (1) "Baseline actual emissions" means the rate of emissions, in tons per year, of a regulated new source review (NSR) pollutant, as determined in accordance with Parts (A) through (C) of this Subparagraph:
 - (A) For an existing emissions unit, baseline actual emissions means the average rate, in tons per year, at which the emissions unit actually emitted the pollutant during any consecutive 24-month period selected by the owner or operator within the five year period immediately preceding the date that a complete permit application is received by the Division for a permit required under this Rule. The Director shall allow a different time period, not to exceed 10 years immediately preceding the date that a complete permit application is received by the Division, if the owner or operator demonstrates that it is more representative of normal source operation. For the purpose of determining baseline actual emissions, the following apply:
 - (i) The average rate shall include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions;

- (ii) The average rate shall be adjusted downward to exclude any non-compliant emissions that occurred while the source was operating above any emission limitation that was legally enforceable during the consecutive 24-month period;
- (iii) For an existing emission unit (other than an electric utility steam generating unit), the average rate shall be adjusted downward to exclude any emissions that would have exceeded an emission limitation with which the major stationary source must currently comply. However, if the State has taken credit in an attainment demonstration or maintenance plan consistent with the requirements of 40 CFR 51.165(a)(3)(ii)(G) for an emission limitation that is part of a maximum achievable control technology standard that the Administrator proposed or promulgated under Part 63 in Title 40 of the Code of Federal Regulations, the baseline actual emissions shall be adjusted to account for such emission reductions;
- (iv) For an electric utility steam generating unit, the average rate shall be adjusted downward to reflect any emissions reductions under G.S. 143-215.107D and for which cost recovery is sought pursuant to G.S. 62-133.6;
- (v) For a regulated NSR pollutant, when a project involves multiple emissions units, only one consecutive 24-month period shall be used to determine the baseline actual emissions for all the emissions units being changed. A different consecutive 24-month period for each regulated NSR pollutant can be used for each regulated NSR pollutant; and
- (vi) The average rate shall not be based on any consecutive 24-month period for which there is inadequate information for determining annual emissions, in tons per year, and for adjusting this amount if required by Subparts (ii) and (iii) of this Part;
- (B) For a new emissions unit, the baseline actual emissions for purposes of determining the emissions increase that will result from the initial construction and operation of such unit shall equal zero; and thereafter, for all other purposes, shall equal the unit's potential to emit; and
- (C) For a plantwide applicability limit (PAL) for a stationary source, the baseline actual emissions shall be calculated for existing emissions units in accordance with the procedures contained in Part (A) of this Subparagraph, and for a new emissions unit in accordance with the procedures contained in Part (B) of this Subparagraph;
- (2) In the definition of "net emissions increase," the reasonable period specified in 40 CFR 51.166(b)(3)(ii) is seven years;
- (3) The limitation specified in 40 CFR 51.166(b)(15)(ii) does not apply; and
- (4) Particulate matter PM_{2.5} significant levels in 40 CFR 51.166(b)(23)(i) are incorporated by reference except as otherwise provided in this Rule. Sulfur dioxide (SO₂) and nitrogen oxides (NO_x) are precursors to PM_{2.5} in all attainment and unclassifiable areas. Volatile organic compounds and ammonia are not significant precursors to PM_{2.5}.
- (c) All areas of the State are classified as Class II, except the following areas, which are designated as Class I:
 - (1) Great Smoky Mountains National Park;
 - (2) Joyce Kilmer Slickrock National Wilderness Area;
 - (3) Linville Gorge National Wilderness Area;
 - (4) Shining Rock National Wilderness Area; and
 - (5) Swanquarter National Wilderness Area.
- (d) Redesignations of areas to Class I or II may be submitted as state proposals to the Administrator of the Environmental Protection Agency (EPA), if the requirements of 40 CFR 51.166(g)(2) are met. Areas may be proposed to be redesignated as Class III if the requirements of 40 CFR 51.166(g)(3) are met. Redesignations may not, however, be proposed which would violate the restrictions of 40 CFR 51.166(e). Lands within the

boundaries of Indian Reservations may be redesignated only by the appropriate Indian Governing Body.

(e) In areas designated as Class I, II, or III, increases in pollutant concentration over the baseline concentration shall be limited to the values set forth in 40 CFR 51.166(c) and Paragraph (v) of this Rule. However, concentration of the pollutant shall not exceed standards set forth in 40 CFR 51.166(d).

(f) Concentrations attributable to the conditions described in 40 CFR 51.166(f)(1) shall be excluded in determining compliance with a maximum allowable increase. However, the exclusions referred to in 40 CFR 51.166(f)(1)(i) or (ii) shall be limited to five years as described in 40 CFR 51.166(f)(2).

(g) Major stationary sources and major modifications shall comply with the requirements contained in 40 CFR 51.166 (a)(7) and (i) and by extension in 40 CFR 51.166(j) through (o) and (w). The transition provisions allowed by 40 CFR 52.21(i)(11)(i) and (ii) and (m)(1)(vii) and (viii) are hereby adopted under this Rule. The minimum requirements described in the portions of 40 CFR 51.166 referenced in this Paragraph are hereby adopted as the requirements to be used under this Rule, except as otherwise provided in this Rule. Wherever the language of the portions of 40 CFR 51.166 referenced in this Paragraph speaks of the "plan," the requirements described therein shall apply to the source to which they pertain, except as otherwise provided in this Rule. Whenever the portions of 40 CFR 51.166 referenced in this Paragraph provide that the State plan may exempt or not apply certain requirements in certain circumstances, those exemptions and provisions of nonapplicability are also hereby adopted under this Rule. However, this provision shall not be interpreted so as to limit information that may be requested from the owner or operator by the Director as specified in 40 CFR 51.166(n)(2).

(h) New natural gas-fired electrical utility generating units for which cost recovery is sought pursuant to G.S. 62-133.6 shall install best available control technology for NO_x and SO₂, regardless of applicability of the rest of this Rule.

(i) For the purposes of this Rule, 40 CFR 51.166(w)(10)(iv)(a) reads: "If the emissions level calculated in accordance with Paragraph (w)(6) of this Section is equal to or greater than 80 percent of the PAL level, the Director shall renew the PAL at the same level." 40 CFR 51.166(w)(10)(iv)(b) is not incorporated by reference.

(j) 15A NCAC 02Q .0102 and .0302 are not applicable to any source to which this Rule applies. The owner or operator of the sources to which this Rule applies shall apply for and receive a permit as required in 15A NCAC 02Q .0300 or .0500.

(k) When a particular source or modification becomes a major stationary source or major modification solely by virtue of a relaxation in any enforceable limitation which was established after August 7, 1980, on the capacity of the source or modification to emit a pollutant, such as a restriction on hours of operation, then the provisions of this Rule shall apply to the source or modification as though construction had not yet begun on the source or modification.

(l) For the purposes of this Rule, the provisions of 40 CFR 52.21(r)(2) regarding the period of validity of approval to construct are incorporated by reference except that the term "Administrator" is replaced with "Director".

(m) Volatile organic compounds exempted from coverage in 40 CFR 51.100(s) shall be exempted when calculating source applicability and control requirements under this Rule.

(n) The degree of emission limitation required for control of any air pollutant under this Rule shall not be affected by:

- (1) that amount of a stack height, not in existence before December 31, 1970, that exceeds good engineering practice; or
- (2) any other dispersion technique not implemented before December 31, 1970.

(o) A substitution or modification of a model as provided for in 40 CFR 51.166(l) is subject to public comment procedures in accordance with the requirements of 40 CFR 51.102.

(p) Permits may be issued on the basis of innovative control technology as set forth in 40 CFR 51.166(s)(1) if the requirements of 40 CFR 51.166(s)(2) have been met, subject to the condition of 40 CFR 51.166(s)(3), and with the allowance set forth in 40 CFR 51.166(s)(4).

(q) If a source to which this Rule applies impacts an area designated Class I by requirements of 40 CFR 51.166(e), notice to EPA shall be provided as set forth in 40 CFR 51.166(p)(1). If the Federal Land Manager presents a demonstration described in 40 CFR 51.166(p)(3) during the public comment period or public hearing to the Director and if the Director concurs with this demonstration, the permit application shall be denied. Permits may be issued on the basis that the requirements for variances as set forth in 40 CFR 51.166(p)(4), (p)(5) and (p)(7), or (p)(6) and (p)(7) have been satisfied. Pursuant to 40 CFR 51.166(p)(4), Class I Variances, and this Paragraph, the maximum allowable increases in micrograms per cubic meter over minor source baseline concentration for particulate matter are as follows:

Class I variances – Particulate Matter		
Indicator	Averaging Period	micrograms per cubic meter
PM _{2.5}	Annual arithmetic mean	4
PM _{2.5}	24 hour maximum	9
PM ₁₀	Annual arithmetic mean	17
PM ₁₀	24 hour maximum	30

(r) A permit application subject to this Rule shall be processed in accordance with the procedures and requirements of 40 CFR 51.166(q). Within 30 days of receipt of the application, applicants shall be notified if the application is complete as to initial information submitted. Commencement of construction before full prevention of significant deterioration approval is obtained constitutes a violation of this Rule.

(s) Approval of an application with regard to the requirements of this Rule does not relieve the owner or operator of the responsibility to comply with applicable provisions of other rules of this Subchapter or Subchapter 02Q of this Title and any other requirements under local, state, or federal law.

(t) When a source or modification is subject to this Rule the following procedures apply:

- (1) Notwithstanding any other provisions of this Paragraph, the Director shall, no later than 60 days after receipt of an application, notify the Federal Land Manager with the U.S. Department of Interior and U.S. Department of Agriculture of an application from a source or modification subject to this Rule;
- (2) When a source or modification may affect visibility of a Class I area, the Director shall provide written notification to all affected Federal Land Managers within 30 days of receiving the permit application or within 30 days of receiving advance notification of an application. The notification shall be given at least 30 days prior to the publication of notice for public comment on the application. The notification shall include a copy of all information relevant to the permit application, including an analysis provided by the source of the potential impact of the proposed source on visibility;
- (3) The Director shall consider any analysis concerning visibility impairment performed by the Federal Land Manager if the analysis is received within 30 days of notification. If the Director finds that the analysis of the Federal Land Manager fails to demonstrate to the Director's satisfaction that an adverse impact on visibility will result in the Class I area, the Director shall follow the public hearing process described in 40 CFR 51.307(a)(3) on the application and include an explanation of the Director's decision or notice as to where the explanation can be obtained; and
- (4) The Director may require monitoring of visibility in or around any Class I area by the proposed new source or modification when the visibility impact analysis indicates possible visibility impairment.

(u) If the owner or operator of a source is using projected actual emissions to avoid applicability of prevention of significant deterioration requirements, the owner or operator shall notify the Director of the modification before beginning actual construction. The notification shall include:

- (1) a description of the project;
- (2) identification of sources whose emissions could be affected by the project;
- (3) the calculated projected actual emissions and an explanation of how the projected actual emissions were calculated, including identification of emissions excluded by 40 CFR 51.166(b)(40)(ii)(c);
- (4) the calculated baseline actual emissions and an explanation of how the baseline actual emissions were calculated; and
- (5) any netting calculations, if applicable.

If upon reviewing the notification, the Director finds that the project will cause a prevention of significant deterioration evaluation, the Director shall notify the owner or operator of his

or her findings. The owner or operator shall not make the modification until a permit has been issued pursuant to this Rule. If a permit revision is not required pursuant to this Rule, the owner or operator shall maintain records of annual emissions in tons per year, on a calendar year basis related to the modifications, for 10 years following resumption of regular operations after the change if the project involves increasing the emissions unit's design capacity or its potential to emit the regulated NSR pollutant; otherwise, these records shall be maintained for five years following resumption of regular operations after the change. The owner or operator shall submit a report to the Director within 60 days after the end of each year during which these records must be generated. The report shall contain the items listed in 40 CFR 51.166(r)(6)(v)(a) through (c). The owner or operator shall make the information documented and maintained under this Paragraph available to the Director or the general public pursuant to the requirements in 40 CFR 70.4(b)(3)(viii).

(v) Increments. For particulate matter, the maximum allowable increases in micrograms per cubic meter over the baseline concentration for areas classified as Class I, Class II and Class III shall be as follows:

Increments - Particulate Matter				
Indicator	Averaging Period	Class I	Class II	Class III
PM _{2.5}	Annual arithmetic mean	1	4	8
PM _{2.5}	24 hour maximum	2	9	18
PM ₁₀	Annual arithmetic mean	4	17	34
PM ₁₀	24 hour maximum	8	30	60

(w) The references to the Code of Federal Regulations (CFR) in this Rule are incorporated by reference unless a specific reference states otherwise. The version of the CFR incorporated in this Rule is that as of May 16, 2008 at <http://www.gpo.gov/fdsys/pkg/FR-2008-05-16/pdf/E8-10768.pdf> and does not include any subsequent amendments or editions to the referenced material. The publication may be accessed free of charge.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(3); 143-215.107(a)(5); 143-215.107(a)(7); 143-215.108(b);

Eff. June 1, 1981;

Amended Eff. December 1, 1992; August 1, 1991; October 1, 1989; July 1, 1988; October 1, 1987; June 1, 1985; January 1, 1985; February 1, 1983;

Temporary Amendment Eff. March 8, 1994, for a period of 180 days or until the permanent rule is effective, whichever is sooner;

Amended Eff. September 1, 2013; January 2, 2011; September 1, 2010; May 1, 2008; July 28, 2006; July 1, 1997; February 1, 1995; July 1, 1994.

15A NCAC 02D .0531 SOURCES IN NONATTAINMENT AREAS

(a) For the purpose of this Rule, the definitions contained in 40 CFR 51.165(a)(1) and 40 CFR 51.301 apply, except the definition of "baseline actual emissions." For the purposes of this Rule:

- (1) "Baseline actual emissions" means the rate of emissions, in tons per year, of a regulated new source review (NSR) pollutant, as determined in accordance with Parts (A) through (C) of this Subparagraph:

(A) For an existing emissions unit, baseline actual emissions means the average rate, in tons per year, at which the emissions unit actually emitted the pollutant during any consecutive 24-month period selected by the owner or operator within the five year period immediately preceding the date that a complete permit application is received by the Division for a permit required under this Rule. The Director shall allow a different time period, not to exceed 10 years immediately preceding the date that a complete permit application is received by the Division, if the owner or operator demonstrates that it is more representative of normal source operation. For the purpose of determining baseline actual emissions, the following apply:

- (i) The average rate shall include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions;
- (ii) The average rate shall be adjusted downward to exclude any non-compliant emissions that occurred while the source was operating above any emission limitation that was legally enforceable during the consecutive 24-month period;
- (iii) For an existing emission unit (other than an electric utility steam generating unit), the average rate shall be adjusted downward to exclude any emissions that would have exceeded an emission limitation with which the major stationary source must currently

comply. However, if the State has taken credit in an attainment demonstration or maintenance plan consistent with the requirements of 40 CFR 51.165(a)(3)(ii)(G) for an emission limitation that is part of a maximum achievable control technology standard that the Administrator proposed or promulgated under Part 63 in Title 40 of the Code of Federal Regulations, the baseline actual emissions shall be adjusted to account for such emission reductions;

- (iv) For an electric utility steam generating unit, the average rate shall be adjusted downward to reflect any emissions reductions under G.S. 143-215.107D and for which cost recovery is sought pursuant to G.S. 62-133.6;

- (v) For a regulated NSR pollutant, when a project involves multiple emissions units, only one consecutive 24-month period shall be used to determine the baseline actual emissions for all the emissions units being changed. A different consecutive 24-month period can be used for each regulated NSR pollutant; and

- (vi) The average rate shall not be based on any consecutive 24-month period for which there is inadequate information for determining annual emissions, in tons per year, and for adjusting this amount if required by Subparts (ii) and (iii) of this Part;

- (B) For a new emissions unit, the baseline actual emissions for purposes of determining the emissions increase that will result from the initial construction and operation of such unit shall equal zero; and thereafter, for all other purposes, shall equal the unit's potential to emit; and

- (C) For a plantwide applicability limit (PAL) for a stationary source, the

baseline actual emissions shall be calculated for existing emissions units in accordance with the procedures contained in Part (A) of this Subparagraph, and for a new emissions unit in accordance with the procedures contained in Part (B) of this Subparagraph;

- (2) In the definition of "net emissions increase," the reasonable period specified in 40 CFR 51.165(a)(1)(vi)(C)(1) is seven years; and
 - (3) Particulate matter PM_{2.5} significant levels in 40 CFR 51.165(a)(1)(x)(A) are incorporated by reference except as otherwise provided in this Rule. Sulfur dioxide (SO₂) and nitrogen oxides (NO_x) are precursors to PM_{2.5} in all nonattainment areas. Volatile organic compounds and ammonia are not significant precursors to PM_{2.5}.
- (b) Redesignation to Attainment. If any county or part of a county to which this Rule applies is later designated in 40 CFR 81.334 as attainment, all sources in that county subject to this Rule before the redesignation date shall continue to comply with this Rule.

(c) Applicability. 40 CFR 51.165(a)(2) is incorporated by reference. This Rule applies to areas designated as nonattainment in 40 CFR 81.334, including any subsequent amendments or editions.

(d) This Rule is not applicable to:

- (1) complex sources of air pollution regulated only under Section .0800 of this Subchapter and not under any other rule in this Subchapter;
- (2) emission of pollutants at the new major stationary source or major modification located in the nonattainment area that are pollutants other than the pollutant or pollutants for which the area is nonattainment. (A major stationary source or major modification that is major for volatile organic compounds or nitrogen oxides is also major for ozone.);
- (3) emission of pollutants for which the source or modification is not major;
- (4) a new source or modification that qualifies for exemption under the provision of 40 CFR 51.165(a)(4); or
- (5) emission of compounds listed under 40 CFR 51.100(s) as having been determined to have negligible photochemical reactivity except carbon monoxide.

(e) 15A NCAC 02Q .0102 and .0302 are not applicable to any source to which this Rule applies. The owner or operator of the source shall apply for and receive a permit as required in 15A NCAC 02Q .0300 or .0500.

(f) To issue a permit to a source to which this Rule applies, the Director shall determine that the source meets the following requirements:

- (1) The new major stationary source or major modification will emit the nonattainment

pollutant at a rate no more than the lowest achievable emission rate;

- (2) The owner or operator of the proposed new major stationary source or major modification has demonstrated that all major stationary sources in the State that are owned or operated by this person (or any entity controlling, controlled by, or under common control with this person) are subject to emission limitations and are in compliance, or on a schedule for compliance that is federally enforceable or contained in a court decree, with all applicable emission limitations and standards of this Subchapter that EPA has authority to approve as elements of the North Carolina State Implementation Plan for Air Quality;

- (3) The owner or operator of the proposed new major stationary source or major modification will obtain sufficient emission reductions of the nonattainment pollutant from other sources in the nonattainment area so that the emissions from the new major source and any associated new minor sources will be less than the emissions reductions by a ratio of at least 1.00 to 1.15 for volatile organic compounds and nitrogen oxides and by a ratio of less than one to one for carbon monoxide. The baseline for this emission offset shall be the actual emissions of the source from which offset credit is obtained. Emission reductions shall not include any reductions resulting from compliance (or scheduled compliance) with applicable rules in effect before the application. The difference between the emissions from the new major source and associated new minor sources of carbon monoxide and the emission reductions shall be sufficient to represent reasonable further progress toward attaining the National Ambient Air Quality Standards. The emissions reduction credits shall also conform to the provisions of 40 CFR 51.165(a)(3)(ii)(A) through (G) and (J); and
- (4) The North Carolina State Implementation Plan for Air Quality is being carried out for the nonattainment area in which the proposed source is located.

(g) New natural gas-fired electrical utility generating units for which cost recovery is sought pursuant to G.S. 62-133.6 shall install lowest achievable emission rate technology for NO_x and SO₂, regardless of the applicability of the rest of this Rule.

(h) For the purposes of this Rule, 40 CFR 51.165(f) is incorporated by reference except that 40 CFR 51.165(f)(10)(iv)(A) reads: "If the emissions level calculated in accordance with Paragraph (f)(6) of this Section is equal to or greater than 80 percent of the PAL level, the Director shall renew the PAL at the same level." 40 CFR 51.165(f)(10)(iv)(B) is not incorporated by reference.

(i) When a particular source or modification becomes a major stationary source or major modification solely by virtue of a relaxation in any enforceable limitation established after August 7, 1980, on the capacity of the source or modification to emit a pollutant, such as a restriction on hours of operation, then the provisions of this Rule shall apply to the source or modification as though construction had not yet begun on the source or modification.

(j) To issue a permit to a source of a nonattainment pollutant, the Director shall determine, in accordance with Section 173(a)(5) of the Clean Air Act and in addition to the other requirements of this Rule, that an analysis (produced by the permit applicant) of alternative sites, sizes, production processes, and environmental control techniques for the source demonstrates that the benefits of the source significantly outweigh the environmental and social costs imposed as a result of its location, construction, or modification.

(k) For the purposes of this Rule, the provisions of 40 CFR 52.21(r)(2) regarding the period of validity of approval to construct are incorporated by reference except that the term "Administrator" is replaced with "Director."

(l) Approval of an application regarding the requirements of this Rule does not relieve the owner or operator of the responsibility to comply with applicable provisions of other rules of this Chapter and any other requirements under local, state, or federal law.

(m) Except as provided in 40 CFR 52.28(c)(6), for a source or modification subject to this Rule the following procedures shall be followed:

(1) Notwithstanding any other provisions of this Paragraph, the Director shall, no later than 60 days after receipt of an application, notify the Federal Land Manager with the U.S. Department of Interior and U.S. Department of Agriculture of an application from a source or modification subject to this Rule;

(2) The owner or operator of the source shall provide an analysis of the impairment to visibility that would occur because of the source or modification and general commercial, industrial and other growth associated with the source or modification;

(3) When a source or modification may affect the visibility of a Class I area, the Director shall provide written notification to all affected Federal Land Managers within 30 days of receiving the permit application or within 30 days of receiving advance notification of an application. The notification shall be given at least 30 days before the publication of the notice for public comment on the application. The notification shall include a copy of all information relevant to the permit application, including an analysis provided by the source of the potential impact of the proposed source on visibility;

(4) The Director shall consider any analysis concerning visibility impairment performed by the Federal Land Manager if the analysis is received within 30 days of notification. If the Director finds that the analysis of the Federal

Land Manager fails to demonstrate to the Director's satisfaction that an adverse impact on visibility will result in the Class I area, the Director shall follow the public hearing process described in 40 CFR 51.307(a)(3) on the application and include an explanation of the Director's decision or notice where the explanation can be obtained;

(5) The Director shall issue permits only to those sources whose emissions will be consistent with making reasonable progress, as defined in Section 169A of the Clean Air Act, toward the national goal of preventing any future, and remedying any existing, impairment of visibility in mandatory Class I areas when the impairment results from manmade air pollution. In making the decision to issue a permit, the Director shall consider the cost of compliance, the time necessary for compliance, the energy and nonair quality environmental impacts of compliance, and the useful life of the source; and

(6) The Director may require monitoring of visibility in or around any Class I area by the proposed new source or modification when the visibility impact analysis indicates possible visibility impairment.

The requirements of this Paragraph do not apply to nonprofit health or nonprofit educational institutions.

(n) If the owner or operator of a source is using projected actual emissions to avoid applicability of nonattainment new source review, the owner or operator shall notify the Director of the modification before beginning actual construction. The notification shall include:

- (1) a description of the project;
- (2) identification of sources whose emissions could be affected by the project;
- (3) the calculated projected actual emissions and an explanation of how the projected actual emissions were calculated, including identification of emissions excluded by 40 CFR 51.165(a)(1)(xxviii)(B)(3);
- (4) the calculated baseline actual emissions and an explanation of how the baseline actual emissions were calculated; and
- (5) any netting calculations, if applicable.

If upon reviewing the notification, the Director finds that the project will cause a nonattainment new source review evaluation, the Director shall notify the owner or operator of his or her findings. The owner or operator shall not make the modification until it has received a permit issued pursuant to this Rule. If a permit revision is not required pursuant to this Rule, the owner or operator shall maintain records of annual emissions in tons per years, on a calendar year basis related to the modifications for 10 years, following resumption of regular operations after the change if the project involves increasing the emissions unit's design capacity or its potential to emit the regulated NSR pollutant; otherwise these records shall be maintained for five years following resumption of regular

operations after the change. The owner or operator shall submit a report to the Director within 60 days after the end of each year during which these records must be generated. The report shall contain the items listed in 40 CFR 51.165(a)(6)(v)(A) through (C). The owner or operator shall make the information documented and maintained under this Paragraph available to the Director and the general public pursuant to the requirements in 40 CFR 70.4(b)(3)(viii).

(o) The reference to the Code of Federal Regulations (CFR) in this Rule are incorporated by reference unless a specific reference states otherwise. Except for 40 CFR 81.334, the version of the CFR incorporated in this Rule is that as of May 16, 2008 at <http://www.gpo.gov/fdsys/pkg/FR-2008-05-16/pdf/E8-10768.pdf> and does not include any subsequent amendments or editions to the referenced material. The publication may be accessed free of charge.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5); 143-215.108(b);

Eff. June 1, 1981;

Amended Eff. December 1, 1993; December 1, 1992; August 1, 1991; December 1, 1989; October 1, 1989; July 1, 1988; October 1, 1987; June 1, 1985; January 1, 1985; February 1, 1983;

Temporary Amendment Eff. March 8, 1994 for a period of 180 days or until the permanent rule is effective, whichever is sooner;

Amended Eff. September 1, 2013; January 2, 2011; September 1, 2010; May 1, 2008; May 1, 2005; July 1, 1998; July 1, 1996; July 1, 1995; July 1, 1994.

15A NCAC 07H .0306 GENERAL USE STANDARDS FOR OCEAN HAZARD AREAS

(a) In order to protect life and property, all development not otherwise specifically exempted or allowed by law or elsewhere in the Coastal Resources Commission's Rules shall be located according to whichever of the following is applicable:

- (1) The ocean hazard setback for development is measured in a landward direction from the vegetation line, the static vegetation line or the measurement line, whichever is applicable. The setback distance is determined by both the size of development and the shoreline erosion rate as defined in 15A NCAC 07H .0304. Development size is defined by total floor area for structures and buildings or total area of footprint for development other than structures and buildings. Total floor area includes the following:
 - (A) The total square footage of heated or air-conditioned living space;
 - (B) The total square footage of parking elevated above ground level; and
 - (C) The total square footage of non-heated or non-air-conditioned areas elevated above ground level,

excluding attic space that is not designed to be load-bearing.

Decks, roof-covered porches and walkways are not included in the total floor area unless they are enclosed with material other than screen mesh or are being converted into an enclosed space with material other than screen mesh.

- (2) With the exception of those types of development defined in 15A NCAC 07H .0309, no development, including any portion of a building or structure, shall extend oceanward of the ocean hazard setback distance. This includes roof overhangs and elevated structural components that are cantilevered, knee braced, or otherwise extended beyond the support of pilings or footings. The ocean hazard setback is established based on the following criteria:

- (A) A building or other structure less than 5,000 square feet requires a minimum setback of 60 feet or 30 times the shoreline erosion rate, whichever is greater;
- (B) A building or other structure greater than or equal to 5,000 square feet but less than 10,000 square feet requires a minimum setback of 120 feet or 60 times the shoreline erosion rate, whichever is greater;
- (C) A building or other structure greater than or equal to 10,000 square feet but less than 20,000 square feet requires a minimum setback of 130 feet or 65 times the shoreline erosion rate, whichever is greater;
- (D) A building or other structure greater than or equal to 20,000 square feet but less than 40,000 square feet requires a minimum setback of 140 feet or 70 times the shoreline erosion rate, whichever is greater;
- (E) A building or other structure greater than or equal to 40,000 square feet but less than 60,000 square feet requires a minimum setback of 150 feet or 75 times the shoreline erosion rate, whichever is greater;
- (F) A building or other structure greater than or equal to 60,000 square feet but less than 80,000 square feet requires a minimum setback of 160 feet or 80 times the shoreline erosion rate, whichever is greater;
- (G) A building or other structure greater than or equal to 80,000 square feet but less than 100,000 square feet requires a minimum setback of 170

- feet or 85 times the shoreline erosion rate, whichever is greater;
- (H) A building or other structure greater than or equal to 100,000 square feet requires a minimum setback of 180 feet or 90 times the shoreline erosion rate, whichever is greater;
- (I) Infrastructure that is linear in nature such as roads, bridges, pedestrian access such as boardwalks and sidewalks, and utilities providing for the transmission of electricity, water, telephone, cable television, data, storm water and sewer requires a minimum setback of 60 feet or 30 times the shoreline erosion rate, whichever is greater;
- (J) Parking lots greater than or equal to 5,000 square feet requires a setback of 120 feet or 60 times the shoreline erosion rate, whichever is greater;
- (K) Notwithstanding any other setback requirement of this Subparagraph, a building or other structure greater than or equal to 5,000 square feet in a community with a static line exception in accordance with 15A NCAC 07J .1200 requires a minimum setback of 120 feet or 60 times the shoreline erosion rate in place at the time of permit issuance, whichever is greater. The setback shall be measured landward from either the static vegetation line, the vegetation line or measurement line, whichever is farthest landward; and
- (L) Notwithstanding any other setback requirement of this Subparagraph, replacement of single-family or duplex residential structures with a total floor area greater than 5,000 square feet shall be allowed provided that the structure meets the following criteria:
- (i) the structure was originally constructed prior to August 11, 2009;
 - (ii) the structure as replaced does not exceed the original footprint or square footage;
 - (iii) it is not possible for the structure to be rebuilt in a location that meets the ocean hazard setback criteria required under Subparagraph (a)(2) of this Rule;
 - (iv) the structure as replaced meets the minimum setback
- required under Part (a)(2)(A) of this Rule; and
- (v) the structure is rebuilt as far landward on the lot as feasible.
- (3) If a primary dune exists in the AEC on or landward of the lot on which the development is proposed, the development shall be landward of the crest of the primary dune or the ocean hazard setback, whichever is farthest from vegetation line, static vegetation line or measurement line, whichever is applicable. For existing lots, however, where setting the development landward of the crest of the primary dune would preclude any practical use of the lot, development may be located oceanward of the primary dune. In such cases, the development may be located landward of the ocean hazard setback but shall not be located on or oceanward of a frontal dune. The words "existing lots" in this Rule shall mean a lot or tract of land which, as of June 1, 1979, is specifically described in a recorded plat and which cannot be enlarged by combining the lot or tract of land with a contiguous lot(s) or tract(s) of land under the same ownership.
- (4) If no primary dune exists, but a frontal dune does exist in the AEC on or landward of the lot on which the development is proposed, the development shall be set landward of the frontal dune or landward of the ocean hazard setback whichever is farthest from the vegetation line, static vegetation line or measurement line, whichever is applicable.
- (5) If neither a primary nor frontal dune exists in the AEC on or landward of the lot on which development is proposed, the structure shall be landward of the ocean hazard setback.
- (6) Structural additions or increases in the footprint or total floor area of a building or structure represent expansions to the total floor area and shall meet the setback requirements established in this Rule and 15A NCAC 07H .0309(a). New development landward of the applicable setback may be cosmetically, but shall not be structurally, attached to an existing structure that does not conform with current setback requirements.
- (7) Established common law and statutory public rights of access to and use of public trust lands and waters in ocean hazard areas shall not be eliminated or restricted. Development shall not encroach upon public accessways, nor shall it limit the intended use of the accessways.
- (8) Beach fill as defined in this Section represents a temporary response to coastal erosion, and compatible beach fill as defined in 15A NCAC

07H .0312 can be expected to erode at least as fast as, if not faster than, the pre-project beach. Furthermore, there is no assurance of future funding or beach-compatible sediment for continued beach fill projects and project maintenance. A vegetation line that becomes established oceanward of the pre-project vegetation line in an area that has received beach fill may be more vulnerable to natural hazards along the oceanfront. A development setback measured from the vegetation line provides less protection from ocean hazards. Therefore, development setbacks in areas that have received large-scale beach fill as defined in 15A NCAC 07H .0305 shall be measured landward from the static vegetation line as defined in this Section. However, in order to allow for development landward of the large-scale beach fill project that is less than 2,500 square feet and cannot meet the setback requirements from the static vegetation line, but can or has the potential to meet the setback requirements from the vegetation line set forth in Subparagraphs (1) and (2)(A) of this Paragraph, a local government or community may petition the Coastal Resources Commission for a "static line exception" in accordance with 15A NCAC 07J .1200. The static line exception applies to development of property that lies both within the jurisdictional boundary of the petitioner and the boundaries of the large-scale beach fill project. This static line exception shall also allow development greater than 5,000 square feet to use the setback provisions defined in Part (a)(2)(K) of this Rule in areas that lie within the jurisdictional boundary of the petitioner as well as the boundaries of the large-scale beach fill project. The procedures for a static line exception request are defined in 15A NCAC 07J .1200. If the request is approved, the Coastal Resources Commission shall allow development setbacks to be measured from a vegetation line that is oceanward of the static vegetation line under the following conditions:

- (A) Development meets all setback requirements from the vegetation line defined in Subparagraphs (a)(1) and (a)(2)(A) of this Rule;
- (B) Total floor area of a building is no greater than 2,500 square feet;
- (C) Development setbacks are calculated from the shoreline erosion rate in place at the time of permit issuance;
- (D) No portion of a building or structure, including roof overhangs and elevated portions that are cantilevered, knee braced or otherwise extended beyond the

support of pilings or footings, extends oceanward of the landward-most adjacent building or structure. When the configuration of a lot precludes the placement of a building or structure in line with the landward-most adjacent building or structure, an average line of construction shall be determined by the Division of Coastal Management on a case-by-case basis in order to determine an ocean hazard setback that is landward of the vegetation line, a distance no less than 30 times the shoreline erosion rate or 60 feet, whichever is greater;

- (E) With the exception of swimming pools, the development defined in 15A NCAC 07H .0309(a) is allowed oceanward of the static vegetation line; and
- (F) Development is not eligible for the exception defined in 15A NCAC 07H .0309(b).

(b) In order to avoid weakening the protective nature of ocean beaches and primary and frontal dunes, no development is permitted that involves the removal or relocation of primary or frontal dune sand or vegetation thereon which would adversely affect the integrity of the dune. Other dunes within the ocean hazard area shall not be disturbed unless the development of the property is otherwise impracticable. Any disturbance of these other dunes is allowed only to the extent permitted by 15A NCAC 07H .0308(b).

(c) Development shall not cause irreversible damage to historic architectural or archaeological resources documented by the Division of Archives and History, the National Historical Registry, the local land-use plan, or other sources with knowledge of the property.

(d) Development shall comply with minimum lot size and setback requirements established by local regulations.

(e) Mobile homes shall not be placed within the high hazard flood area unless they are within mobile home parks existing as of June 1, 1979.

(f) Development shall comply with general management objective for ocean hazard areas set forth in 15A NCAC 07H .0303.

(g) Development shall not interfere with legal access to, or use of, public resources nor shall such development increase the risk of damage to public trust areas.

(h) Development proposals shall incorporate measures to avoid or minimize adverse impacts of the project. These measures shall be implemented at the applicant's expense and may include actions that:

- (1) minimize or avoid adverse impacts by limiting the magnitude or degree of the action;
- (2) restore the affected environment; or
- (3) compensate for the adverse impacts by replacing or providing substitute resources.

(i) Prior to the issuance of any permit for development in the ocean hazard AECs, there shall be a written acknowledgment from the applicant to the Division of Coastal Management that the applicant is aware of the risks associated with development in this hazardous area and the limited suitability of this area for permanent structures. By granting permits, the Coastal Resources Commission does not guarantee the safety of the development and assumes no liability for future damage to the development.

(j) All relocation of structures requires permit approval. Structures relocated with public funds shall comply with the applicable setback line as well as other applicable AEC rules. Structures including septic tanks and other essential accessories relocated entirely with non-public funds shall be relocated the maximum feasible distance landward of the present location; septic tanks may not be located oceanward of the primary structure. All relocation of structures shall meet all other applicable local and state rules.

(k) Permits shall include the condition that any structure shall be relocated or dismantled when it becomes imminently threatened by changes in shoreline configuration as defined in 15A NCAC 07H .0308(a)(2)(B). Any such structure shall be relocated or dismantled within two years of the time when it becomes imminently threatened, and in any case upon its collapse or subsidence. However, if natural shoreline recovery or beach fill takes place within two years of the time the structure becomes imminently threatened, so that the structure is no longer imminently threatened, then it need not be relocated or dismantled at that time. This permit condition shall not affect the permit holder's right to seek authorization of temporary protective measures allowed under 15A NCAC 07H .0308(a)(2).

History Note: Authority G.S. 113A-107; 113A-113(b)(6); 113A-124;

Eff. September 9, 1977;

Amended Eff. December 1, 1991; March 1, 1988; September 1, 1986; December 1, 1985;

RRC Objection due to ambiguity Eff. January 24, 1992;

Amended Eff. March 1, 1992;

RRC Objection due to ambiguity Eff. May 21, 1992;

Amended Eff. February 1, 1993; October 1, 1992; June 19, 1992;

RRC Objection due to ambiguity Eff. May 18, 1995;

Amended Eff. August 11, 2009; April 1, 2007; November 1, 2004; June 27, 1995;

Temporary Amendment Eff. January 3, 2013;

Amended Eff. September 1, 2013.

15A NCAC 07H .0312 TECHNICAL STANDARDS FOR BEACH FILL PROJECTS

Placement of sediment along the oceanfront shoreline is referred to in this Rule as "beach fill." Sediment used solely to establish or strengthen dunes or to re-establish state-maintained transportation corridors across a barrier island breach in a disaster area as declared by the Governor is not considered a beach fill project under this Rule. Beach fill projects including beach nourishment, dredged material disposal, habitat restoration, storm protection, and erosion control may be permitted under the following conditions:

- (1) The applicant shall characterize the recipient beach according to the following methodology:
 - (a) Characterization of the recipient beach is not required for the placement of sediment directly from and completely confined to a maintained navigation channel or associated sediment basins within the active nearshore, beach or inlet shoal system;
 - (b) Sediment sampling and analysis shall be used to capture the three-dimensional spatial variability of the sediment characteristics including grain size, sorting and mineralogy within the natural system;
 - (c) Shore-perpendicular topographic and bathymetric surveying of the recipient beach shall be conducted to determine the beach profile. Topographic and bathymetric surveying shall occur along a minimum of five shore-perpendicular transects evenly spaced throughout the entire project area. Each transect shall extend from the frontal dune crest seaward to a depth of 20 feet (6.1 meters) or to the shore-perpendicular distance 2,400 feet (732 meters) seaward of mean low water, whichever is in a more landward position. Transect spacing shall not exceed 5,000 feet (1,524 meters) in the shore-parallel direction. Elevation data for all transects shall be referenced to the North American Vertical Datum of 1988 (NAVD 88) and the North American Datum of 1983 (NAD 83);
 - (d) No fewer than 13 sediment samples shall be taken along each beach profile transect. At least one sample shall be taken from each of the following morphodynamic zones where present: frontal dune, frontal dune toe, mid berm, mean high water (MHW), mid tide (MT), mean low water (MLW), trough, bar crest and at even depth increments from 6 feet (1.8 meters) to 20 feet (6.1 meters) or to a shore-perpendicular distance 2,400 feet (732 meters) seaward of mean low water, whichever is in a more landward position. The total number of samples taken landward of MLW shall equal the total number of samples taken seaward of MLW;
 - (e) For the purpose of this Rule, "sediment grain size categories" are

defined as "fine" (less than 0.0625 millimeters), "sand" (greater than or equal to 0.0625 millimeters and less than 2 millimeters), "granular" (greater than or equal to 2 millimeters and less than 4.76 millimeters) and "gravel" (greater than or equal to 4.76 millimeters and less than 76 millimeters). Each sediment sample shall report percentage by weight of each of these four grain size categories;

- (f) A composite of the simple arithmetic mean for each of the four grain size categories defined in Sub-Item (1)(e) of this Rule shall be calculated for each transect. A grand mean shall be established for each of the four grain size categories by summing the mean for each transect and dividing by the total number of transects. The value that characterizes grain size values for the recipient beach is the grand mean of percentage by weight for each grain size category defined in Sub-Item (1)(e) of this Rule;
- (g) Percentage by weight calcium carbonate shall be calculated from a composite of all sediment samples along each transect defined in Sub-Item (1)(d) of this Rule. The value that characterizes the carbonate content of the recipient beach is a grand mean calculated by summing the average percentage by weight calcium carbonate for each transect and dividing by the total number of transects. For beaches on which fill activities have taken place prior to the effective date of this Rule, the Division of Coastal Management shall consider visual estimates of shell content as a proxy for carbonate weight percent;
- (h) The total number of sediments and shell material greater than or equal to three inches (76 millimeters) in diameter, observable on the surface of the beach between mean low water (MLW) and the frontal dune toe, shall be calculated for an area of 50,000 square feet (4,645 square meters) within the beach fill project boundaries. This area is considered a representative sample of the entire project area and referred to as the "background" value;
- (i) Beaches that received sediment prior to the effective date of this Rule shall

be characterized in a way that is consistent with Sub-Items (1)(a) through (1)(h) of this Rule and shall use data collected from the recipient beach prior to the addition of beach fill. If such data were not collected or are unavailable, a dataset best reflecting the sediment characteristics of the recipient beach prior to beach fill shall be developed in coordination with the Division of Coastal Management; and

- (j) All data used to characterize the recipient beach shall be provided in digital and hardcopy format to the Division of Coastal Management upon request.
- (2) The applicant shall characterize the sediment to be placed on the recipient beach according to the following methodology:
- (a) The characterization of borrow areas including submarine sites, upland sites, and dredged material disposal areas shall be designed to capture the three-dimensional spatial variability of the sediment characteristics including grain size, sorting and mineralogy within the natural system or dredged material disposal area;
 - (b) The characterization of borrow sites shall include sediment characterization data provided by the Division of Coastal Management where available;
 - (c) Seafloor surveys shall measure elevation and capture acoustic imagery of the seafloor. Measurement of seafloor elevation shall cover 100 percent of each submarine borrow site and use survey-grade swath sonar in accordance with current US Army Corps of Engineers standards for navigation and dredging. Seafloor imaging without an elevation component shall also cover 100 percent of each borrow site and be performed in accordance with US Army Corps of Engineers standards for navigation and dredging. Because shallow submarine areas can provide technical challenges and physical limitations for acoustic measurements, seafloor imaging without an elevation component may not be required for water depths less than 10 feet (3 meters). Alternative elevation surveying methods for water depths less than 10 feet (3 meters) may be evaluated on a case-

by-case basis by the Division of Coastal Management. Elevation data shall be tide- and motion-corrected and referenced to NAVD 88 and NAD 83. Seafloor imaging data without an elevation component shall be referenced to the NAD 83. All final seafloor survey data shall conform to standards for accuracy, quality control and quality assurance as set forth either by the US Army Corps of Engineers, the National Oceanic and Atmospheric Administration, or the International Hydrographic Organization. For offshore dredged material disposal sites, only one set of imagery without elevation is required. Sonar imaging of the seafloor without elevation is not required for borrow sites completely confined to maintained navigation channels, sediment deposition basins within the active nearshore, beach or inlet shoal system;

- (d) Geophysical imaging of the seafloor subsurface shall be used to characterize each borrow site and shall use survey grids with a line spacing not to exceed 1,000 feet (305 meters). Offshore dredged material disposal sites shall use a survey grid not to exceed 2,000 feet (610 meters) and only one set of geophysical imaging of the seafloor subsurface is required. Survey grids shall incorporate at least one tie point per survey line. Because shallow submarine areas can pose technical challenges and physical limitations for geophysical techniques, subsurface data may not be required in water depths less than 10 feet (3 meters). Subsurface geophysical imaging is not required for borrow sites completely confined to maintained navigation channels, sediment deposition basins within the active nearshore, beach or inlet shoal system, or upland sites. All final subsurface geophysical data shall use accurate sediment velocity models for time-depth conversions and be referenced to NAD 83;
- (e) Sediment sampling of all borrow sites shall use a vertical sampling device no less than 3 inches (76 millimeters) in diameter. Characterization of each borrow site shall use no fewer than 10

evenly spaced cores or one core per 23 acres (grid spacing of 1,000 feet or 305 meters), whichever is greater. Characterization of borrow sites completely confined to maintained navigation channels or sediment deposition basins within the active nearshore, beach or inlet shoal system shall use no fewer than five evenly spaced vertical samples per channel or sediment basin, or sample spacing of no more than 5,000 linear feet (1,524 meters), whichever is greater. Two sets of sampling data (with at least one dredging event in between) from maintained navigation channels or sediment deposition basins within the active nearshore, beach or inlet shoal system may be used to characterize material for subsequent nourishment events from those areas if the sampling results are found to be compatible with Sub-Item (3)(a) of this Rule. In submarine borrow sites other than maintained navigation channels or associated sediment deposition basins within the active nearshore, beach or inlet shoal system where water depths are no greater than 10 feet (3 meters), geophysical data of and below the seafloor are not required, and sediment sample spacing shall be no less than one core per six acres (grid spacing of 500 feet or 152 meters). Vertical sampling shall penetrate to a depth equal to or greater than permitted dredge or excavation depth or expected dredge or excavation depths for pending permit applications. All sediment samples shall be integrated with geophysical data to constrain the surficial, horizontal and vertical extent of lithologic units and determine excavation volumes of compatible sediment as defined in Item (3) of this Rule;

- (f) For offshore dredged material disposal sites, the grid spacing shall not exceed 2,000 feet (610 meters). Characterization of material deposited at offshore dredged material disposal sites after the initial characterization are not required if all of the material deposited complies with Sub-Item (3)(a) of this Rule as demonstrated by at least two sets of sampling data with at least one dredging event in between;

- (g) Grain size distributions shall be reported for all sub-samples taken within each vertical sample for each of the four grain size categories defined in Sub-Item (1)(e) of this Rule. Weighted averages for each core shall be calculated based on the total number of samples and the thickness of each sampled interval. A simple arithmetic mean of the weighted averages for each grain size category shall be calculated to represent the average grain size values for each borrow site. Vertical samples shall be geo-referenced and digitally imaged using scaled, color-calibrated photography;
 - (h) Percentage by weight of calcium carbonate shall be calculated from a composite sample of each core. A weighted average of calcium carbonate percentage by weight shall be calculated for each borrow site based on the composite sample thickness of each core. Carbonate analysis is not required for sediment confined to maintained navigation channels or associated sediment deposition basins within the active nearshore, beach or inlet shoal system; and
 - (i) All data used to characterize the borrow site shall be provided in digital and hardcopy format to the Division of Coastal Management upon request.
- (3) The Division of Coastal Management shall determine sediment compatibility according to the following criteria:
- (a) Sediment completely confined to the permitted dredge depth of a maintained navigation channel or associated sediment deposition basins within the active nearshore, beach or inlet shoal system is considered compatible if the average percentage by weight of fine-grained (less than 0.0625 millimeters) sediment is less than 10 percent;
 - (b) The average percentage by weight of fine-grained sediment (less than 0.0625 millimeters) in each borrow site shall not exceed the average percentage by weight of fine-grained sediment of the recipient beach characterization plus five percent;
 - (c) The average percentage by weight of granular sediment (greater than or equal to 2 millimeters and less than 4.76 millimeters) in a borrow site shall not exceed the average percentage by weight of coarse-sand sediment of the recipient beach characterization plus five percent;
 - (d) The average percentage by weight of gravel (greater than or equal to 4.76 millimeters and less than 76 millimeters) in a borrow site shall not exceed the average percentage by weight of gravel-sized sediment for the recipient beach characterization plus five percent;
 - (e) The average percentage by weight of calcium carbonate in a borrow site shall not exceed the average percentage by weight of calcium carbonate of the recipient beach characterization plus 15 percent; and
 - (f) Techniques that take incompatible sediment within a borrow site or combination of sites and make it compatible with that of the recipient beach characterization shall be evaluated on a case-by-case basis by the Division of Coastal Management.
- (4) Excavation and placement of sediment shall conform to the following criteria:
- (a) Sediment excavation depth from a maintained navigation channel shall not exceed the permitted dredge depth of the channel;
 - (b) Sediment excavation depths for all borrow sites shall not exceed the maximum depth of recovered core at each coring location;
 - (c) In order to protect threatened and endangered species, and to minimize impacts to fish, shellfish and wildlife resources, no excavation or placement of sediment shall occur within the project area during times designated by the Division of Coastal Management in consultation with other State and Federal agencies; and
 - (d) Sediment and shell material with a diameter greater than or equal to three inches (76 millimeters) is considered incompatible if it has been placed on the beach during the beach fill project, is observed between MLW and the frontal dune toe, and is in excess of twice the background value of material of the same size along any 50,000-square-foot (4,645 square meter) section of beach.

History Note: Authority G.S. 113-229; 113A-102(b)(1); 113A-103(5)(a); 113A-107(a); 113A-113(b)(5) and (6); 113A-118; 113A-124;
Eff. February 1, 2007;
Amended Eff. September 1, 2013; April 1, 2008.

15A NCAC 10F .0303 BEAUFORT COUNTY

(a) Regulated Areas. This Rule applies to the following waters in Beaufort County:

- (1) that portion of Broad Creek south of a line from a point on the east shore at 35.49472 N, 76.95693 W to a point on the west shore at 35.49476 N, 76.96028 W and north of a line from a point on the east shore at 35.48485 N, 76.95178 W to a point on the west shore at 35.48495 N, 76.95619 W;
- (2) that portion of Blounts Creek south of a line 100 yards north of the Blounts Creek Boating Access Area, from a point on the east shore at 35.40846 N, 76.96091 W to a point on the west shore at 35.40834 N, 76.96355 W, and north of a line 100 yards south of Cotton Patch Landing, from a point on the east shore at 35.40211 N, 76.96573 W to a point on the west shore at 35.40231 N, 76.96702 W;
- (3) the waters of Battalina Creek, within the territorial limits of the Town of Belhaven;
- (4) the navigable portion of Nevil Creek extending upstream from its mouth at the Pamlico River;
- (5) that portion of Blounts Creek north of a line 35 yards south-southeast of the Mouth of the Creek Bridge from a point on the east shore at 35.43333 N, 76.96985 W to a point on the west shore at 35.43267 N, 76.97196 W and south of a line 350 yards north-northeast of the Mouth of the Creek Bridge from a point on the east shore at 35.43553 N, 76.96962 W to a point on the west shore at 35.43645 N, 76.96998 W; and
- (6) that portion of Tranters Creek east of a line from a point on the north shore at 35.56961 N, 77.09159 W to a point on the south shore at 35.56888 N, 77.09118 W and north of a line from a point on the east shore at 35.56714 N, 77.08941 W to a point on the west shore at 35.56689 N, 77.09029 W.

(b) Speed Limit. It is unlawful to operate a vessel at greater than no-wake speed in the regulated areas described in Paragraph (a) of this Rule.

(c) Placement and Maintenance of Markers. The Board of Commissioners of Beaufort County and the City Council of the City of Washington are designated as suitable agencies for placement and maintenance of the markers implementing this Rule.

History Note: Authority G.S. 75A-3; 75A-15;
Eff. February 1, 1976;

Amended Eff. September 1, 2013; September 1, 2010; June 1, 1998; April 1, 1997; June 1, 1989; March 1, 1987; April 1, 1986; March 4, 1979.

15A NCAC 10F .0355 PERQUIMANS COUNTY

(a) Regulated Areas. This Rule applies to the following waters:

- (1) Perquimans River:
 - (A) The canals of Holiday Island subdivision; and
 - (B) Town of Hertford: that part of the Perquimans River beginning 75 yards northeast of the Perquimans River Bridge (Hertford S-shaped Bridge) parallel to the bridge, shore to shore, and ending approximately 550 yards southwest, at a line from a point on the north shore 36.19300 N, 76.46962 W to a point on the south shore 36.19150 N, 76.47099 W.
- (2) Yeopim River:
 - (A) The canal entrance between Navaho Trail and Cherokee Trail;
 - (B) The canal entrance between Cherokee Trail and Ashe Street;
 - (C) The boat ramp at Ashe and Pine Street;
 - (D) The canal entrance between Pine Street and Linden Street;
 - (E) The canal entrance and boat ramp between Willow Street and Evergreen Drive;
 - (F) The canal entrance between Sago Street and Alder Street; and
 - (G) The swimming area at the Snug Harbor Park and Beach.
- (3) Yeopim Creek:
 - (A) The canal entrance between Mohave Trail and Iowa Trail;
 - (B) The canal entrance between Iowa Trail and Shawnee Trail;
 - (C) The area within 75 yards of the Albemarle Plantation Marina Piers; and
 - (D) The area of Beaver Cove as delineated by appropriate markers.
- (4) Little River: The entrance to the cove known as "Muddy Gut Canal," which extends from the waters known as "Deep Creek."

(b) Speed Limit. No person shall operate any motorboat or vessel at greater than no-wake speed within the regulated area described in Paragraph (a) of this Rule.

(c) Placement and Maintenance of Markers. The Board of Commissioners of Perquimans County is designated a suitable agency for placement and maintenance of markers implementing this Rule.

History Note: Authority G.S. 75A-3; 75A-15;
Eff. November 1, 1988;
Amended Eff. October 1, 1992;

*Temporary Amendment Eff. October 1, 1997;
Amended Eff. July 1, 1998;
Temporary Amendment Eff. February 4, 2000;
Amended Eff. September 1, 2013; May 1, 2006; June 1, 2005;
July 1, 2000.*

*Readopted Eff. February 8, 1978;
Amended Eff. September 1, 2013; May 1, 1989.*

TITLE 21 – OCCUPATIONAL LICENSING BOARDS AND COMMISSIONS

CHAPTER 06 - BOARD OF BARBER EXAMINERS

21 NCAC 06A .0103 OFFICE HOURS

*History Note: Authority G.S. 86A-6;
Eff. February 1, 1976;
Readopted Eff. February 8, 1978;
Amended Eff. June 1, 2008; May 1, 1989;
Repealed Eff. September 1, 2013.*

21 NCAC 06A .0301 EXECUTIVE SECRETARY

*History Note: Authority G.S. 86A-6;
Eff. February 1, 1976;
Readopted Eff. February 8, 1978;
Amended Eff. May 1, 1989; March 1, 1989;
Repealed Eff. September 1, 2013.*

21 NCAC 06A .0303 DUTIES OF EXECUTIVE SECRETARY

*History Note: Authority G.S. 86A-5(a)(4);
Eff. February 1, 1976;
Readopted Eff. February 8, 1978;
Amended Eff. May 1, 1989;
Repealed September 1, 2013.*

21 NCAC 06C .0907 DISQUALIFICATION

The members of the Board who are not challenged in an affidavit of disqualification shall decide whether to disqualify the person being challenged by the following procedural rules:

- (1) The person whose disqualification is to be determined shall not participate in the decision but may be called upon to furnish information to the remaining members of the Board.
- (2) The Chairman shall appoint a member of the Board or the Executive Director to investigate the allegations of the affidavit, if necessary.
- (3) The investigator shall report his findings and recommendations to the remaining members of the Board who shall then decide whether to disqualify the challenged individual.
- (4) A record of the proceedings shall be maintained as part of the contested case record.

*History Note: Authority G.S. 86A-5; 150B-40;
Eff. February 1, 1976;*

21 NCAC 06F .0101 PHYSICAL STRUCTURE

(a) The physical structure of barber schools in North Carolina shall conform to the following criteria:

- (1) be a minimum of 14 linear feet wide;
- (2) be equipped with a minimum of ten barber chairs in sanitary and safe condition sufficient for the number of students enrolled;
- (3) have a minimum of 896 square feet in the practical area for the first ten chairs;
- (4) have an additional 70 square feet in the practical area for each additional barber chair over the required ten;
- (5) have at least five linear feet of space between each chair, center to center;
- (6) have no more than two students enrolled per barber chair;
- (7) be equipped with toilet facilities with hand-washing sink or basin sufficient to serve the number of people at the school;
- (8) have concrete or wood floors covered with smooth, nonporous materials;
- (9) have instructional materials, for example, blackboard space, slide programs, sufficient to teach barbering;
- (10) have a workstand, with a mounted mirror with minimum dimensions of 36 inches tall and 20 inches wide, for each barber chair in the practical work area, constructed of material that renders it easily cleaned;
- (11) have a tool cabinet for each barber chair, with a door as nearly air tight as possible;
- (12) have a towel cabinet, or other method of storage, such that clean towels are stored separate from used towels;
- (13) have at least one fully functional sink or lavatory, with hot and cold water, for each two barber chairs, located within seven unobstructed linear feet of each barbering area;
- (14) have the school separate from any other place or type of business by a wall of ceiling height;
- (15) have a classroom area, separate from the practical area;
- (16) have desk chairs sufficient to serve the number of students enrolled, and a desk and chair for the instructors;
- (17) have a time clock for electronic recordation of student hours;
- (18) have an informational sign displayed in each practical area of the school indicating that all barbering services are performed by students; and
- (19) have a bulletin board hanging in each classroom area with a posting of the sanitation rules and minimum school curricula as prescribed under 21 NCAC 06F .0210, or any other memorandum, letter or rule issued by the

Board which states it is to be posted for the information of students.

This Paragraph applies to barber schools permitted on or after December 1, 1994 or which undergo structural renovations after that date.

(b) Barber schools permitted on or after July 1, 2008, shall have a minimum of 20 square feet per student in the classroom as stated in the Occupancy Building Code Table.

(c) The sink distance requirement set forth in Subparagraph (a)(13) of this Rule does not apply to barber schools permitted on or before September 1, 2009.

(d) All shops must comply with the minimum mirror dimensions set forth in Subchapter (a)(10) of this Rule by June 1, 2014.

(e) All barber schools permitted after June 1, 2013, must receive a satisfactory building inspection by the jurisdiction having authority prior to obtaining a shop inspection pursuant to 21 NCAC 06L .0105.

History Note: Authority G.S. 86A-15; 86A-22;

Eff. February 1, 1976;

Readopted Eff. February 8, 1978;

Amended Eff. September 1, 2013; October 1, 2009; June 1, 2008; December 1, 1994; May 1, 1989.

21 NCAC 06F .0116 STUDENTS WITH CRIMINAL RECORDS

(a) Prior to enrollment and the acceptance of any enrollment fee or tuition, the barber school shall notify the applicant of the Board's statutes and rules regarding criminal convictions and registered sex offenders and have the applicant sign and date the notice indicating that the applicant has been so informed.

(b) Persons making application for student permits who have been convicted of a felony shall furnish to the Board a certified copy of their Federal Bureau of Investigation criminal record report.

(c) Failure to include any information regarding felony convictions on applications for student permits shall result in revocation of a student permit after a hearing.

History Note: Authority G.S. 86A-18; 86A-22;

Eff. February 1, 1976;

Readopted Eff. February 8, 1978;

Amended Eff. March 1, 1983;

Legislative Objection Lodged Eff. March 7, 1983;

Amended Eff. September 1, 2013; April 1, 2010; May 1, 1989.

21 NCAC 06H .0101 DUTIES AND RESPONSIBILITIES

Barber school managers shall:

- (1) file for a school permit at least 30 days before opening the school for business;
- (2) ensure that all students are instructed;
- (3) ensure compliance with the North Carolina General Statutes governing barber schools and barbering and the administrative rules of the Board.

History Note: Authority G.S. 86A-13; 86A-15; 86A-22;

Eff. February 1, 1976;

Readopted Eff. February 8, 1978;

Amended Eff. September 1, 2013; June 1, 2008; May 1, 1989; March 1, 1983.

21 NCAC 06I .0105 APPRENTICE BARBER

A student who has trained in another state may take the examination to become a registered apprentice barber provided:

- (1) he or she proves satisfactorily to the Board that his or her hours of training in the out-of-state barber school are the substantive equivalent to those in North Carolina;
- (2) he or she provides proof of completion of barber school training;
- (3) he or she completes and furnishes to the Board Form BAR-7;
- (4) he or she pays the required fee according to 21 NCAC 06N .0101; and
- (5) he or she furnishes a certified copy of his or her Federal Bureau of Investigation criminal record report.

History Note: Authority G.S. 86A-5; 86A-18; 86A-24; 86A-25;

Eff. February 1, 1976;

Readopted Eff. February 8, 1978;

Amended Eff. March 1, 1983;

Legislative Objection Lodged Eff. March 7, 1983;

Amended Eff. September 1, 2013; June 1, 2008; May 1, 1989.

21 NCAC 06J .0101 REGISTERED APPRENTICE

A registered apprentice must:

- (1) attend an approved barber school for a period of at least 1528 hours or the equivalent as determined by the Board. (For curriculum requirements see 21 NCAC 06F .0120);
- (2) furnish the Board with Form BAR-4 and pay the fee according to 21 NCAC 06N .0101;
- (3) make a score of at least 70 percent on both a written and practical apprentice examination; and
- (4) submit a certified copy of his or her Federal Bureau of Investigation criminal record report.

History Note: Authority G.S. 86A-3; 86A-10; 86A-24; 86A-25;

Eff. February 1, 1976;

Readopted Eff. February 8, 1978;

Amended Eff. March 1, 1983;

Legislative Objection Lodged Eff. March 7, 1983;

Amended Eff. September 1, 2013; June 1, 2008; May 1, 1989.

21 NCAC 06K .0104 OUT-OF-STATE APPLICANTS

An applicant who is licensed as a barber in another state and who wants to apply to become registered as a barber in this state must establish his out-of-state license and experience and must provide:

- (1) a certified copy of the applicant's out-of-state license;

- (2) three sworn affidavits verifying the experience of the applicant;
- (3) form BAR-8 and the required fee;
- (4) a certified copy of his Federal Bureau of Investigation criminal record report;
- (5) a certified statement from the applicant's out-of-state Board stating the following:
 - (a) the applicant's length of licensure in that state;
 - (b) whether such licensure has been continuous or has been interrupted by periods when the applicant was not licensed in the state;
 - (c) the reasons for any such interruptions in licensure; and
 - (d) whether or not there have been any disciplinary actions against the applicant's license; and
- (6) a certified transcript describing the number of instructional hours and course content from the school where the applicant received his barber training.

History Note: Authority G.S. 86A-12; 86A-15; 86A-25; Eff. February 1, 1976; Readopted Eff. February 8, 1978; Amended Eff. March 1, 1983; Legislative Objection Lodged Eff. March 7, 1983; Amended Eff. September 1, 2013, May 1, 1989.

21 NCAC 06L .0103 EQUIPMENT

- (a) Each barber shall have a cabinet for barbering equipment. The cabinets shall be constructed of material that may be easily cleaned.
- (b) Each shop shall have smooth finished walls, ceilings and floors, and no exposed pipes.
- (c) Each barber chair shall be covered with a smooth, non-porous surface, such as vinyl or leather, which is easily cleaned.
- (d) Each shop shall have within the shop or building functioning toilet facilities for employees and patrons.
- (e) Each barber shop shall have a cabinet, or other method of storage, such that clean towels are stored separate from used towels.
- (f) In addition to the requirements of Paragraph (d) of this Rule, barber shops which are permitted on or after January 1, 1995 or which undergo structural renovations after that date must have within the shop or building a hand-washing sink or lavatory for patrons with hot and cold water, soap and disposable towels.
- (g) Where a barber shop is located within a shop licensed by the North Carolina Board of Cosmetic Art Examiners, the toilet facility and sink may be shared with the cosmetology shop.
- (h) Paragraphs (a), (d) and (f) of this Rule do not apply to barber shops operated by the Division of Prisons.
- (i) All equipment and tools used in the course of providing shaving, trimming the beard, cutting the hair, dyeing the hair or applying hair tonics, permanent waving or marceling the hair, giving facial or scalp massages or treatment with oils, creams, lotions or other preparations must be suitable for the safe cutting

of hair and shall be maintained in a sanitary and good operating condition.

History Note: Authority G.S. 86A-2; 86A-15; Eff. February 1, 1976; Readopted Eff. February 8, 1978; Amended Eff. September 1, 2013; September 1, 2009; June 1, 2008; January 1, 1995; May 1, 1989; March 1, 1983.

21 NCAC 06L .0114 POLICY PROHIBITING PETS

With the exception of trained guide or assistance animals no animals are permitted in a barber shop.

History Note: Authority G.S. 86A-15; Eff. June 1, 2008; Amended Eff. September 1, 2013.

21 NCAC 06L .0118 SANITARY RATINGS AND POSTING OF RATINGS

(a) The sanitary rating of a barber shop shall be based on a system of grading outlined in this Subchapter. Based on the grading, all establishments shall be rated in the following manner:

- (1) all establishments receiving a rating of at least 90 percent or more, shall be awarded a grade A;
- (2) all establishments receiving a rating of at least 80 percent, and less than 90 percent, shall be awarded a grade B.
- (3) a sanitation rating of less than 80 percent shall be awarded a failing grade.

(b) Every barber shop shall be given a sanitary rating. A barber school shall be graded one to three times a year, and a barber shop shall be graded one to three times a year.

(c) The sanitary rating of A, B, or Failing given to a barber shop establishment shall be posted in a conspicuous place, a place easily seen by the public at the front of the shop, at all times.

(d) No newly established barber shop shall be permitted to operate without first having obtained a sanitary rating card with a grade of not less than 80 percent.

(e) Barber inspectors shall give each barber shop a new sanitary rating card each year.

(f) Violation of Chapter 86A or any administrative rule adopted by the Board or the operation of a barber shop which fails to receive a sanitary rating of at least 80 percent (grade B) shall be sufficient cause for revoking or suspending the letter of approval or permit.

(g) A re-inspection for the purpose of raising a failing sanitary rating of a barber shop shall not be given within 30 days.

History Note: Authority G.S. 86A-5(a)(1); 86A-15; Eff. June 1, 2008; Amended Eff. September 1, 2013.

21 NCAC 06L .0119 SYSTEMS OF GRADING BARBER SHOPS

The system of grading the sanitary rating of all barber shops and schools, shall be as follows, setting out areas to be inspected and considered, and the maximum points given for compliance:

- (1) clean entrance and waiting area 2;
- (2) water system; hot and cold running water, septic system 2;
- (3) walls, ceiling and floors:
 - (a) construction and covering 6;
 - (b) clean 5;
- (4) lighting and ventilation (windows included); their adequacy and cleanliness 3;
- (5) public toilet:
 - (a) clean and well ventilated 5;
 - (b) soap and individual towels furnished 5;
 - (c) hot and cold running water 2;
- (6) cleanliness as to person and dress 1;
- (7) linens:
 - (a) supply of clean towels 2;
 - (b) soiled towels 3;
 - (c) hair cloth 1;
- (8) soiled towel receptacle 4;
- (9) tools and instruments 4;
 - (a) disinfectants selected from those approved by the Federal Environmental Protection Agency 4;
 - (b) disinfectants used properly 4;
 - (c) all implements cleaned, disinfected, and property stored 8;
- (10) working area
 - (a) clean work stand 3;
 - (b) clean lavatories 2;
 - (c) clean and disinfected jars and containers 1;
 - (d) no unnecessary articles in work area 1;
- (11) certificate posted; 10;
- (12) sanitary law posted; 1;
- (13) sterilizing solution/container 20;

History Note: Authority G.S. 86A-5(a)(1); 86A-15; Eff. June 1, 2008; Amended Eff. September 1, 2013.

21 NCAC 06M .0101 QUALIFICATIONS

History Note: Authority G.S. 86A-7; Eff. February 1, 1976; Readopted Eff. February 8, 1978; Amended Eff. May 1, 1989; March 1, 1983; Repealed Eff. September 1, 2013.

21 NCAC 06M .0102 DUTIES AND RESPONSIBILITIES

Barber shop inspectors shall:

- (1) inspect existing barber shops and barber schools and to inspect new barber shops and barber schools prior to opening;
- (2) inspect any business that advertises or holds itself out as offering barbering services or

- employing barbers on the premises, whether licensed or unlicensed;
- (3) investigate complaints in the inspector's inspection area;
- (4) file weekly reports with the Board which contain a summary of the inspector's activities of the past week and make necessary recommendations to the Board;
- (5) issue notices of violations and warnings for violations of the Board's law or administrative rules; and
- (6) administer examinations as directed by the Board office.

History Note: Authority G.S. 86A-7; 86A-13; 86A-15; 86A-22; Eff. February 1, 1976; Readopted Eff. February 8, 1978; Amended Eff. September 1, 2013; June 1, 2008; December 1, 1994; May 1, 1989; March 1, 1983.

21 NCAC 06N .0104 FORM BAR-3

(a) Form BAR-3 must be filed for permission to enroll in barber school. It requires the following:

- (1) name, address, and birth date of applicant;
- (2) applicant's prior barber school attendance, if any;
- (3) name of school enrolled;
- (4) date of enrollment;
- (5) a certified copy of his Federal Bureau of Investigation criminal record report; and
- (6) signature of school manager

(b) A fee as required in Rule .0101 of this Subchapter must accompany this form.

History Note: Authority G.S. 86A-18; 86A-22; 86A-25; Eff. February 1, 1976; Readopted Eff. February 8, 1978; Amended Eff. March 1, 1983; Legislative Objection Lodged Eff. March 7, 1983; Curative Amended Eff. April 6, 1983; Amended Eff. September 1, 2013; May 1, 1989.

21 NCAC 06N .0105 FORM BAR-4

(a) Form BAR-4 must be filed by one desiring to take the examination to receive a registered apprentice certificate. It requires the following:

- (1) name, address, and birthdate of applicant;
- (2) name of barber school attended;
- (3) place of proposed employment as an apprentice barber; and
- (4) a certified copy of his Federal Bureau of Investigation criminal record report.

(b) The lower portion of the front page contains a course training certification to be filled in by the manager of the barber school the applicant attended.

(c) A fee as required in Rule .0101 of this Subchapter must be submitted with the application.

(d) Form BAR-4 must be notarized.

History Note: Authority G.S. 86A-1; 86A-10; 86A-15; 86A-24; 86A-25;;
Eff. February 1, 1976;
Readopted Eff. February 8, 1978;
Amended Eff. March 1, 1983;
Legislative Objection Lodged Eff. March 7, 1983;
Curative Amended Eff. April 6, 1983;
Amended Eff. September 1, 2013; May 1, 1989.

21 NCAC 06N .0106 FORM BAR-5

(a) Form BAR-5 must be filed by one desiring to take the examination to receive a registered barber certificate. It requires the following:

- (1) name, address, and birthdate of applicant;
- (2) place of proposed employment;
- (3) barber school training;
- (4) a certified copy of his/her Federal Bureau of Investigation criminal record report; and
- (5) barbering experience.

(b) Form BAR-5 must be notarized in two places.

(c) A fee as required in Rule .0101 of this Subchapter must accompany this form.

History Note: Authority G.S. 86A-1; 86A-3; 86A-10; 86A-25;
Eff. February 1, 1976;
Readopted Eff. February 8, 1978;
Amended Eff. March 1, 1983;
Legislative Objection Lodged Eff. March 7, 1983;
Curative Amended Eff. April 6, 1983;
Amended Eff. September 1, 2013; May 1, 1989.

21 NCAC 06N .0108 FORM BAR-7

(a) Form BAR-7 must be filed by one who has practiced less than three years in some state other than North Carolina and who desires to take the examination to obtain an apprentice license in North Carolina. It requires the following:

- (1) name, address and birthdate of applicant;
- (2) name of barber school attended;
- (3) experience background and status of each barber license in another state;
- (4) a certified copy of his Federal Bureau of Investigation criminal record report; and
- (5) a photograph approximately 2" x 3 " in size.

(b) An examination fee according to Rule .0101 of this Subchapter must accompany this form.

(c) Form BAR-7 must be notarized.

(d) Form BAR-7 must be accompanied by a copy of a barber school transcript and a letter from the other state Board verifying licensure in that state if licensed.

(e) Form BAR-7 must be accompanied by one sworn affidavit verifying experience, if any.

History Note: Authority G.S. 86A-1; 86A-12; 86A-25;
Eff. February 1, 1976;
Readopted Eff. February 8, 1978;
Amended Eff. March 1, 1983;
Legislative Objection Lodged Eff. March 7, 1983;
Curative Amended Eff. April 6, 1983;
Amended Eff. September 1, 2013; May 1, 1989.

21 NCAC 06N .0109 FORM BAR-8

(a) Form BAR-8 must be filed by one who has practiced as a barber in some state other than North Carolina for three years or more and who desires to obtain a certificate as a registered barber in North Carolina. It requires, the following:

- (1) name, address and birthdate of applicant;
- (2) name and address of barber school attended in other state;
- (3) barbering experience and status of each barber license in another state; and
- (4) a certified copy of his Federal Bureau of Investigation criminal record report.

(b) A fee in accordance with in Rule .0101 in this Subchapter must accompany this form.

(c) Form BAR-8 must be accompanied by a copy of a current out-of-state license and three notarized statements from persons who can attest to the applicant's out-of-state experience.

(d) Form BAR-8 must be notarized.

(e) Form BAR-8 must be accompanied by a copy of a barber school transcript and verification from the applicant's out-of-state Board of the applicant's licensure in that state.

History Note: Authority G.S. 86A-1; 86A-12; 86A-25;
Eff. March 1, 1983;
Legislative Objection Lodged Eff. March 7, 1983;
Curative Eff. April 6, 1983;
Amended Eff. September 1, 2013; May 1, 1989.

21 NCAC 06N .0112 ACCESS TO FORMS

The forms described in this Subchapter may be accessed via downloadable document from the Board's Internet website, www.ncbarbers.com, or may be obtained at the Board's office.

History Note: Authority G.S. 86-A-5, 150B-19.1;
Eff. May 1, 1989;
Amended Eff. September 1, 2013.

21 NCAC 06Q .0101 ADDITIONAL GROUNDS FOR DENIAL OR DISCIPLINE

Except as provided in Chapter 86A of the General Statutes, the Board:

- (1) will find fraudulent misrepresentation in the following examples:
 - (a) An individual or entity operates or attempts to operate a barber shop without a permit;
 - (b) An individual or entity advertises barbering services unless the establishment and personnel employed therein are licensed or permitted;
 - (c) An individual or entity uses or displays a barber pole for the purpose of offering barber services to the consuming public without a barber shop permit;
 - (d) An individual fails to positively identify a Registered Barber, apprentice barber, or student barber

- with a right to work permit prior to allowing the person to perform barbering services;
- (e) An individual or entity fails to maintain and produce a license or permit as defined by 21 NCAC 06P .0103(7) upon the request of the Executive Director or an inspector during an inspection;
- (2) will determine if grounds for denial or discipline exist when:
 - (a) An individual violates a settlement agreement entered into with the Board;
 - (b) An individual or entity violates the Board's law or any adopted by the Board or a local department of health for barbers, barber shops or barber schools; or
 - (c) An individual fails to disclose a felony criminal conviction in dealing with the Board.

History Note: Authority G.S. 86A-1; 86A-2; 86A-5(a); 86A-10; 86A-11; 86A-13; 86A-15; 86A-16; 86A-17; 86A-18; 86A-20; 86A-22; 86A-23; 86A-24;
Eff. June 1, 2008;
Amended Eff. September 1, 2013.

21 NCAC 06S .0101 GENERAL EXAMINATION INSTRUCTIONS

- (a) All candidates scheduled for an examination conducted by the Board must bring:
 - (1) two forms of identification, one of which must be photo bearing;
 - (2) exam approval documentation;
 - (3) tools and supplies as required by the Board; and
 - (4) a hygienically clean model with natural hair and beard of sufficient length to demonstrate practical barbering proficiency as determined by the Board.
- (b) No briefcases, bags, books, papers or study materials are allowed in the examination room. The exam facility is not responsible for lost or misplaced items.
- (c) No cell phones, calculators or other electronic devices are permitted for use during the examination.
- (d) No eating, drinking, smoking or gum-chewing is permitted during the examination.
- (e) No visitors, children, pets or guests are allowed at the test center.
- (f) No extra time for the examination will be permitted unless mandated by State or federal law such as the Americans with Disabilities Act.
- (g) No leaving the test center during the examination. Candidates may visit the restroom with the test center manager's permission, but will not receive any additional time for the examination.

(h) No giving or receiving assistance during the examination. If a candidate gives or receives assistance during the examination, the test center manager will stop the examination and the candidate will be dismissed from the test center. The Board's approved test center manager will not score the examination and will report the candidate to the Board, which will make any decisions regarding discipline.

(i) Candidates must maintain silence during the examination, and shall not mention the name of the school attended or the names of instructors. Candidates shall not wear or carry any school identification on uniforms or equipment.

History Note: Authority G.S. 86A-8; 86A-9; 86A-10; 86A-24;
Eff. September 1, 2009;
Amended Eff. September 1, 2013.

CHAPTER 16 – BOARD OF DENTAL EXAMINERS

21 NCAC 16A .0104 LOCATION

History Note: Authority G.S. 90-26; 90-43; 90-48;
Eff. May 1, 1989;
Amended Eff. February 1, 2008; September 1, 2001; May 1, 1991;
Repealed Eff. September 1, 2013.

21 NCAC 16B .0101 EXAMINATION REQUIRED; EXEMPTIONS

- (a) All persons desiring to practice dentistry in North Carolina are required to pass a Board approved, as set forth in these Rules, written and clinical examinations before receiving a license.
- (b) The examination requirement does not apply to persons who do not hold a North Carolina dental license and who are seeking volunteer licenses pursuant to G.S. 90-21.107 or licensure by endorsement pursuant to Rules .1001 and .1002 of this Subchapter.

History Note: Authority G.S. 90-21.107; 90-28; 90-30; 90-36; 90-38; 90-48;
Eff. September 3, 1976;
Readopted Eff. September 26, 1977;
Amended Eff. September 1, 2013; March 1, 2006; May 1, 1991; May 1, 1989; January 1, 1983.

21 NCAC 16B .0317 REEXAMINATION

- (a) Any applicant who has passed the written examination but has failed the clinical examination must also re-take the written examination unless the applicant successfully passes the clinical examination within one year after passing the written examination. The Board will not accept scores from the written portion of the examination that are more than one year old.
- (b) Any applicant who has failed the written portion of the examination may retake the written portion of the examination two additional times during the 12 month period from the date of the initial examination. The applicant must wait a minimum of 72 hours before attempting to retake a written examination.

(c) Any applicant who has failed the written portion of the examination three times shall successfully complete an additional Board approved course of study in the area(s) of deficiency exhibited on the examination. Such applicant must send evidence of the additional study, along with the application, before being admitted for reexamination.

*History Note: Authority G.S. 90-28; 90-30; 90-48;
Eff. November 1, 2008;
Amended Eff. September 1, 2013.*

**21 NCAC 16B .1001 DENTAL LICENSURE BY
ENDORSEMENT BASED ON MILITARY SERVICE**

(a) An applicant for a dental license by endorsement based on military service shall submit to the Board:

- (1) a completed, signed and notarized application form provided by the Board at www.ncdentalboard.org;
- (2) the application fee required by Rule 16M .0101(a)(14) of this Chapter;
- (3) written evidence demonstrating that the applicant has been awarded a military occupational specialty in dentistry and that the applicant:
 - (A) has completed a military program of training substantially equivalent to or greater than that required for licensure as a dentist in North Carolina;
 - (B) has completed testing or equivalent training and experience substantially equivalent to or greater than that required for licensure as a dentist in North Carolina, as set forth in G.S. 90-30; and
 - (C) has engaged in the active practice of dentistry as defined by G.S. 90-29(b)(1) for at least 1,500 hours per year during at least two of the five years preceding the date of application; and
- (4) a statement disclosing and explaining the commission of any act set out in G.S. 90-41(a) or (b), any disciplinary actions, investigations, malpractice claims, state or federal agency complaints, judgments, settlements, or criminal charges.

(b) All information required must be completed and received by the Board office as a complete package with the initial application and application fee. Incomplete application packages shall be returned to the applicant.

(c) All applicants shall submit to the Board a signed release form and completed Fingerprint Record Card, obtained from the Board.

*History Note: Authority G.S. 90-30(b); 90-41; 93B-15.1;
Eff. September 1, 2013.*

**21 NCAC 16B .1002 DENTAL LICENSURE BY
ENDORSEMENT BASED ON STATUS AS MILITARY
SPOUSE**

(a) An applicant for a dental license by endorsement based on the applicant's status as a military spouse shall submit to the Board:

- (1) a completed, signed and notarized application form provided by the Board at www.ncdentalboard.org;
- (2) the application fee required by Rule 16M .0101(a)(14) of this Chapter;
- (3) written evidence demonstrating that the applicant is married to an active member of the U.S. military and that such applicant:
 - (A) holds a current dental license from another jurisdiction whose standards for licensure are substantially equivalent to or greater than those required for licensure as a dentist in North Carolina as set forth in these Rules; and
 - (B) has engaged in the active practice of dentistry as defined by G.S. 90-29(b)(1) for at least 1,500 hours per year during at least two of the five years preceding the date of application; and
- (4) a statement disclosing and explaining the commission of an act set out in G.S. 90-41(a) or (b), any disciplinary actions, investigations, malpractice claims, state or federal agency complaints, judgments, settlements, or criminal charges.

(b) All information required must be completed and received by the Board office as a complete package with the initial application and application fee. Incomplete application packages shall be returned to the applicant.

(c) All applicants shall submit to the Board a signed release form and completed Fingerprint Record Card, obtained from the Board.

*History Note: Authority G.S. 90-30(b); 90-41; 90-36; 93B-15.1;
Eff. September 1, 2013.*

21 NCAC 16C .0101 LICENSURE

(a) All dental hygienists must be licensed by the North Carolina State Board of Dental Examiners before practicing dental hygiene in this state.

(b) The examination requirement does not apply to persons who do not hold a North Carolina dental hygiene license who are seeking volunteer licenses pursuant to G.S. 90-21.107 or license by endorsement pursuant to Rules 16G .0107 or .0108 of this Chapter.

*History Note: Authority G.S. 90-223; 90-224;
Eff. September 3, 1976;
Readopted Eff. September 26, 1977;*

Amended Eff. September 1, 2013; June 1, 2006; May 1, 1989; January 1, 1983.

21 NCAC 16C .0301 APPLICATION FOR LICENSURE

(a) All applications for licensure shall be made on the forms furnished by the Board at www.ncdentalboard.org and no application shall be deemed complete which does not set forth all the information required relative to the applicant. Incomplete applications will be returned to the applicant. Any applicant who changes his address shall notify the Board office within 10 business days. Applicants shall ensure that proof of graduation from high school or its equivalent is sent to the Board office. Applicants must also ensure that proof of graduation from a dental hygiene program as set forth in G.S. 90-224 is sent in a sealed envelope to the Board office.

(b) The nonrefundable application fee shall accompany the application.

(c) Applicants who are licensed in other states shall ensure that the Board receives verification of licensure from the board of each state in which they are licensed. A photograph of the applicant, taken within six months prior to the date of the application, must be affixed to the application.

(d) All applicants shall submit to the Board a signed release form and completed Fingerprint Record Card. The form and card are available from the Board office.

(e) All applicants shall arrange for and ensure the submission to the Board office the examination scores required by Rule .0303 of this Subchapter. The examination requirement does not apply to individuals who do not hold a North Carolina dental hygiene license who are seeking volunteer licenses pursuant to G.S. 90-21.107 or licensure by endorsement pursuant to Rules 16G .0107 or 16G .0108 of this Chapter.

History Note: Authority G.S. 90-223; 90-224;

Eff. September 3, 1976;

Readopted Eff. September 26, 1977;

Amended Eff. September 1, 2013; June 1, 2006; May 1, 1989.

21 NCAC 16G .0107 DENTAL HYGIENE LICENSURE BY ENDORSEMENT BASED ON MILITARY SERVICE

(a) An applicant for a dental hygiene license by endorsement based on his or her status as a member of the U.S. military shall submit to the Board:

- (1) a completed, signed and notarized application form provided by the Board;
- (2) an application fee in the amount of two hundred sixty-five dollars (\$265.00);
- (3) written evidence demonstrating that the applicant has been awarded a military occupational specialty in dental hygiene and that the applicant:
 - (A) completed a military program of training substantially equivalent to or greater than the requirements for licensure as a dental hygienist in North Carolina;
 - (B) completed testing or equivalent training and experience substantially

equivalent to or greater than that required for licensure as a dental hygienist in North Carolina, as set forth in G.S. 90-224; and

(C) engaged in the active practice of dental hygiene as defined by G.S. 90-221 for at least 1,500 hours per year during at least two of the five years preceding the date of application; and

(4) a statement disclosing and explaining the commission of any acts set out in G.S. 90-229, any disciplinary actions, investigations, malpractice claims, state or federal agency complaints, judgments, settlements, or criminal charges.

(b) All information required must be completed and received by the Board office as a complete package with the initial application and application fee. Incomplete application packages shall be returned to the applicant.

(c) All applicants shall submit to the Board a signed release form and completed Fingerprint Record Card. The form and card may be obtained from the Board office.

History Note: Authority G.S. 90-223; 90-224(c); 90-229; 93B-15.1;

Eff. Pending Consultation pursuant to G.S. 12-3.1.

21 NCAC 16G .0108 DENTAL HYGIENE LICENSURE BY ENDORSEMENT BASED ON STATUS AS MILITARY SPOUSE

(a) An applicant for a dental hygiene license by endorsement based on the applicant's status as a current spouse of an active member of the U.S. military shall submit to the Board:

- (1) a completed, signed and notarized application form provided by the Board;
- (2) a two hundred sixty-five dollar (\$265.00) application fee;
- (3) written evidence demonstrating that the applicant is a military spouse and that such applicant:

(A) holds a current dental hygiene license from another jurisdiction whose standards for licensure are substantially equivalent to or greater than those required for licensure as a dental hygienist in North Carolina; and

(B) has engaged in the active practice of dental hygiene as defined by G.S. 90-221 for at least 1,500 hours per year during at least two of the five years preceding the date of application; and

(4) a statement disclosing and explaining the commission of any act described in G.S. 90-229, any disciplinary actions, investigations, malpractice claims, state or federal agency complaints, judgments, settlements, or criminal charges.

(b) All information required must be completed and received by the Board office as a complete package with the initial application and application fee. Incomplete application packages shall be returned to the applicant.

(c) All applicants shall submit to the Board a signed release form and completed Fingerprint Record Card.

History Note: Authority G.S. 90-223; 90-224(c); 90-229; 90-232; 93B-15.1;

Eff. Pending Consultation pursuant to G.S. 12-3.1.

21 NCAC 16M .0101 DENTISTS

(a) The following fees shall be payable to the Board:

- | | | |
|------|---|-----------|
| (1) | Application for general dentistry license | \$ 395.00 |
| (2) | Renewal of general dentistry license | \$ 289.00 |
| (3) | Application for instructor's license or renewal thereof | \$ 140.00 |
| (4) | Application for provisional license | \$ 100.00 |
| (5) | Application for intern permit or renewal thereof | \$ 150.00 |
| (6) | Certificate of license to a resident dentist desiring to change to another state or territory | \$ 25.00 |
| (7) | Duplicate license | \$ 25.00 |
| (8) | Reinstatement of license | \$ 225.00 |
| (9) | Fee for late renewal of any license or permit | \$ 50.00 |
| (10) | Application for license by credentials | \$2000.00 |
| (11) | Application for limited volunteer dental license | \$ 100.00 |
| (12) | Renewal of limited volunteer dental license | \$ 25.00 |
| (13) | Board conducted examination processing fee | \$ 805.00 |
| (14) | Application for license by endorsement | \$ 395.00 |

(b) Each dentist renewing a license to practice dentistry in North Carolina shall be assessed a fee of forty dollars (\$40.00), in addition to the annual renewal fee, to be contributed to the operation of the North Carolina Caring Dental Professionals.

History Note: Authority G.S. 90-28; 90-39; 90-48; 150B-19(5); 93B-15.1;

Eff. September 3, 1976;

Readopted Eff. September 26, 1977;

Amended Eff. August 1, 1998; December 1, 1994; May 1, 1989; March 1, 1988; May 1, 1987;

Temporary Amendment Eff. October 28, 1998;

Amended Eff. August 1, 2000;

Temporary Amendment Eff. January 1, 2003;

Amended Eff. May 1, 2011; April 1, 2006; March 1, 2004; January 1, 2004; April 1, 2003;

Amended Eff. Pending Consultation pursuant to G.S. 12-3.1.

CHAPTER 22 - HEARING AID DEALERS AND FITTERS BOARD

21 NCAC 22A .0301 DEFINITIONS AND INTERPRETATIONS

History Note: Authority G.S. 93D-3(c); 150B-14; Eff. April 23, 1976;

Amended Eff. May 1, 1988;

Repealed Eff. September 1, 2013.

21 NCAC 22A .0303 LICENSE

History Note: Authority G.S. 93D-3(c); 93D-5; Eff. April 23, 1976;

Amended Eff. May 1, 1988;

Repealed Eff. September 1, 2013.

**21 NCAC 22A .0307 REGISTERED APPRENTICE
21 NCAC 22A .0308 REGISTERED APPLICANT
21 NCAC 22A .0309 DULY MADE APPLICATION
21 NCAC 22A .0310 ONE FULL YEAR OF
APPRENTICESHIP
21 NCAC 22A .0311 DIRECT SUPERVISION
21 NCAC 22A .0312 AUDIOMETER**

History Note: Authority G.S. 93D-3(c); 93D-9; Eff. May 1, 1988;

Amended Eff. February 1, 1996;

Repealed Eff. September 1, 2013.

21 NCAC 22A .0401 DEFINITIONS AND INTERPRETATIONS

(a) The rules of statutory construction concerning number and gender as contained in G.S. 12-3(1) shall be applied in the construction of these Rules.

(b) The definitions contained in the Food and Drug Administration Standards concerning Hearing Aid Devices, Title 21 of the Code of Federal Regulations Part 801.420, as published in the 42nd Volume of the Federal Register (February 15, 1977) page 9294 are incorporated herein by reference, not including subsequent amendments or editions of the referenced materials, with the following additions and amendments:

- (1) "Reconditioned" shall mean that the condition of the hearing aid is the same as a used hearing aid.
- (2) "Audiologist" shall mean any individual holding a valid non-temporary license as an audiologist issued by the North Carolina Board of Examiners for Speech and Language Pathologists and Audiologists.

(c) The definitions cited in this Section shall serve as interpretations for terms appearing in Chapter 93D of the General Statutes of North Carolina and in these Rules.

- (1) "Advertising" means a written or oral communication that is published, disseminated, circulated, or placed before the

- public for the purpose of attracting public attention to a product, business, or service.
- (2) "Apprentice" means an individual who holds a valid Board-issued apprentice registration certificate to fit and sell hearing aids under the supervision of a Registered Sponsor.
- (3) "Audiometer" means an electronic device used for air conduction testing, bone conduction testing and obtaining speech audiometry results, that contains a masking circuit, at least one VU meter, and capability of sound field output.
- (4) "Direct supervision" means the Registered Sponsor shall be present in the office suite and immediately available to furnish assistance and direction to the Apprentice. It does not mean that the Registered Sponsor must be present in the room with the Apprentice when the Apprentice is fitting and selling hearing aids or completing associated contracts or other paperwork.
- (5) "Duly made application" means a completed application received in the office of the Board, including all required documents, photographs, fees, and supplemental information requested in the application.
- (6) "General supervision" means the Apprentice is under the Registered Sponsor's overall direction and control, but the Registered Sponsor's presence is not required when the Apprentice is fitting and selling hearing aids or completing associated contracts or other paperwork. Under general supervision, the training of the Apprentice, including instruction, consultation and on-site inspection and evaluation of the Apprentice's work, and the maintenance of the necessary equipment and supplies are the continuing responsibility of the Registered Sponsor.
- (6) "One full year of apprenticeship" means that an apprentice satisfies each of the following requirements within 24 consecutive months from the date of issuance of the initial apprentice registration certificate:
- (A) works under the supervision of a Registered Sponsor for a minimum of 27 clock hours per week for a period of 50 weeks; and
- (B) holds a valid apprentice registration certificate for a period of 365 calendar days.
- (7) "Personal supervision" means the Apprentice is under the Registered Sponsor's specific direction and control for training and instruction, and the Registered Sponsor, or a North Carolina licensed Hearing Aid Specialist approved by the Registered Sponsor, shall be in attendance in the room with the Apprentice during:

- (A) the evaluation or measurement of the powers or range of human hearing by means of an audiometer or by other means;
- (B) the consequent selection or adaptation or sale or rental of hearing aids intended to compensate for hearing loss;
- (C) the making of an impression of the ear; and
- (D) the completion of any associated contracts and other paperwork.
- (8) "Registered Applicant" means any individual, including an apprentice, approved and registered to sit for the next scheduled licensing exam.
- (9) "Registered Sponsor" means a person with a permanent license as an audiologist under Article 22 of Chapter 90 of the General Statutes who is registered in accordance with G.S. 93D-3(c)(16), or a licensee of the Board who has been approved as a sponsor of an apprentice.

History Note: Authority 93D-3(c); 93D-9; 150B-14; Eff. September 1, 2013.

21 NCAC 22A .0501 FEE SCHEDULE

The Board hereby establishes the following fees:

- | | | |
|------|--|----------|
| (1) | Application for registration as an apprentice | \$100.00 |
| (2) | Renewal of apprentice registration | \$150.00 |
| (3) | Application for registration of a Registered Sponsor not otherwise licensed by the Board | \$150.00 |
| (4) | Application for a license | \$250.00 |
| (5) | Examination fee | \$300.00 |
| (6) | Issuance of certificate of license after successfully passing examination | \$ 25.00 |
| (7) | To reissue a suspended license more than 90 days after but not more than two years after license suspended | \$200.00 |
| (8) | Annual license renewal | \$250.00 |
| (a) | Late fee: 60 days or fewer after license expiration (in addition to renewal fee) | \$ 25.00 |
| (b) | Late fee: more than 60 days after license expiration (in addition to renewal fee) | \$ 50.00 |
| (9) | For approval of a continuing education program provider | \$ 40.00 |
| (10) | Verifying and recording attendance at a continuing education program (per program, per person) | \$ 15.00 |

- (11) For a continuing education make-up class provided by the Board
(per person, per day) \$ 50.00
- (12) For a voluntary apprentice training workshop (per person, per day) \$ 50.00
- (13) For a license examination preparation course provided by the Board (per person, per day) \$ 50.00
- (14) Processing fee for a check on which payment has been refused by the payor bank because of insufficient funds or because the drawer did not have an account at that bank \$ 25.00

History Note: Authority G.S. 12-3.1; 25-3-506; 93D-3; 93D-5; 93D-8; 93D-9; 93D-11; 93D-13; Temporary Adoption Eff. July 11, 1991, For a Period of 180 Days to Expire on January 7, 1992; Eff. January 1, 1992; Amended Eff. March 1, 2009; March 1, 2007; Recodified from 21 NCAC 22B .0603 Eff. May 1, 2013; Amended Eff. September 1, 2013.

21 NCAC 22A .0503 SUBMISSION OF APPLICATIONS AND FEES

- (a) The Board shall accept a digital image of a signed affidavit or other document required as part of an application as the original when submitted electronically in conjunction with the electronic application.
- (b) If an applicant submits an incomplete application, the application shall be classified as "abandoned by the applicant" on the 10th business day following electronic transmission of the application to the Board if the application is not a duly made application, as defined in 21 NCAC 22A .0401. The Board shall not apply any fee paid or document submitted for the abandoned application to any other application. It is the responsibility of the applicant and the sponsor, if any, to ensure that all supplemental documents requested in the application are submitted within 10 business days if all documents are not electronically submitted with the application. This Rule does not extend an application deadline set forth in any other rule of this Chapter.
- (c) The exam registration deadline is 45 days prior to the examination date. Late registration is grounds for denying an applicant admission to an examination, based on proximity to examination date, availability of space in the examination, and the applicant or the applicant's sponsor's past history of compliance with the Board's rules. An applicant denied admission to an examination due to late registration shall be registered for the next scheduled examination, if otherwise eligible.
- (d) No later than 10 business days after an apprentice has held a valid apprentice registration certificate for 365 days, the apprentice shall make application to take the next scheduled licensing examination. All apprentices shall reapply for a license by examination within the time prescribed in Paragraph (c) of this Rule each time they take and fail to pass the licensing examination.

- (e) No later than 20 days after the date printed on the Official Notice of Examination Results, a registered apprentice who failed to pass the qualifying examination shall make application to renew the apprentice certificate or the sponsor shall submit written notice to the Board that the apprenticeship is being terminated by the current expiration date of the certificate.
- (f) The Board shall deny a late duly made application, except as set forth in Paragraph (c) of this Rule.

History Note: Authority G.S. 25-3-506; 93D-3(c); 93D-5; 93D-9; Eff. April 23, 1976; Amended Eff. August 1, 2012; February 1, 1996; January 1, 1992; May 1, 1988; Recodified from 21 NCAC 22F .0103 Eff. May 1, 2013; Amended Eff. September 1, 2013.

21 NCAC 22F .0107 COMMUNICATION OF RESULTS OF EXAMINATIONS

- (a) The office of the Board shall issue written notification to each registered applicant by mailing exam results to the mailing address provided by the applicant concerning the applicant's performance on the qualifying examination no later than 30 working days after the date of the examination.
- (b) A copy of the applicant's exam results shall be mailed to the applicant's Registered Sponsor at the mailing address on file with the Board at the same time the results are mailed to the applicant.

History Note: Authority G.S. 93B-8; 93D-3(c); Eff. April 23, 1976; Amended Eff. September 1, 2013; June 1, 2012; February 1, 1996; May 1, 1988.

21 NCAC 22F .0120 CONTINUING EDUCATION

History Note: Authority G.S. 93D-3(c); 93D-11; Eff. April 23, 1976; Amended Eff. March 1, 1996; May 1, 1988; Repealed Eff. September 1, 2013.

21 NCAC 22F .0201 CONTINUING EDUCATION DEFINITIONS

The following definitions apply to the Rules contained in this Section:

- (1) "CE Program" means a continuing education presentation where attendance is monitored and the participants are required to be present at one or more designated physical locations. The CE Program shall consist of sessions which may be eligible for Board-approved CEU credit. A CE Program may be televised or conducted via the internet only if participants must be at a designated location where attendance is monitored by the CE Program provider.
- (2) "CEU accrual period" means the calendar year (January 1 through December 31) immediately preceding the March license renewal deadline.

- (3) "CEU reporting deadline" means the tenth day of January which immediately follows the CEU Accrual Period.
- (4) "CEU Verification Report" means the electronic form available on the Board website (www.nchalb.org) for recording CEU credits earned to satisfy the license renewal requirement.
- (5) "Continuing Education Unit" (CEU) means the reporting unit used in calculating approved continuing education hours. One-tenth of a CEU (0.10) equals one hour of approved instruction. Ten hours of approved instruction equals 1.00 CEU credit. The Board-approved CEU credits are recorded to two decimal points (for example, a session conducted for two hours would be recorded as 0.20 CEU).
- (6) "Educational objective" means a statement of the working knowledge or understanding of presented content that a participant should attain upon completion of the session.
- (7) "Hour" means a full clock hour (60 minutes) of instruction and learning, excluding any time allowed for any other activity such as meals, breaks, or business or committee meetings.
- (8) "Program application" means the Board's official application for the purpose of program review for Board-approved CEU credit, which is available on the Board website.
- (9) "Presentation format" means the teaching method utilized to impart information to the participants (for example, lecture, panel discussion, demonstration, practicum, or debate).
- (10) "Report of Attendance" means the official attendance verification form entitled "Continuing Education Report of Program Attendance," which is available on the website in generic form and in specific form for approved programs and self-study.
- (11) "Self-study" means independently completed internet-based activities or events provided by the Board, or approved by the International Institute for Hearing Instruments Studies (IIHIS), American Speech-Language-Hearing Association (ASHA), or American Academy of Audiology (AAA), for at least one hour of credit that includes an internet-presented examination pertaining to the content of the self-study session. Self-study may be:
 - (a) live, online presentations;
 - (b) prerecorded, downloaded presentations; or
 - (c) text-based, downloaded readings.
- (12) "Session" means an instructional or learning event, with at least two primary educational objectives pertaining to a single Board topic content category, and a specific amount of

time allotted for accomplishing the specified objectives.

- (13) "Topic Content Categories" means a system to separate Board-approved sessions by content. "Category 1" is for amplification and hearing rehabilitation issues. "Category 2" is for hearing loss, regulations, and consumer-related issues. "Category 0" is assigned to unapproved sessions in a program when other sessions in the program are approved.

History Note: Authority G.S. 93D-3(c); 93D-11; Eff. September 1, 2013.

21 NCAC 22F .0202 ANNUAL CONTINUING EDUCATION REQUIREMENTS

- (a) A licensee shall complete and record with the Board at least ten hours (1.00 CEU credit) of Board-approved continuing education annually, including at least five hours (0.50 CEU credit) classified as Category 1 in accordance with Rule .0203 of this Section.
- (b) The CEU Accrual Period for each license renewal shall be the calendar year preceding license renewal. CEU credit cannot be carried over from one CEU Accrual Period to the next, even if the CEU credit earned exceeds the license renewal requirement.
- (c) A licensee may receive CEU credit for only one of the sessions when sessions with essentially identical content are presented at the same or different CE Programs during any two consecutive Board CEU Accrual Periods. The Board shall determine whether sessions have essentially identical content by reviewing the presenters, educational objectives, and content for each session as provided on the program application.
- (d) A licensee completing the same self-study during any two consecutive CEU Accrual Periods shall be granted CEU credit only once.
- (e) An individual passing the licensing exam during a CEU Accrual Period satisfies the continuing education requirement for the corresponding license renewal.

History Note: Authority G.S. 93D-3(c); 93D-11; Eff. September 1, 2013.

21 NCAC 22F .0203 CONTENT CATEGORIES

- (a) Sessions assigned to Category 1 or Category 2, as described herein, satisfy the continuing education requirement for license renewal. Category 0 sessions, as described herein, do not satisfy any part of the continuing education requirement.
- (b) Category 1 is for amplification and hearing rehabilitation issues, and shall be assigned to continuing education sessions which are comprised of the following topics:
 - (1) hearing aid technology: instrument circuitry and acoustic performance data;
 - (2) earmold or shell coupling systems: design, selection, modifications, and ear impressions;
 - (3) hearing aid selection procedures, verification, fitting and adjustment techniques, and servicing or repairs; and

- (4) aural rehabilitation using amplification: auditory training, hearing aid orientation and counseling techniques, and hearing aid validation techniques.
- (c) Category 2 is for hearing loss, regulations, and consumer-related issues, and shall be assigned to continuing education sessions which are comprised of the following topics:
 - (1) biological, physical, and behavioral bases underlying normal and pathological hearing processes;
 - (2) detection, assessment, or monitoring of hearing impairment (such as measurement techniques and test interpretation), including intraoperative monitoring;
 - (3) cochlear implants or implantable hearing devices;
 - (4) central auditory processing;
 - (5) assistive listening devices, including FM Systems and ancillary wireless devices;
 - (6) techniques for development of speech and language in children with hearing loss, or augmentative and alternative communication strategies for children or adults with hearing loss;
 - (7) cerumen management, dizziness, or tinnitus as it directly pertains to persons with hearing loss;
 - (8) hearing impaired consumers' views of the hearing health care industry and consumer complaints;
 - (9) infection control issues for the hearing health care profession;
 - (10) professional conduct and regulatory issues pertaining to the fitting and selling of hearing aids; and
 - (11) hearing aid business practices such as hearing aid office management, sales contracts, and hearing aid marketing or industry trends.
- (d) Category 0 shall be assigned to all unapproved sessions in a continuing education program, including sessions comprised of the following programs, activities and topics:
 - (1) financial planning unrelated to the fitting or programming of hearing instruments;
 - (2) computer training unrelated to the fitting or programming of hearing instruments;
 - (3) employment contracts;
 - (4) balance mechanism or tinnitus, if not directly pertaining to persons with hearing loss;
 - (5) cerumen management, if not directly pertaining to persons with hearing loss;
 - (6) training designed for license examination preparation;
 - (7) factory tours, poster sessions, open forum sessions, and poster-type sessions conducted at a CE Program where participants are free to determine the amount of time that they interact with multiple presenters; and
 - (8) all other topics not listed as approved for Category 1 or Category 2.

History Note: Authority G.S. 93D-3(c); 93D-11; Eff. September 1, 2013.

21 NCAC 22F .0204 CE PROGRAM APPLICATION

- (a) Any individual or program sponsor shall submit a program application to the Board to request Board-approved CEU credit for a CE program. The person designated on the Board's program application as the program's applicant shall receive all Board communication related to program submission and approval.
- (b) The applicant shall complete and submit a duly made application prior to the Board's evaluation of the program for approval. A duly made application shall consist of responses to all information requested on the application form, the required application fee in accordance with Rule 21 NCAC 22A .0501, a copy of the published program announcement and the published time-ordered program agenda listing the exact time that each session begins and ends, which sessions are divided into parts, and scheduled breaks.
- (c) The Board shall use the initial duly made application to determine Board-approved CEU credit for the program. The initial program applicant shall be responsible for the accuracy of the submitted information. If a subsequent application for the same CE program is received by the Board from another applicant, the Board shall respond by providing either a copy of the Board's written notification of approval or denial of the initial application, or written notice of the status of the initial application.
- (d) A program sponsor may seek prior approval for a CE Program or submit a program application after the CE program date. CE Program sessions shall not be advertised as "approved by the Board" until Board approval is granted. Prior to Board approval, published announcements shall state that "sessions have been submitted for approval."
- (e) The Board will accept one program application for a series of CE Programs if:
 - (1) the initial program starting date is more than 30 days after the Board receives submission of the duly made application;
 - (2) identical content will be presented at each program on different dates or at different locations during the same calendar year; and
 - (3) all program dates and locations are listed on the application.
- (f) The Board shall not accept a program application for a series of identical CE Programs submitted after the starting date of a program in the series pending approval. A separate program application is required for each program that has already occurred. Future program dates in the series may be combined on one application as set forth in Paragraph (e) of this Rule.
- (g) A licensee shall submit to the Board a signed Report of Attendance with the program application when seeking Board approval for a program after the program date.
- (h) The program sponsor shall submit to the Board a program application with a roster of licensees who attended a CE Program when seeking Board approval for a program after the program date.

(i) The deadline to submit a program application shall be the 10th day of January following the calendar year in which the program was offered.

History Note: Authority G.S. 93D-3(c); 93D-11; Eff. September 1, 2013.

21 NCAC 22F .0205 CONTENT APPROVAL PROCESS

(a) The Board shall use the start date of a program to determine the CEU Accrual Period assigned to Board-approved CEU credit. The Board shall deny CEU credit for a program when the program application does not list the date and location of the program.

(b) In order for the Board to assign CEU credit, each program application received by the Board shall subdivide the CE Program into sessions classified according to the Topic Content Categories set forth in Rule .0203 of this Section. The Board shall evaluate sessions for approval using the following criteria:

- (1) the content of a session;
 - (A) educational objectives clearly demonstrate relevance to the fitting and selling of hearing aids;
 - (B) presentation enhances a practitioner's knowledge of issues relating to the fitting and selling of hearing aids; and
 - (C) format includes time for questions and answers;
- (2) the length of each session and published breaks;
 - (A) no credit shall be offered for any session less than one full hour;
 - (B) for sessions lasting longer than one hour, 0.05 CEU credit shall be issued for each additional full half-hour increment (a session lasting one hour and 45 minutes shall be issued 0.15 CEU);
 - (C) any session lasting more than three hours shall include a published break, lasting at least 15 minutes, or the session shall be eligible for a maximum of 0.30 CEU credit;
 - (D) for every three hours of continuous presentation time (regardless of the number of sessions presented during that time interval), a published break must be provided in order for any additional program sessions to be eligible for CEU credit; and
 - (E) if a session is divided into parts, all such parts must pertain to the same Board topic content category. No single part may be of a duration of less than one hour. The session shall be clearly listed in the published program agenda as being divided into parts with attendance required at all parts in order to receive CEU credit.

A session is considered to be divided into parts if there is a published break scheduled to interrupt the session during the CE Program; and

- (3) the way in which attendance is monitored;
 - (A) the program provider shall have a program representative verify attendance at each session of a CE Program;
 - (B) a speaker or facilitator shall be present to actively interact with the participants and monitor attendance for sessions relying primarily on prerecorded (audio or video) materials or computer-generated presentations;
 - (C) there shall be an announced means for participants to ask questions during each session for all televised or telephone distance learning presentations; and
 - (D) the published program announcement shall state that a program representative will be present at each distance learning site to monitor attendance.

(c) The Board shall post the processing and approval status of an application on the Board website in addition to posting a CE Program Report of Attendance for each approved CE Program which shows the Board-approved CEU credit for each session of the program.

History Note: Authority G.S. 93D-3(c); 93D-11; Eff. September 1, 2013.

21 NCAC 22F .0206 APPEALS AND CE PROGRAM MODIFICATION

(a) Only the initial applicant shall possess the right to appeal the decision of the Board. The applicant's appeal shall include a written statement and any supplemental documentation the applicant determines will support the request for Board reconsideration. The appeal shall be submitted prior to the end of the CEU Accrual Period for the program. The Board shall review the appeal to determine compliance with the rules in this Section. The Board shall respond in writing to the applicant within 30 days. An applicant who is not satisfied with the Board decision after the appeal may request an administrative hearing in accordance with 21 NCAC 22L .0103.

(b) The program sponsor shall submit documentation regarding any modifications to an approved program to the Board within 30 calendar days after the CE Program completion date and shall notify program participants that approved CEU credit is subject to change due to modifications in the agenda.

(c) The program sponsor shall write all program modifications in the appropriate section on the Report of Attendance and sign the form in the area designated for CE Program modifications if any session of an approved CE program is modified after publication of the program announcement or after submission of the program application to the Board.

(d) The Board may modify its approval of sessions and the CEU credit allowed when a program is changed after receiving Board approval. The Board shall update the program status on the website to reflect CEU credit changes.

(e) The program applicant shall submit a new program application if:

- (1) the Board approved a CE Program for multiple dates and the content or duration of the CE Program changes after one or more of the approved program dates have occurred. The remaining program dates shall constitute a new CE Program; or
- (2) the program sponsor offers a pre-approved CE Program on additional dates. The additional date(s) shall constitute a new CE Program, unless the program sponsor notifies the Board within 20 days of the canceled CE Program's date that a different date has been substituted.

History Note: Authority G.S. 93D-3(c); 93D-11; Eff. September 1, 2013.

21 NCAC 22F .0207 RECORDING CEU CREDIT

(a) A licensee shall have proof of attendance in order to record CEU credit with the Board:

- (1) For pre-approved CE Programs, the program sponsor shall provide each licensee in attendance with the approved CE Program Report of Attendance. At the conclusion of each session, the program sponsor's representative or the session speaker shall sign the CE Program Report of Attendance of each licensee in attendance in the space provided for attendance verification. Alternatively, a program sponsor may initial or rubberstamp the space for session attendance verification after each session and then sign the bottom of each page of the Report of Attendance at the end of the program; or
- (2) If the CE Program is not pre-approved, the licensee shall print a generic CE Program Report of Attendance from the Board website and take it to the program to complete the session titles as listed on the program sponsor's agenda presented to participants on the day of the continuing education event. The licensee shall obtain the hand-written signature of the program sponsor's representative or the session speaker on the Report of Attendance at the end of each session.

(b) The program applicant shall submit a roster of licensees who attended a CE Program no later than 30 days following completion of a pre-approved CE Program:

- (1) If the program applicant is recording CEU credit with the Board on behalf of licensees, the payment of the recording fee as set forth in Rule 21 NCAC 22A .0501 and an original Report of Attendance for each licensee shall accompany the submission of the roster; or

- (2) If licensees are responsible for recording CEU credit with the Board, including paying the recording fee, the program applicant shall provide the original signed Report of Attendance form to each licensee at the end of the program, and shall submit only the roster.

(c) The Board shall accept the Board form entitled "Continuing Education Report of Program Attendance" for attendance verification when recording CEU credit. The Board shall reject certificates of attendance issued by any entity other than the Board as proof of attendance or as verification of CEU credit earned.

(d) A licensee shall record CE Program CEU credit with the Board by submitting all of the following:

- (1) an electronic CEU Verification Report;
- (2) an original Report of Attendance; and
- (3) a recording fee for each CE Program as set forth in Rule 21 NCAC 22A .0501.

(e) A licensee shall record self-study CEU credit with the Board as set forth in Rule .0208 of this Section.

(f) The Board shall accept an electronic image of the Report of Attendance as the original Report of Attendance when submitted electronically in conjunction with a CEU Verification Report or a roster.

(g) A licensee shall record sufficient Board-approved CEU credit to satisfy the continuing education requirement for license renewal by the CEU reporting deadline, which is the 10th day of January immediately following the CEU Accrual Period.

(h) A licensee's failure to record sufficient CEU credit with the Board by the CEU reporting deadline shall be grounds for disciplinary action.

History Note: Authority G.S. 93D-3(c); 93D-11; 93D-13; Eff. September 1, 2013.

21 NCAC 22F .0208 SELF-STUDY

(a) Self-study may be completed to satisfy up to all 10 hours of the continuing education requirement during each CEU Accrual Period.

(b) Each self-study event shall be one session and up to 10 sessions completed in the same CEU Accrual Period may be reported on one self-study Report of Attendance as a self-study Program.

(c) A licensee shall record self-study CEU credit with the Board by submitting all of the following:

- (1) an electronic CEU Verification Report;
- (2) a completed self-study Report of Attendance;
- (3) an official transcript listing the licensee's score of 80 percent or greater on an internet-presented examination pertaining to the content of the self-study activity; and
- (4) the recording fee as set forth in Rule 21 NCAC 22A .0501 for each self-study program.

(d) The Board shall accept electronic images of the self-study Report of Attendance and official transcripts when submitted electronically in conjunction with the CEU Verification Report.

History Note: Authority G.S. 93D-3(c); 93D-11; Eff. September 1, 2013.

21 NCAC 22F .0209 CONTINUING EDUCATION RECORDS

(a) The Board shall maintain a cumulative record of the CEU credit recorded for each licensee during the three most recent CEU Accrual Periods.

(b) A summary of recorded CEU credits may be viewed on the Board website. A request for a full copy of a licensee's CEU record, including copies of the original forms submitted for the three most recent CEU Accrual Periods, is subject to the provisions of G.S. 132-6.

(c) The Board shall destroy all records of program applications and CEU credits reported to the Board no sooner than five years after such records are received by the Board.

History Note: Authority G.S. 93D-3(c); 93D-11; 93D-13; Eff. September 1, 2013.

**21 NCAC 22K .0101 DESIGNATION
21 NCAC 22K .0102 APPLICATION FOR LICENSE
21 NCAC 22K .0103 APPLICATION FOR
APPRENTICE REGISTRATION CERTIFICATE
21 NCAC 22K .0104 APPLICATION FOR LICENSE
RENEWAL**

History Note: Authority G.S. 93D-3(c); 150B-11(1); Eff. April 23, 1976; Amended Eff. February 1, 1996; May 1, 1988; Repealed Eff. September 1, 2013.

21 NCAC 22K .0105 ACCESS TO FORMS

History Note: Authority G.S. 93D-3(c); Eff. February 1, 1996; Repealed Eff. September 1, 2013.

RULES REVIEW COMMISSION

This Section contains information for the meeting of the Rules Review Commission on October 17, 2013 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

Jeff Hyde
Margaret Currin
Jay Hemphill
Thomas Taylor
Faylene Whitaker

Appointed by House

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

COMMISSION COUNSEL

Joe Deluca (919)431-3081
Amanda Reeder (919)431-3079

RULES REVIEW COMMISSION MEETING DATES

October 17, 2013 November 21, 2013
December 19, 2013 January 16, 2014

AGENDA

RULES REVIEW COMMISSION
Thursday, October 17, 2013 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. Review of Log of Filings (Permanent Rules) for rules filed between August 21, 2013 and September 20, 2013
- IV. Review of Log of Filings (Temporary Rules) for any rule filed within 15 business days of the RRC Meeting
- V. G.S. 150B-19.1 Certification
 - A. Department of Justice, Division of Criminal Information – 12 NCAC 04H .0101, .0102, .0103, .0201, .0202, .0203, .0301, .0302, .0303, .0304, .0401, .0402, .0403, .0404 (DeLuca)
 - B. Department of Justice, Division of Criminal Information – 12 NCAC 04I .0101, .0102, .0103, .0104, .0201, .0202, .0203, .0204, .0301, .0302, .0303, .0401, .0402, .0403, .0404, .0405, .0406, .0407, .0408, .0409, .0410, .0501, .0601, .0602, .0603, .0701, .0801 (DeLuca)
 - C. Department of Justice, Division of Criminal Information – 12 NCAC 04J .0101, .0102, .0103, .0201, .0301 (DeLuca)
- VI. Commission Business
 - Next meeting: November 21, 2013

Commission Review
Log of Permanent Rule Filings
August 21, 2013 through September 20, 2013

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

BANKS, OFFICE OF THE COMMISSIONER OF

The rules in Subchapter 3B concern rulemaking and contested cases including rulemaking (.0100); contested cases (.0200); and appeals to the state banking commission (.0300).

<u>Definitions</u>	04	NCAC	03B	.0219
Amend/*				
<u>Appointment of Appellate Panel</u>	04	NCAC	03B	.0301
Amend/*				

The rules in Subchapter 3F concern licensees under the Money Transmitters Act including administrative (.0200); licensing (.0300); operations (.0400); reporting and notifications (.0500); examination books and records (.0600); and license revocation (.0700).

<u>Definitions</u>	04	NCAC	03F	.0201
Amend/*				
<u>Application for a License</u>	04	NCAC	03F	.0301
Amend/*				
<u>Revocation or Cancellation of Surety Bond</u>	04	NCAC	03F	.0506
Amend/*				
<u>Impairment of Minimum Net Worth</u>	04	NCAC	03F	.0508
Amend/*				
<u>Record and Bookkeeping Requirements</u>	04	NCAC	03F	.0601
Amend/*				
<u>Examination Fee</u>	04	NCAC	03F	.0602
Amend/*				

The rules in Subchapter 3L concern check-cashing businesses including administrative (.0100); application (.0200); licensing (.0300); operations (.0400); books and records examinations (.0500); and reporting and notification requirements (.0600).

<u>Definitions</u>	04	NCAC	03L	.0101
Amend/*				
<u>Posting of Fees</u>	04	NCAC	03L	.0403
Amend/*				
<u>Books and Records</u>	04	NCAC	03L	.0501
Amend/*				
<u>Report of Information to Commissioner for the General ...</u>	04	NCAC	03L	.0604
Repeal/*				

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's 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>Administration of Justice Officer Schools and Training Pr...</u>	12	NCAC	10B	.0702
Amend/*				

WILDLIFE RESOURCES COMMISSION

The rules in Subchapter 10C cover inland fishing including jurisdictional issues involving the Marine Fisheries Commission (.0100); general rules (.0200); game fish (.0300); non-game fish (.0400); primary nursery areas (.0500); and anadromous fish spawning areas (.0600).

<u>Black Bass</u>	15A	NCAC	10C	.0305
Amend/*				
<u>Crappie</u>	15A	NCAC	10C	.0306
Adopt/*				
<u>Flounder, Sea Trout and Red Drum</u>	15A	NCAC	10C	.0307
Adopt/*				
<u>Kokanee Salmon</u>	15A	NCAC	10C	.0308
Adopt/*				
<u>Muskellunge</u>	15A	NCAC	10C	.0309
Adopt/*				
<u>Pickarel</u>	15A	NCAC	10C	.0310
Adopt/*				
<u>Roanoke and Rock Bass</u>	15A	NCAC	10C	.0311
Adopt/*				
<u>Sauger</u>	15A	NCAC	10C	.0312
Adopt/*				
<u>Shad</u>	15A	NCAC	10C	.0313
Adopt/*				
<u>Striped Bass</u>	15A	NCAC	10C	.0314
Adopt/*				
<u>Sunfish</u>	15A	NCAC	10C	.0315
Adopt/*				
<u>Trout</u>	15A	NCAC	10C	.0316
Adopt/*				
<u>Walleye</u>	15A	NCAC	10C	.0317
Adopt/*				
<u>White Bass</u>	15A	NCAC	10C	.0318
Adopt/*				
<u>White Perch</u>	15A	NCAC	10C	.0319
Adopt/*				
<u>Yellow Perch</u>	15A	NCAC	10C	.0320
Adopt/*				

The rules in Subchapter 10F cover motorboats and water safety including boat registration (.0100); safety equipment and accident reports (.0200); and local water safety regulations covering speed limits, no-wake restrictions, restrictions on swimming and other activities, and placement of markers for designated counties or municipalities (.0300).

<u>Safety Equipment</u>	15A	NCAC	10F	.0201
Amend/*				

DENTAL EXAMINERS, BOARD OF

The rules in Subchapter 16Q concern general anesthesia and sedation including definitions (.0100); general anesthesia (.0200); parenteral conscious sedation (.0300); enteral conscious sedation (.0400); renewal of permits (.0500); reporting and penalties (.0600); and penalty for non-compliance (.0700).

<u>Equipment</u>	21	NCAC	16Q	.0202
Amend/*				
<u>Clinical Requirements and Equipment</u>	21	NCAC	19Q	.0302

Amend/*				
<u>Annual Renewal Required</u>	21	NCAC	16Q	.0501
Amend/*				

HEARING AID DEALERS AND FITTERS BOARD

The rules in Subchapter 22I concern professional affairs.

<u>Visual Inspection and Hearing Test</u>	21	NCAC	22I	.0103
Amend/*				

The rules in Subchapter 22L concern administrative hearings and contested cases.

<u>Committee on Investigations</u>	21	NCAC	22L	.0101
Amend/*				
<u>Request for Hearing</u>	21	NCAC	22L	.0103
Amend/*				
<u>Granting or Denying Hearing Requests</u>	21	NCAC	22L	.0104
Amend/*				
<u>Notice of Hearing</u>	21	NCAC	22L	.0105
Amend/*				
<u>Presiding Officer</u>	21	NCAC	22L	.0106
Amend/*				
<u>Informal Procedures</u>	21	NCAC	22L	.0109
Amend/*				
<u>Disqualification of Board Members</u>	21	NCAC	22L	.0110
Amend/*				
<u>Failure to Appear</u>	21	NCAC	22L	.0111
Amend/*				
<u>Subpoenas</u>	21	NCAC	22L	.0113
Amend/*				
<u>Proposals for Decisions and Final Decision</u>	21	NCAC	22L	.0115
Amend/*				
<u>Publication of Disciplinary Actions</u>	21	NCAC	22L	.0116
Adopt/*				

MEDICAL BOARD

The rules in Subchapter 32B concern license to practice medicine including prescribing (.1000); general (.1300); resident's training license (.1400); faculty limited license (.1500); purpose license (.1600); other business (.1700); and expedited license for physician license (.2000).

<u>Application for Physician License</u>	21	NCAC	32B	.1303
Amend/*				
<u>Reinstatement of Physician License</u>	21	NCAC	32B	.1350
Amend/*				
<u>Application of Resident's Training License</u>	21	NCAC	32B	.1402
Amend/*				
<u>Application for Medical School Faculty License</u>	21	NCAC	32B	.1502
Amend/*				
<u>Special Purpose License</u>	21	NCAC	32B	.1602
Amend/*				
<u>Scope of Practice Under Limited Volunteer License and Ret...</u>	21	NCAC	32B	.1701

Amend/*				
<u>Application for Limited Volunteer License</u>	21	NCAC	32B	.1702
Amend/*				
<u>Application for Retired Limited Volunteer License</u>	21	NCAC	32B	.1704
Amend/*				
<u>Expedited Application for Physician License</u>	21	NCAC	32B	.2001
Amend/*				

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

<u>Process for Approval to Practice</u>	21	NCAC	32M	.0104
Amend/*				
<u>Inactive Status</u>	21	NCAC	32M	.0108
Amend/*				

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

<u>Exemption from License</u>	21	NCAC	32S	.0209
Amend/*				

FUNERAL SERVICE, BOARD OF

The rules in Subchapter 34A concern board functions including general provisions (.0100); and fees and other payments (.0200).

<u>Fees and Other Payments</u>	21	NCAC	34A	.0201
Amend/*				

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).

<u>Issuance of a License by a Compact Party State</u>	21	NCAC	36	.0702
Amend/*				
<u>Process for Approval to Practice</u>	21	NCAC	36	.0804
Amend/*				
<u>Inactive Status</u>	21	NCAC	36	.0808
Amend/*				

PHARMACY, BOARD OF

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

<u>Definitions</u>	21	NCAC	46	.3401
Amend/*				

<u>General Requirements for the Use of Automated Medication ...</u> Amend/*	21	NCAC	46	.3402
<u>Multidisciplinary Committee for Decentralized Automated M...</u> Repeal/*	21	NCAC	46	.3403
<u>Stocking or Restocking of an Automated Medication System</u> Amend/*	21	NCAC	46	.3404
<u>Centralized Automated Medication Systems</u> Amend/*	21	NCAC	46	.3405
<u>Quality Assurance Program</u> Amend/*	21	NCAC	46	.3406
<u>Record Keeping</u> Amend/*	21	NCAC	46	.3407
<u>Compliance</u> Amend/*	21	NCAC	46	.3408

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

OFFICE OF ADMINISTRATIVE HEARINGS

Chief Administrative Law Judge
JULIAN MANN, III

Senior Administrative Law Judge
FRED G. MORRISON JR.

ADMINISTRATIVE LAW JUDGES

Beecher R. Gray	Randall May
Selina Brooks	A. B. Elkins II
Melissa Owens Lassiter	Joe Webster
Don Overby	

<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. Bobby Warren Joyner T/A Hillsdale Club	12 ABC 06153	11/06/12	
ABC Commission v. Quick Quality, Inc., T/A Rock Star Grill and Bar	12 ABC 07260	12/11/12	
ABC Commission v. Fat Cats Grill and Oyster Bar Inc, T/A Fat Cats Grill and Oyster Bar	12 ABC 08988	12/19/12	
ABC Commission v. Wachdi Khamis Awad T/A Brothers in the Hood	12 ABC 09188	03/06/13	
ABC Commission v. Double Zero, LLC, T/A Bad Dog	12 ABC 11398	04/08/13	
ABC Commission v. Soledad Lopez de Avilez T/A Tienda Avilez	13 ABC 00002	06/06/13	
ABC Commission v. Two Brothers Food Market, Inc., T/A Circle Mart	13 ABC 10356	07/11/13	
ABC Commission v. Grandmas Pizza LLC T/A Grandmas Pizza	13 ABC 11401	08/13/13	
<u>DEPARTMENT OF CRIME CONTROL AND PUBLIC SAFETY</u>			
Maggie Yvonne Graham v. Victims Compensation Commission	09 CPS 05287	04/09/13	
Brian J. Johnson v. Department of Public Safety Victim Services	12 CPS 01664	12/21/12	
George H. Jagers, III v. Crime Victims Compensation Commission	12 CPS 01693	11/01/12	
Teresa Herbin v. Department of Public Safety Victim Services	12 CPS 03680	08/10/12	
Jacqueline M Davis victim-Antonio T Davis v. Dept. of Public Safety	12 CPS 05919	11/06/12	
Demario J. Livingston v. Dept. of Public Safety Victim Services	12 CPS 06245	10/19/12	
Shirley Ann Robinson v. NC Crime Victims Compensation Commission	12 CPS 07601	12/07/12	
Harold Eugene Merritt v. State Highway Patrol	12 CPS 07852	05/24/13	
Vanda Lawanda Johnson v. Office of Victim Compensation	12 CPS 09709	04/25/13	
Latoya Nicole Ritter v. Crime Victim Compensation Commission, Janice Carmichael	12 CPS 10572	04/25/13	
Teresa f. Williams v. Crime Victims Compensation Commission	13 CPS 09790	07/11/13	

CONTESTED CASE DECISIONS

Angela Clendenin King v. Office of Administrative Hearings NC Crime Victims Comp Commission	13 CPS 11239	08/02/13
Matthew B. McGee v. NC Victims Compensation Commission	13 CPS 12133	08/26/13

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Stonesthrow Group Home Medicaid Provider #6603018 Owned by Alberta Professional Services Inc v. DHHS, Division of Mental Health/Development Disabilities/ Substance Abuse, and DMA	09 DHR 05790	01/11/13
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
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STATE OF NORTH CAROLINA
COUNTY OF NORTH HAMPTON

Filed

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
12 DOJ 05141

NOV -7 PM 5:08

WALLACE CONNELL RANSOM, Office of
Administrative Hearings

Petitioner,

v.

N.C. SHERIFFS' EDUCATION AND
TRAINING STANDARDS COMMISSION,

Respondent.

PROPOSAL FOR DECISION

THE ABOVE-ENTITLED MATTER was heard before the undersigned Augustus B. Elkins II, Administrative Law Judge, on February 20, 2012, in Elizabeth City, North Carolina. This case was heard pursuant to N.C.G.S. § 150B-40(e), designation of an Administrative Law Judge to preside at the hearing of a contested case under Article 3A, Chapter 150B of the North Carolina General Statutes. The record was left open for the parties' submission of further materials, including but not limited to supporting briefs, memorandums of law and proposals. The Petitioner submitted a March 14, 2013 letter which was received by the Undersigned on March 18, 2013 setting forth proposed conclusions of law. Respondent filed proposals attached to a March 22, 2013 letter which was received by the Undersigned on March 26, 2013. The record was closed on March 26, 2013.

APPEARANCES

For Petitioner: Courtney S. Hull, Esq.
Attorney for Petitioner
P.O. Box 99
Elizabeth City, North Carolina 27907

For Respondent: Matthew L. Boyatt, Assistant Attorney General
Attorney for Respondent
North Carolina Department of Justice
9001 Mail Service Center
Raleigh, North Carolina 27699-9001

ISSUES

Did Petitioner knowingly make a material misrepresentation of any information required for certification as a justice officer when he failed to disclose a 1992 Northampton County charge

of "DWI – Level 5 – Aid and Abet" during his application process?

Did Petitioner knowingly and designedly by any means of false pretense, deception, fraud, misrepresentation or cheating whatsoever, obtain or attempt to obtain certification through the North Carolina Sheriffs' Education and Training Standards Commission when he failed to disclose a 1992 Northampton County charge of "DWI – Level 5 – Aid/Abet" during his application process?

EXHIBITS

Petitioner's Exhibits 1-22 were introduced and admitted.

Respondent's Exhibits 1-11 were introduced and admitted.

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

FINDINGS OF FACT

1. Both parties are properly before this Administrative Law Judge, in that jurisdiction and venue are proper with both parties receiving timely notice of hearing.
2. The North Carolina Sheriffs' Education and Training Standards Commission (Sheriffs' Commission) has the authority granted under Chapter 17E of the North Carolina General Statutes and Title 12 of the North Carolina Administrative Code, Chapter 10B, to certify justice officers and to deny, revoke, or suspend such certification.
3. Petitioner received a Notification of Probable Cause to Revoke Justice Officer Certification in an April 13, 2012 letter from Respondent.
4. The Petitioner was appointed as a detention officer through the Northampton County Sheriff's Office on February 3, 1995. Thereafter, Petitioner was appointed as a deputy sheriff through the Northampton County Sheriff's Office on June 3, 1996. Petitioner holds dual certification through the Sheriffs' Commission.

5. Petitioner was also appointed as a police officer through the Garysburg Police Department on September 28, 2000. Petitioner currently holds certification through the Sheriffs' Commission and through the North Carolina Criminal Justice Education and Training Standards Commission (CJ Commission).

6. Some twenty-one (21) years ago, on January 3, 1992, Petitioner was charged with "DWI – Level 5 – Aid/Abet" in violation of North Carolina law. At the time Petitioner was charged with this offense, Petitioner was around 20 years of age. Petitioner testified that on January 3, 1992, he was a passenger in a motor vehicle being driven by Rodell Shearin. Mr. Shearin was leaving a graduation party where they both had been in attendance and he offered to give Petitioner a ride home. Not long afterward, Mr. Shearin was stopped by Trooper Lane of the North Carolina State Highway Patrol. Trooper Lane charged Shearin with Driving While Impaired. The Trooper asked Petitioner if he knew Shearin was impaired and Petitioner stated he did not. The Trooper said he was issuing him a citation for aiding and abetting anyway. Petitioner had to walk back to the party to catch another ride. Petitioner went to court in response to the citation issued by the Trooper and a member of the District Attorney's Office called him up and told him there was no probable cause, the case was dismissed, and Petitioner could go home.

7. The Petitioner completed a Personal History Statement (Form F-3), dated January 30, 1995, as part of his original employment application with the Northampton County Sheriff's Office, and in order to obtain certification as a justice officer from the Sheriffs' Commission.

8. Question No. 47 of the Sheriffs' Commission Form F-3 asked the applicant to disclose the following:

"Have you ever been arrested by a law enforcement officer or otherwise charged with a criminal offense?"

9. The instructions for Question No. 47 advised the Petitioner the following:

"If any doubt exists in your mind as to whether or not you were arrested or charged with a criminal offense at some point in your life . . . you should answer yes."

10. When the Petitioner completed Question No. 47, he answered "No".

11. At the time Petitioner completed the F-3 form in furtherance of his Northampton County Sheriff's Office application, Petitioner had earned a high school diploma from Northampton High School (class of 1989) and also completed the Jailer Certification Course through the North Carolina Sheriffs' Education and Training Standards Commission.

12. Diane Konopka, Deputy Director of the North Carolina Sheriffs' Education and Training Standards Division testified at the Contested Case Hearing. Ms. Konopka stated that at the time Petitioner completed the Detention Officer Certification Course in the mid-nineties, she

believed that students should have been advised in the Course Orientation block of training to disclose all criminal offenses they were ever charged with, regardless of the disposition of the charge. In addition, Ms. Konopka advised students should have been told by instructor(s) to provide full disclosure of criminal charges in applications to the North Carolina Sheriffs' Education and Training Standards Commission, in addition to any applications submitted to the North Carolina Criminal Justice Education and Training Standards Commission.

13. The Petitioner stated he did not intentionally omit information on his 1995 Personal History Statement (Form F-3). Rather, Petitioner testified that he did not disclose the Aid and Abet DWI charge on the F-3 Form because, though he was issued a citation, he was not arrested by the trooper, the charge was dropped by the District Attorney's Office for lack of probable cause and he was never convicted of the charge. Petitioner does not maintain that he forgot to list the criminal offense. Petitioner cited he did not intentionally omit the charge but believed it did not have to be listed based on the circumstances cited above.

14. On September 19, 2000, Petitioner completed another Personal History Statement (Form F-3), as part of his employment application with the Garysburg Police Department, and in order to obtain certification as a justice officer from North Carolina Criminal Justice Education and Training Standards Commission.

15. Question No. 47 of The CJ Commission Form F-3 asked the applicant to disclose the following:

"Have you ever been arrested by a law enforcement officer or otherwise charged with a criminal offense?"

16. The instructions for Question No. 47 advised the Petitioner the following:

"If any doubt exists in your mind as to whether or not you were arrested or charged with a criminal offense at some point in your life . . . you should answer yes."

17. When the Petitioner completed Question No. 47 on the September 19, 2000 F-3 Form, he answered "No".

18. Petitioner maintains that he did not disclose his Aid and Abet DWI charge on the 2000 F-3 form because he misunderstood the question to mean that only charges resulting in a conviction were required to be disclosed. Petitioner does not claim that someone told him to answer "No" on this question. Further, Petitioner does not claim that he made a mistake or forgot about the January 3, 1992 Aid and Abet DWI citation.

19. At the time Petitioner completed the September 19, 2000, F-3 Form, Petitioner testified that he had been a sworn deputy on the patrol division for at least three (3) years.

20. Petitioner testified that by the time he completed the September 19, 2000 F-3 Form,

he had issued hundreds of criminal citations and criminal warrants in furtherance of his duties as a sworn deputy. Further, Petitioner stated that by September 2000, he had assisted the State Highway Patrol with numerous DWI stops and investigations.

21. Petitioner testified that by September 2000, Petitioner had received periodic law enforcement training in order to maintain his certification and to keep current with the laws of the State of North Carolina. Petitioner testified that he did not have a problem learning or understanding the law, and that he was able to carry out his job functions effectively.

22. When Petitioner filled out the January 1995 Form F-3, he was given the form and told to fill it out in the deputy's room, which he did in 15 to 20 minutes. He believed he was answering each question truthfully and honestly. Likewise the September 2000 Form F-3 was filled out in about 15 to 20 minutes at the Police Department. He also filled that form out believing he was being truthful and without any intention to deceive. He knew the agency would verify the form and he wanted to be as accurate as possible.

23. Petitioner is a father and husband who currently supports his family. In order to support his family, Petitioner works with both the Northampton Sheriff's Office and the Garysburg Police Department. He has been promoted several times in the Northampton Sheriff's Office and has received a promotion in the Garysburg Police Department.

24. Sheriff Wardie Vincent of the Northampton Sheriffs' Office and Chief of Police Raymond Vaughn of the Garysburg Police Department each testified regarding Petitioner's law enforcement accomplishments. Both witnesses testified that Petitioner is a good law enforcement officer who works well with others and is well regarded in the community. Petitioner has given approximately 17 years of service to the community as a law enforcement officer. Petitioner's certification has never been suspended or revoked by either the North Carolina Sheriffs' Education and Training Standards Commission or the North Carolina Criminal Justice Education and Training Standards Commission. Both Sheriff Vincent and Chief Vaughn stated they valued Petitioner as a law enforcement officer, and wanted to continue to employ Petitioner. Sheriff Vincent stated that Petitioner is a very good supervisor and has a reputation in the community for honesty and trustworthiness. Chief Vaughn agreed and further found Petitioner to be very professional and a man of outstanding ethics.

25. Major Milton Drew, the Jail Administrator for the Northampton Sheriff's Office stated he had known Petitioner for approximately 18 years. He found Petitioner to be a very good officer who was a very truthful person. Major Drew stated that in his experience with Question 47 of the Personal History Statement, he has seen quite a few other persons be confused by the question. He stated Northampton Sheriff's Office personnel now sit down with applicants and go back over the questions, often giving specific instructions.

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

CONCLUSIONS OF LAW

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

2. Pursuant to 12 NCAC 10B .0204(c), the North Carolina Sheriffs' Education and Training Standards Commission may revoke, deny, or suspend the certification of a justice officer when the Commission finds that the applicant for certification or certified justice officer: (1) has knowingly made a material misrepresentation of any information required for certification or accreditation from the Sheriffs' Commission or the North Carolina Criminal Justice Education and Training Standards Commission; or (2) has knowingly and designedly by any means of false pretense, deception, fraud, misrepresentation or cheating whatsoever, obtained or attempted to obtain credit, training or certification from the Sheriffs' Commission or the North Carolina Criminal Justice Education and Training Standards Commission.

3. Under Administrative Code rules, revocation, denial or suspension of certification of a justice officer may be entered when the applicant for certification has "*knowingly made a material misrepresentation*" or has "*knowingly and designedly by any means of false pretense, deception, fraud, misrepresentation, or cheating,*" attempted to obtain certification from the Commission. (emphasis added)

4. Whether a Petitioner has engaged in knowingly making a misrepresentation or knowingly and designedly by fraud or misrepresentation attempted to obtain certification may be gathered from the facts of the case as applied to the standards of law that speak to the specific issues. Knowingly means with knowledge; consciously; intelligently; willfully; intentionally and is equivalent to an averment that one knew what he or she was about to do, and, with such knowledge, proceeded to do the act alleged. Black's Law Dictionary 784 (5th ed. 1979).

5. The essential elements of fraud are: (1) false representation or concealment of a material fact, (2) reasonably calculated to deceive, (3) *made with intent to deceive*, (4) which does in fact deceive, (5) resulting in damage to the injured party. See C.F.R. Foods, Inc. v. Randolph Development Co., 107 N.C.App. 584, 421 S.E.2d 386 (1992) Bolton Corp. v. T.A. Loving Co., 94 N.C.App. 392, 380 S.E.2d 796 (1989), citing Myers & Chapman, Inc. v. Thomas G. Evans, Inc., 323 N.C. 559, 374 S.E.2d 385 (1988) and Terry v. Terry, 302 N.C. 77, 273 S.E.2d 674 (1981) citing Ragsdale v. Kennedy, 286 N.C.130, 209 S.E.2d 494 (1974); accord Cofield v. Griffin, 238 N.C. 377, 78 S.E.2d 131 (1953). As distinguished from negligence, it is always a *positive, intentional perversion of truth*. (emphasis added)

6. Our Supreme Court has held that, in fraud claims, subsequent acts and conduct are competent on the issue of original intent and purpose. Rowan County Bd. Of Educ. v. U.S. Gypsum Co., 103 N.C.App. 288, 407 S.E.2d 860 (1991) quoting Rush (Cross) v. Beckwith 293 N.C. 224, 238 S.E.2d 130 (1977) quoting Early v. Eley, 243 N.C. 695, 91 S.E.2d 919 (1956).

7. As evidenced by all matters presented during the hearing and in review of the submitted proposals, the parties agree, and the Undersigned concludes that the Petitioner did not make a material misrepresentation of information required on the 1995 Form F-3 Petitioner completed in furtherance of his application through the Northampton Sheriff's Office. Further, the Petitioner did not knowingly and designedly by any means of false pretense, deception, fraud, misrepresentation or cheating, obtain or attempt to obtain certification through the North Carolina Sheriffs' Education and Training Standards Commission when Petitioner answered "No" to Question 47 on the 1995 Form F-3. Moreover, with respect to Petitioner's submission of the 2000 Form F-3, Petitioner did not knowingly and designedly by any means of false pretense, deception, fraud, misrepresentation or cheating, obtain or attempt to obtain certification through the Criminal Justice Education and Training Standards Commission when Petitioner answered "No" on the 2000 Form F-3.

8. Turning lastly and again to the Petitioner's submission of the 2000 Form F-3, the evidence in this case, leads the Undersigned to conclude that the Petitioner did not knowingly (consciously; intelligently; willfully; intentionally) make a material misrepresentation by checking "No" to Question 47 in the 2000 application. Two factors are critical in this conclusion. One is an examination of the circumstances that led to Petitioner's being issued a citation that was found to be without probable cause and promptly dismissed; and second is Petitioner's demeanor and testimony regarding his intent in filling out and his subsequent checking of "No" to Question 47.

9. As the Respondent seeks revocation of Petitioner's certification, Respondent has the burden of proof as to its claims against Petitioner. The responsible party for the burden of proof must carry that burden by a greater weight or preponderance of the evidence. Black's Law Dictionary cites that "preponderance means something more than weight; it denotes a superiority of weight, or outweighing." The party with this burden of persuasion must provide proof to convince the trier of fact that the alleged state of facts is true. If evidence is evenly balanced, the party with the burden of persuasion loses. Maher Terminals, Inc., 512 U.S. at ----, 114 S.Ct. at 2255; Flav-O-Rich, Inc. v. Rawson Food Serv., Inc. (In re Rawson Food Serv., Inc.), 846 F.2d 1343, 1348 (11th Cir.1988) (If evidence is in equipoise, the one with the burden of proof loses.).

10. Pursuant to 12 NCAC 10B .0205(2): "The Commission may either reduce or suspend the periods of sanction under this Item or substitute a period of probation in lieu of revocation, suspension or denial following an administrative hearing. This authority to reduce or suspend the period of sanction may be utilized by the Commission when extenuating circumstances brought out at the administrative hearing warrant such a reduction or suspension."

11. “The use of the word ‘may’ generally connotes permissive or discretionary action and does not mandate or compel a particular act.” *Brock and Scott Holding, Inc. v. Stone*, 203 N.C. App. 135, 137, 691 S.E.2d 37, 39 (2010) (quoting *Campbell v. First Baptist Church of the City of Durham*, 298 N.C. 476, 483, 259 S.E.2d 558, 563 (1979)) (emphasis added).

BASED UPON the foregoing Findings of Fact and Conclusions of Law the Undersigned makes the following:

PROPOSAL FOR DECISION

The following Proposal for Decision is fact specific to this case and to this Petitioner.

The Undersigned finds and holds that there is sufficient evidence in the record to properly and lawfully support the Conclusions of Law cited above. The weight of the evidence in this matter sustains a finding that the Petitioner did not knowingly make a material misrepresentation or knowingly and designedly by any means of false pretense, deception, fraud, misrepresentation or cheating obtain or attempt to obtain credit, training or certification from the North Carolina Sheriffs’ Education and Training Standards Commission or the North Carolina Criminal Justice Education and Training Standards Commission.

Based on all the evidence, including testimony and exhibits provided at the above-captioned case, and the applicable law, the Undersigned recommends that Petitioner’s justice officer certification not be revoked.

Should the Commission reject the above proposal, the Undersigned proposes that the Commission exercise its equitable discretion and suspend or greatly reduce any period of sanction and refrain from revoking Petitioner’s justice officer certification. Extenuating circumstances, as set forth in the record, were brought out at the administrative hearing that warrants such action. The totality of all information presented at this hearing lead to the conclusion that the Petitioner is that type of individual suited for and a credit to the law enforcement community.

NOTICE

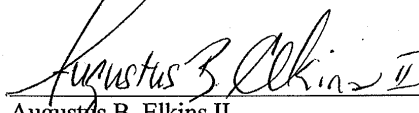
The agency making the final decision in this contested case is required to give each party an opportunity to file exceptions to this Proposal for Decision, to submit proposed findings of fact and to present oral and written arguments to the agency. N.C.G.S. § 150B-40(e).

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

A copy of the final agency decision or order shall be served upon each party personally or by certified mail addressed to the party at the latest address given by the party to the agency and a copy shall be furnished to his attorney of record. N.C.G.S. § 150B-42(a). It is requested that the agency furnish a copy to the Office of Administrative Hearings.

IT IS SO ORDERED.

This the 7th day of May, 2013.

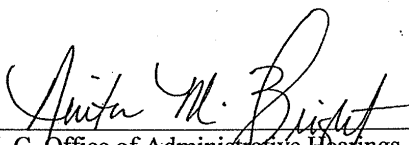

Augustus B. Elkins II
Administrative Law Judge

On this date mailed to:

COURTNEY S. HULL
THE TWIFORD LAW FIRM, P.C.
PO BOX 99
ELIZABETH CITY, NC 27907
ATTORNEY FOR PETITIONER

MATTHEW L BOYATT
ASSISTANT ATTORNEY GENERAL
NC DEPARTMENT OF JUSTICE
9001 MAIL SERVICE CENTER
RALEIGH, NC 27699-9001
ATTORNEY FOR RESPONDENT

This the 7th day of May, 2013.



N. C. Office of Administrative Hearings
6714 Mail Service Center
Raleigh NC 27699-6714
919 431 3000
Facsimile: 919 431 3100

FILED

STATE OF NORTH CAROLINA 2012 DEC 19 PM 11:11 IN THE OFFICE OF
COUNTY OF CABARRUS ADMINISTRATIVE HEARINGS
12DOJ05143

OFFICE OF
ADMIN HEARINGS

Graham Avon Hager,)	
Petitioner,)	
v.)	DECISION
NC Sheriffs' Education and Training Standards)	
Commission,)	
Respondent.)	

On November 15, 2012, Administrative Law Judge Selina M. Brooks heard this case in Charlotte, North Carolina. The case was heard after respondent requested, pursuant to N.C.G.S. § 150B-40(e), the designation of an administrative law judge to preside at the hearing of this contested case under Article 3A, Chapter 150B of the North Carolina General Statutes.

APPEARANCES

Petitioner: *Pro Se*
Respondent: Matthew L. Boyatt, Assistant Attorney General

ISSUE

Is Respondent's proposed revocation of Petitioner's Justice Officer Certification for the commission of the Class B misdemeanor offense of hit and run resulting in property damage supported by substantial evidence?

FINDINGS OF FACT

1. Petitioner applied through the North Carolina Sheriffs' Education and Training Standards Commission to be certified as a Deputy Sheriff with the Mecklenburg County Sheriff's Office. Petitioner was sworn as a Deputy Sheriff through the Mecklenburg County Sheriff's Office on December 23, 1992, and Petitioner obtained his general certification through the North Carolina Sheriffs' Education and Training Standards Commission on December 23, 1993.

2. On January 4, 2011, Petitioner was involved in a hit and run collision. Petitioner backed his patrol vehicle into a covered motorcycle at 3011 Timber Hollow Road, thereby knocking the motorcycle to the ground. Petitioner left the scene of that collision without notifying the owner of the vehicle. Petitioner also failed to notify his chain of command about the collision with the motorcycle. Captain McGee stated Petitioner caused approximately \$700.00 in damage to the motorcycle.

3. As a result of Petitioner's January 4, 2011 hit and run collision involving the parked motorcycle, Petitioner appeared before the Mecklenburg County Sheriff's Office Chain of Command Review Board. That Board determined Petitioner failed to report the motorcycle collision, and sustained the allegation that Petitioner violated General Order 2 with respect to the requirement to reporting collisions. Petitioner was ordered to undergo remedial training and was also issued a written reprimand.

4. Only July 18, 2011, the Petitioner was involved in a reportable collision while operating his county issued patrol vehicle. Petitioner admitted he was the at-fault driver. The Petitioner ran a steady red traffic signal which caused a passenger vehicle to T-bone Petitioner's county assigned patrol vehicle. The collision caused approximately \$3,000.00 damage to the Acura passenger vehicle and also caused significant damage to the front left quarter panel and light assembly of Petitioner's county assigned patrol vehicle.

5. On July 19, 2011, Petitioner was employed by the Mecklenburg County Sheriff's Office and was on duty in a marked patrol vehicle, a loaner patrol vehicle (vehicle 3824). At that time, Petitioner was serving civil process.

6. At approximately 4:00 p.m. on July 19, 2011, Petitioner drove his loaner patrol vehicle into the cul-de-sac located at Hyacinth Court in Charlotte, North Carolina. The Petitioner was unable to turn his vehicle around in the cul-de-sac; therefore, Petitioner decided to back into the driveway of the residence located at 1513 Hyacinth Court, Charlotte, North Carolina 28206.

7. As Petitioner backed into the driveway of the 1513 Hyacinth Court property, Petitioner heard a scraping sound and possibly felt a bump. At that point, Petitioner pulled out of the driveway and stopped his patrol vehicle. The Petitioner looked at the house located at 1513 Hyacinth Court because he knew at that time that he possibly struck the house or a planter located by the front porch of the house. Despite this admission, Petitioner did not get out of the patrol vehicle in order to adequately determine whether he damaged property at 1513 Hyacinth Court. Instead, Petitioner placed his patrol vehicle in drive and left the scene of property damage.

8. A resident living in 1516 Hyacinth Court observed Petitioner hit the front porch of the 1513 Hyacinth Court property, and also observed Petitioner run a stop sign at the end of the cul-de-sac as Petitioner departed the scene of the collision. Petitioner admitted that once away from the area of the 1516 Hyacinth Court property, Petitioner again stopped his patrol vehicle to assess any potential damage to the vehicle. Petitioner made no effort at that time to return to the 1516 Hyacinth Court property to further assess damage or to notify the homeowner.

9. Further, Petitioner made no effort to notify his chain of command following the July 19, 2011 collision. Rather, Petitioner's supervisors made contact with Petitioner at his residence following his shift once it was determined that Petitioner had been involved in another collision.

10. The Petitioner caused substantial damage to the front porch of the residence

located at 1513 Hyacinth Court. The back of Petitioner's patrol vehicle struck a column on the front porch, thereby compromising the stability of the structure. The repair bill for the damaged porch indicates the entire structure had to be jacked up and an entire column had to be replaced. Petitioner caused \$1,084.35 in damage to the 1513 Hyacinth Court property. Petitioner knew he struck the house at the time Petitioner backed his patrol vehicle up the driveway. Petitioner's failure to stop and notify the homeowner, in addition to his departing the scene of the collision constitutes a hit and run resulting in property damage within the meaning of North Carolina General Statute § 20-166 (c) (1).

11. Captain McGee with the Mecklenburg County Sheriff's Office conducted the internal affairs investigation relating to the July 19, 2011 collision. Petitioner was dismissed for cause due to this hit and run collision. In addition, Petitioner had a history of this type of unlawful behavior.

12. At the time Petitioner struck the front porch of the house located at 1513 Hyacinth Court on July 19, 2011, Petitioner was well aware of his duty to stop and remain at the scene of a collision resulting in property damage.

CONCLUSIONS OF LAW

1. Both parties are properly before this Administrative Law Judge, in that jurisdiction and venue are proper. Both parties received Notice of Hearing, and the Petitioner received the Notification of Probable Cause to Revoke Justice Officer Certification letter mailed by the Respondent on April 4, 2012.

2. The North Carolina Sheriffs' Education and Training Standards Commission has the authority granted under Chapter 17E of the North Carolina General Statutes and Title 12 of the North Carolina Administrative Code, Chapter 10B, to certify justice officers and to revoke, suspend, or deny such certification.

3. Pursuant to 12 NCAC 10B .0204(d)(1), the Commission may revoke, suspend, or deny the certification of a justice officer when the Commission finds that the certified officer has committed or been convicted of:

- (1) a crime or unlawful act defined in 12 NCAC 10B .0103(10)(b) as a Class B misdemeanor and which occurred after the date of appointment.

4. The offense of misdemeanor hit and run resulting in property damage in violation of North Carolina General Statute § 20-166 (c) (1) constitutes a Class B Misdemeanor pursuant to the Class B Misdemeanor Manual and the Commission's Rules.

5. Pursuant to 12 NCAC 10B .0103(10)(b)(i), a Class B Misdemeanor is defined in pertinent part as:

- (i) an act committed or omitted in violation of any common law, criminal statute, or criminal traffic code of this state which is classified as a Class B Misdemeanor as set forth in the "Class B Misdemeanor Manual" as published by the North Carolina Department of Justice and shall automatically include any later amendments and editions of the incorporated material as provided by G.S. 150B-21.6.

6. Pursuant to N.C.G.S. § 20-166 (c) (1), 12 NCAC 10B .0103(10)(b) and the Class B Misdemeanor Manual adopted by the Respondent, the crime of misdemeanor hit and run resulting in property damage in violation of North Carolina General Statute § 20-166 (c) (1) constitutes a Class B misdemeanor.

7. Petitioner's failure to stop and remain at the scene of the July 19, 2011 collision resulting in property damage constitutes the commission of misdemeanor hit and run in violation of North Carolina General Statute § 20-166 (c) (1) and 12 NCAC 10B .0204(d)(1).

8. The Respondent's proposed revocation of the Petitioner's certification is supported by substantial evidence.

PROPOSAL FOR DECISION

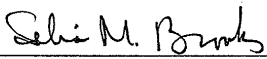
Based on the foregoing Findings of Fact and Conclusions of Law and pursuant to 12 NCAC 10B .0205 (2), the undersigned recommends Respondent revoke the Petitioner's Justice Officer Certification for a period not less than five (5) years based on Petitioner's commission of the Class B misdemeanor offense of hit and run resulting in property damage.

NOTICE

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

The Agency that will make the Final Decision in this contested case is the North Carolina Sheriffs' Education and Training Standards Commission.

This the 19th day of December, 2012.

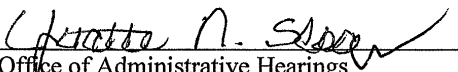

Selina M. Brooks
ADMINISTRATIVE LAW JUDGE

A copy of the foregoing was sent to:

Graham Avon Hager
4128 Carl Palmer Drive
Harrisburg, NC 28075
PETITIONER

Matthew L. Boyatt
Assistant Attorney General
N.C. Department of Justice
9001 Mail Service Center
Raleigh, NC 27699-9001
ATTORNEY FOR RESPONDENT

This the 19th day of December, 2012.


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

Filed

STATE OF NORTH CAROLINA 2ND JURY -6 PM 2:57 IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
COUNTY OF PITT Office of Administrative Hearings 12INS00364

<p>Megan L Hartzog, Petitioner, v. North Carolina State Health Plan, Respondent.</p>	<p>FINAL DECISION</p>
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On January 25, 2013, Administrative Law Judge Beecher R. Gray heard this contested case in Greenville, North Carolina. At the conclusion of the hearing, the undersigned directed the parties to submit proposed decisions within thirty days after receipt of the hearing transcript. Both parties submitted proposed decisions between March 28, 2013 and April 2, 2013, and the record now is closed. The proposed decisions submitted by the parties were considered in the determination of the decision in this contested case.

APPEARANCES

For Petitioner: Mary-Ann Leon
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For Respondent: Heather H. Freeman
Special Deputy Attorney
N.C. Department of Justice
Services to State Agencies Section
P.O. Box 629
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ISSUES

Whether Respondent's decision to apply the cost of the April 20, 2010, surgery to the Petitioner's maximum lifetime benefits for infertility services was 1) erroneous; 2) in excess of its authority; 3) a failure to act as required by rule or law; 4) the result of a failure to use proper procedure; or 5) was arbitrary and capricious.

APPLICABLE STATUTES AND RULES

N.C. Gen. Stat. §135-48 et. seq. (2012)

State Health Plan for Teachers and State Employees Standard PPO Plan Benefits Booklet (2010)

EXHIBITS

For Petitioner, Exhibits (hereinafter "P. Exs") 1-14 were admitted into evidence.

For Respondent, Exhibits (hereinafter "R. Exs.") 1 -13 were admitted into evidence.

WITNESSES

For Petitioner: Megan Hartzog
Dr. Calvin Hayslip, by deposition testimony

For Respondent: Crystal Brewer, Fraud Investigator
Dr. Denis O'Connell
Donna Williams
Dr. Andrew Bonin

FINDINGS OF FACT

BACKGROUND

1. Petitioner Megan Hartzog is a member of the State Health Plan for Teachers and State Employees, administered by Blue Cross/Blue Shield of North Carolina. (T. p. 8)¹
2. On the date of the procedure that is the subject of this dispute, Petitioner was a plan member.

¹ The hearing transcript is referenced as "T." The deposition transcript from the deposition of Dr. Calvin Hayslip is referenced as "P. Ex. 11, Depo. T."

3. Petitioner's physician, Dr. Larissa Gavrilova-Jordan, who, at all times relevant to the events in this contested case hearing, was a physician with ECU Physicians, recommended that Petitioner undergo laparoscopic surgery. That surgery was performed on April 20, 2010. (P. Ex. 1)
4. Whether the surgical services provided to Petitioner on April 20, 2010 were covered by her health insurance benefits is the subject of the dispute between Petitioner and Respondent.
5. If it were determined that the surgery and associated services of April 20, 2010, which is the subject of this dispute, were medically necessary for Petitioner's general health, then the surgery and associated services would be covered by Petitioner's covered health insurance benefits. (T. pp. 158, 159, 167, 168, 210)
6. Petitioner presented the testimony of an expert witness, Dr. Calvin Hayslip, a Board Certified physician in the field of obstetrics and gynecology. Dr. Hayslip has engaged in more than 35 years of active clinical practice in the field of obstetrics and gynecology with a subspecialty in the field of reproductive endocrinology and infertility, and his medical practice regularly treats women for gynecologic endocrine disorders. (P. Ex. 11, Depo. T. pp. 4-7)
7. Petitioner's treating physician, Dr. Gavrilova-Jordan, also was a specialist in Obstetrics and Gynecology. (P. Ex. 11, Depo. T. p. 21)
8. Dr. Hayslip was familiar with Dr. Gavrilova-Jordan's records. They routinely reviewed each other's records. (P. Ex. 11, Depo. T. pp. 8-9)
9. Dr. Hayslip reviewed Petitioner's medical records contained in Petitioner's Exhibit 1. (P. Ex. 11, Depo. T. pp. 9; 51)
10. Dr. Hayslip testified that gynecologic endocrine disorders represent medical problems that may be distinct from infertility treatments and include abnormal bleeding, pelvic pain, endometriosis, or polycystic ovary syndrome. (P. Ex. 11, Depo. T. p. 6)

PETITIONER'S MEDICAL TREATMENT

11. Petitioner was referred to Dr. Gavrilova-Jordan for an evaluation of her infertility. This evaluation involved several diagnostic tests. In the process of her evaluation, she underwent a hysterosalpingogram ("HSG") which showed abnormalities. Specifically, the test showed that there was a mass in the uterus consistent with either an endometrial polyp or a fibroid. There also was a swollen, obstructed fallopian tube, which is categorized as a hydrosalpinx. (P. Ex. 11, Depo. T. pp. 9-10)
12. The HSG showed clearly that there was gynecologic disease that needed to be evaluated and treated. (P. Ex. 11, Depo. T. pp. 10, 51)

13. The medical record for Petitioner's office visit to Dr. Gavrilova-Jordan on March 4, 2010, indicated that Dr. Gavrilova-Jordan discussed correction of the abnormalities seen on the HSG. The record indicates that, although Petitioner continued to carry the diagnosis of " 628.8, infertility, unspecified origin," the office visit reflected the following: (1) the chief complaint was "discuss HSG;" (2) her physician counseled her for twenty-five minutes and summarized the counseling as follows: "We have reviewed fertility testing results suggestive tubal and uterine factors. We have discussed further treatment options including laparoscopic resection of the hydrosalpix, adhesiolysis and hysteroscope resection of myoma and polypectomy. *We discussed fertility treatment options after surgery ...*" [emphasis added] (P. Ex. 1, p. 25; P. Ex. 11, Depo. T. p. 12)
14. Petitioner testified that Dr. Gavrilova-Jordan's plan of care on March 4, 2010, was to stop infertility treatments and address the medical issues associated with the abnormalities seen on the HSG. (T. p. 13) Petitioner testified that her physician had advised her that endometriosis could become very invasive and attack other organs, such as her appendix, kidneys, and lungs. (T. p. 15)
15. Petitioner's expert, Dr. Hayslip, established through his uncontroverted testimony that it was not possible to confirm a diagnosis of endometriosis without visualizing the tissue, and in Petitioner's case, as in 98% of such cases, that only could be done by laparoscopy or surgery, unless endometriosis is present in the vagina and available for biopsy. (P. Ex. 11, Depo. T. pp. 18-19, 70)
16. The indication for surgery in this case was the abnormal HSG, indicative of gynecologic disease, which needed to be evaluated and treated. It was not necessary that Petitioner display overt symptoms of her gynecological disease in order to justify treatment of the disease because a properly qualified physician, such as Dr. Gavrilova-Jordan or Dr. Hayslip, knows that there is a natural progression to endometriosis, which can spread and affect organs outside of the uterus. (P. Ex. 11, Depo. T. pp. 51, 71, 72; T. p. 145)
17. Dr. Gavrilova-Jordan requested approval of Petitioner's surgery in a medical record titled "Surgery/Admission Request." The record notes that the authorization request was directed to Respondent and that confirmation and authorization from Respondent was received. The Surgery/Admission Request stated that surgery was indicated for "abnormal hysterosalpingogram, questionable polyp versus submucous leiomyoma and a right hydrosalpinx." (P. Ex. 11, Depo. T. p. 14; P. Ex. 1, p. 27; T. p. 153)
18. The admitting diagnoses on Dr. Gavrilova-Jordan's Surgery/Admission Request all were gynecological diseases, irrespective of fertility issues. (T. p. 153)
19. Infertility was not mentioned anywhere in Dr. Gavrilova-Jordan's Surgery/Admission Request. (T. p. 145)
20. Dr. Hayslip testified that "we often have patients who are not seeking fertility evaluation or treatment who have the exact same disorders and diagnoses [as Petitioner] that go to surgery." (P. Ex. 11, Depo. T. pp. 14-15)

21. Although Petitioner carried the diagnosis of infertility throughout her medical treatment with Dr. Gavrilova-Jordan, the diagnosis does not mean that all of her treatment was infertility treatment. Although Petitioner is not currently being treated for infertility, she still carries a diagnosis of infertility. (P. Ex. 11, Depo. T. pp. 31, 46)
22. Petitioner was scheduled for a hysteroscopy to evaluate the abnormal mass in her uterus and also was scheduled for a diagnostic laparoscopy because of the tubal obstruction, suspected pelvic adhesive disease, and possible endometriosis. Petitioner underwent surgery during which the polyp was resected. The laparoscopic findings revealed dense pelvic adhesions associated with endometriosis and an obstructed right fallopian tube. The fallopian tube was removed, adhesions were resected, and suspected endometriosis was removed. (P. Ex. 11, Depo. T. p. 10)
23. Petitioner also was placed on progestin (birth control pills) to treat the endometriosis. Progestin was not a fertility treatment and is, in fact, designed to prevent pregnancy. It is a pharmacological, medical treatment for endometriosis. (P. Ex. 11, Depo. T. p. 11)
24. Petitioner remained on progestin between March 4, 2010 and August 25, 2010. (P. Ex. 1, pp. 25, 29, 30, 32, 40, 43, 50; T. pp. 18, 55)
25. Petitioner's medical records also indicate that she was given a prescription for "Norethindrone acetate," a drug commonly used to treat endometriosis.
26. Respondent admitted that there was no indication that the progestin treatment was provided for any reason other than treating gynecologic disease and no indication that the attending physician intended the progestin treatment to address infertility issues. (T. p. 148)
27. Petitioner's expert witness, Dr. Calvin Hayslip, gave uncontroverted expert testimony that, although Petitioner eventually was interested in resuming infertility treatment, the gynecologic disease should have been corrected because, if uncorrected, there would have been consequences to her health down the road, irrespective of whether she had fertility treatment. The consequences of untreated endometriosis would have been progressive pelvic pain, pain with periods, pain with intercourse, as well as the possibility that if not treated earlier, trying to correct the problem later would be more difficult and would carry more risk and more complications. (P. Ex. 11, Depo. T. pp. 13-14)
28. Dr. Hayslip opined that, within a reasonable degree of medical certainty, given the abnormalities on the hysterosalpingogram, surgery clearly was indicated to evaluate and remove the polyp and to evaluate the scar tissue in the pelvis, which had a high likelihood of endometriosis, and which was important to Petitioner's ultimate health. Petitioner needed, medically speaking, to have her condition evaluated and treated because of the abnormal findings on the diagnostic tests. Dr. Hayslip's uncontroverted expert medical opinion was that only Petitioner's gynecologic disease indicated surgery, not her infertility. (P. Ex. 11, Depo. T. pp. 19-20, 31-32)

29. Whether Petitioner's operation was for infertility treatment or the treatment of gynecologic disease depends on the surgeon's intent. The indication for surgery, which was identified by Dr. Gavrilova-Jordan in her Surgery/Admission Request to Respondent for approval of the surgery as a covered benefit, was the abnormal HSG. (P. Ex. 11, Depo. T. pp. 47, 52)
30. The procedures performed by Dr. Gavrilova-Jordan on April 20, 2010 were not part of an infertility treatment. For instance, Petitioner had a fallopian tube removed, which was not an infertility treatment. If Dr. Gavrilova-Jordan were trying to improve Petitioner's fertility by means of this surgery, she would more likely have tried to open up the fallopian tube rather than removing it. (P. Ex. 11, Depo. T. pp. 32, 72)
31. According to Dr. Hayslip, it is not necessary to identify every diagnosis that a person has for each procedure, so it was reasonable to discard primary infertility as the preoperative diagnosis because the comprehensive list of surgical indications made it clear that the surgery was for the diagnosis and treatment of abnormalities seen on the HSG. (P. Ex. 11, Depo. T. pp. 52, 55, 69)
32. According to Dr. Hayslip, although one can say that the operation performed by Dr. Gavrilova-Jordan had the possibility of impacting Petitioner's fertility, it was not an operation to correct infertility and was not a direct fertility treatment. (P. Ex. 11, Depo. T. pp. 33-34)
33. Petitioner's infertility is the result of diminishing ovarian reserve, not endometriosis. Petitioner continues to carry the diagnosis of infertility because of diminishing ovarian reserve. (T. p. 53)
34. Petitioner's gynecological expert, Dr. Hayslip, established through his testimony that Petitioner was carrying and continues to carry a diagnosis of infertility but that the surgery she experienced on April 20, 2010 was indicated by her gynecologic disease and not her ongoing infertility diagnosis. Dr. Hayslip gave his expert opinion that the gynecologic medical professionals cannot say whether the surgery impacted Petitioner's fertility one way or another and that this surgery was an attempt to correct abnormalities in Petitioner's pelvis.

THE MEDICAL RECORDS

35. The medical record dated April 20, 2010 is a record of the operative procedure performed by Dr. Gavrilova-Jordan and her surgical team on April 20, 2010. The record contained a pre-operative diagnosis that stated "primary infertility with abnormal HCG"² and a post operative diagnosis that stated "primary infertility. Endometrial polyp. Severe pelvic endometriosis. Right hydrosalpinx. Pelvic, Left peritubal and periovarian adhesions. Small subserosal leiomyoma." (P. Ex. 1, p. 36)

² Dr. Hayslip noted that the indication of "hCG" was incorrect and should have been corrected by an addendum or amendment to this record. (P. Ex. 11, Depo. T. p. 51)

36. Dr. Gavrilova-Jordan amended the typed operative report from Petitioner's surgery. (P. Ex. 1, p. 35)
37. Dr. Gavrilova-Jordan's amendment to the typed operative report was an accurate description of her patient's medical condition and also was consistent with her preoperative notes and Surgery/Admission Request. (P. Ex. 11, Depo. T. p. 16)
38. The diagnosis contained in the addendum actually was the diagnosis that was contained on Dr. Gavrilova-Jordan's Surgery/Admission Request. (P. Ex. 11, Depo. T. pp. 27-28; P. Ex. 1, p. 35)
39. Based on the addendum and based on the original diagnosis, Petitioner was being treated surgically for gynecologic disorders on April 20, 2010. (P. Ex. 11, Depo. T. p. 31)
40. Respondent admitted that the diagnosis codes contained in the corrected claims submitted by ECU Physicians was consistent with Dr. Gavrilova-Jordan's admitting diagnosis. (T. pp. 153-155; R. Ex. 3)
41. The operative report actually was completed by a medical resident, Dr. Elizabeth Cole. Dr. Cole also completed the handwritten post-operative notes contained in the medical record and dictated the operative report which eventually was transcribed. Respondent admitted that the differences in the handwriting on the request for surgery form and the post-operative notes were apparent from the medical records. (P. Ex. 11, Depo. T. pp. 43, 46, 57-58, 59, 150; R. Ex. 8, pp. 3-4, 10, 13 (operative reported dated 4/20/2010, "page 3 of 3"); T. p. 147)
42. When a resident who is not the primary physician following the patient over a period of time dictates the record for a specific procedure, it is not unusual to find discrepancies between what the primary physician has stated and what the resident has stated. (P. Ex. 11, Depo. T. p. 58; T. pp. 151-152)
43. While it was Dr. Gavrilova-Jordan's responsibility to review the operative report dictated by the resident, she also had a responsibility to correct the report once she discovered a discrepancy. (P. Ex. 11, Depo. T. p. 60; T. pp. 152, 157)
44. Given the inconsistencies in the medical chart, especially between what had been written by Dr. Gavrilova-Jordan and what had been written by the medical resident, Dr. Elizabeth Cole, the addendum was needed for clarity of the medical records. There was nothing unusual about a provider providing clarity to a record that needed clarification. (P. Ex. 11, Depo. T. pp. 16, 48, 50)
45. The fact that Dr. Gavrilova-Jordan signed an incorrectly-dictated operative report did not mean that the information in the operative report was accurate simply because it was signed. (T. p. 203)

46. Petitioner's expert witness testified that there is nothing clearly in the records stating that the indication for surgery was infertility treatment. (P. Ex. 11, Depo. T. pp. 47-48)

RESPONDENT'S CLAIMS PROCESSING AND INVESTIGATIVE PROCEDURE

47. Respondent's witness Crystal Brewer ("Fraud Investigator Brewer") is a health care Fraud Investigator with Respondent who testified regarding Respondent's claims process. (T. p. 61)
48. Fraud Investigator Brewer testified that when medical providers submit claims for payment to the Respondent, the claims are analyzed for benefit coverage based on the first diagnostic code used by the provider. (T. p. 75)
49. Fraud Investigator Brewer also testified as to the usual procedure used by Respondent to investigate benefits coverage when there is a complaint or issue as to coverage. She stated that as part of her duties, she typically would gather two years' worth of medical records, and if "we see a problem within that two year range, we then typically consult with our SIU medical director to see if he thinks that there's an issue with the claims data *based on that specialty of the provider.*" [emphasis added] (T. p. 65) Fraud Investigator Brewer further testified that after a determination is made as to whether there is an issue based on the provider's specialty, "if an issue does look suspicious" medical records will be ordered and a patient will be interviewed. Following this procedure, "a calculation/determination" is made as to whether a refund is owed to Respondent. (T. p. 66)
50. When Dr. Gavrilova-Jordan amended the operative report, her office changed the diagnostic codes so that 614.1, the diagnostic code for chronic salpingitis, was the primary diagnosis. (T. pp. 79, 154; R. Ex. 3)
51. Respondent admitted that once Dr. Gavrilova-Jordan amended her operative report, it was sensible for her office to make corrections on the claim forms submitted for payment. (T. p. 158)
52. Dr. Gavrilova-Jordan sent a letter to Respondent explaining why she had submitted a corrected claim form. (P. Ex. 8; T. p. 24)
53. The corrected claims from Pitt County Memorial Hospital and ECU Physicians that were resubmitted to Respondent were paid because the primary diagnosis referred to gynecological disease rather than infertility treatment. (R. Ex. 3; T. p. 80)
54. Fraud Investigator Brewer testified that Petitioner's claims were referred to her in the Special Investigative Unit ("SIU") because a corrected claim form had been submitted from Pitt County Memorial Hospital and ECU Physicians, and the diagnosis codes for infertility treatment was switched from the first position to the second position. (T. p. 71)

55. Fraud Investigator Brewer testified that not every corrected claim that is submitted by a provider is referred to her investigative unit, but Petitioner's claims were referred because "there were several calls that Ms. Julie Faenza had noticed . . . and there was a lot of questioning about infertility . . . and that she had noticed some of the claims . . . had been switched to a different diagnosis code when it was submitted for correction." The corrected claims did not have different diagnostic codes; the same diagnostic codes were switched in their position. (T. pp. 72, 79)

56. Fraud Investigator Brewer also testified that the telephone calls or email inquiries which had raised concern warranting referral to her investigative unit occurred on January 21, 2010, May 4, 2010, May 4, 2010, May 7, 2010, May 10, 2010 and May 21, 2010 [sic]. (T. p. 103; R. Ex. 4; P. Ex. 12)

57. The calls referenced by Fraud Investigator Brewer occurred either prior to surgery (T. p. 99) or prior to the time when Petitioner would have had any knowledge as to whether the claims submitted by her provider had been denied (T. pp. 100, 101, 103). Fraud Investigator Brewer testified that there was no indication from Petitioner's inquiries that they reflected any motivation other than a member's reasonable interest in what her health benefits were in anticipation of medical treatment. Fraud Investigator Brewer admitted that there was nothing suspicious about Petitioner's aforementioned inquiries to Respondent. (T. p. 102, 103)

58. Fraud Investigator Brewer testified that the only inquiries made by Petitioner indicating that Petitioner had any knowledge of the claims adjustment activity for claims submitted by her medical providers for the April 20, 2010 medical procedure was an inquiry made on May 19, 2010 and an email sent on May 24, 2010. (T. pp. 103, 105; R. Ex. 4, pp. 22-23)

59. Petitioner testified that she was told on May 19, 2010 by a customer service representative that her claims were denied because of an error in coding. (T. pp. 22, 24-25)

60. Respondent admitted it had no evidence to refute Petitioner's testimony that a customer service representative had told Petitioner that her claims were denied because of a coding error. (T. pp. 104-105)

61. Although Fraud Investigator Brewer testified that their usual procedure included interviewing the patient, Respondent neither interviewed Petitioner nor her medical providers as part of its investigation of the corrected claims. (T. pp. 96, 143, 203)

62. Once Fraud Investigator Brewer had gathered medical records and other information, including the information pertaining to Petitioner's communication with Respondent and the claim forms submitted by Petitioner's medical providers, Fraud Investigator Brewer gave the file to Dr. Denis O'Connell for review. (T. p. 73)

63. Dr. Denis O'Connell was tendered and accepted as an expert in the field of coding. (T. pp. 111-114)
64. Dr. O'Connell testified that whether coding on a claim is correct or incorrect depends on whether the coding accurately depicts the physician's intention in performing the medical procedure. (T. p. 143)
65. Dr. O'Connell reviews claims solely to determine if the claims are coded correctly based on "what the coding books state is correct and does not base [his] determinations of whether claims should be accepted or denied on any professional judgment." (T. p. 139)
66. Dr. O'Connell had been a professional coder for approximately one year at the time that he reviewed Petitioner's claims. (T. p. 138)
67. Respondent did not review the claims submitted by Petitioner's providers for the purpose of determining whether Petitioner's treatment was a medically necessary item of service. (T. p. 135)
68. Respondent admitted that there are medical standards for treating endometriosis and the person in the best position to determine appropriate treatment methods is the treating physician. (T. p. 157)
69. Dr. O'Connell indicated that he had no grounds--based on skill, experience, or knowledge and training as a physician--for applying professional judgment to determine whether Petitioner's endometriosis was treated to address infertility. (T. pp. 149, 157)
70. Dr. O'Connell based his determination that Petitioner's medical treatment was treatment for infertility on discussions that had occurred prior to Petitioner's HSG. (T. p. 144)
71. Respondent did not review the letter from Dr. Gavrilova-Jordan explaining why she had submitted corrected claims nor did Respondent ever consider whether Dr. Gavrilova-Jordan's explanation for amending the operative report was consistent with the original request for approval for Petitioner's surgery. (T. pp. 96, 97, 142-143)
72. Although it was clear from the medical records that the operative report had been dictated by a resident, while the request for surgery had been completed by the attending physician--Dr. Gavrilova-Jordan--Respondent did not investigate whether the differences between the request for surgery and the dictated operative report might be accounted for by the unfamiliarity of the resident with Petitioner's plan of care. (T. pp. 96, 150)
73. Respondent's investigation did not reach any conclusion as to whether there was fraud or misrepresentation on the part of Petitioner or her medical providers. (T. pp. 98-99)

PETITIONER'S APPEAL

74. Petitioner's appeal of the denial of benefits was reviewed by Respondent to determine if the services provided were related to the benefit that Respondent is applying to the claim. (T. p. 178)
75. Dr. Andrew Bonin, medical director in Respondent's appeal department, testified for Respondent. Dr. Bonin reviewed Petitioner's appeal of the denial of her provider's claims for benefits. (T. pp. 181, 186)
76. Dr. Bonin testified that he reviewed Petitioner's claim to determine whether it was appropriate to apply the \$5,000.00 lifetime limit on infertility benefits to the surgical procedures that were done by Dr. Gavrilova-Jordan. (T. p. 186)
77. Dr. Bonin was not tendered to the court as an expert witness. (T. pp. 181-195)
78. Dr. Bonin is not a surgeon, did not have a surgical residency as part of his training, and does not have the knowledge, skill, or training to judge whether surgery is an appropriate treatment of endometriosis. (T. pp. 195, 196)
79. If the physician's intention in performing the medical services is not consistent with the appeals analyst's interpretation of the physician's intention, the appeals analyst does not have the skill, knowledge, or background to determine if Respondent is analyzing the benefit application in a way that is consistent with the physician's intention. (T. pp. 178-179)
80. Respondent's policies provide that a member has a right to discuss all treatment options candidly with their health care provider regardless of cost or benefit coverage. (R. Ex. 12)
81. If a medical record reflects that a broad discussion took place in the physician's office, Respondent cannot rely on that discussion to determine that certain treatment is or is not related to a particular benefit because Respondent is not in a position to determine the intention of the discussion. (T. p. 209)
82. In order to determine if a discussion that is referenced in a medical record is dispositive of the physician's intention in providing a particular service, Respondent would need to speak with the physician, the patient, or be a witness to the conversation. (T. p. 209)
83. Dr. Bonin admitted that he relied on the resident's inaccurate handwritten pre-operative and post-operative notes and the resident's inaccurately-dictated operative report in making his determination that Petitioner's lifetime limit on infertility benefits should be applied to the surgical procedure performed by Dr. Gavrilova-Jordan and admitted that he did not rely on Dr. Gavrilova-Jordan's admitting diagnosis on her request for approval of the surgery. (T. p. 204)

84. Dr. Bonin admitted that the issue of whether Petitioner's medical treatment was related to her general health benefits or treatment for infertility was a "gray zone" and that he made the determination based upon his subjective judgment, given the information that he was provided. (T. p. 211)
85. Dr. Bonin admitted that if Petitioner's physician had determined that her surgery was medically appropriate for Petitioner's health because, for instance, delaying the surgery could pose greater health risks for the future, he has no basis, based on his skill, knowledge, or understanding of Petitioner's case, for disagreeing with Petitioner's physician. (T. pp. 214-215)
86. A covered medical service is defined as "any medically necessary, reasonable, and customary items of service, including prescription drugs, and medical supplies included in the [State Health] Plan." N.C. Gen. Stat. §135-48.1

CONCLUSIONS OF LAW

1. The Office of Administrative Hearings has jurisdiction over the parties and the subject matter under Chapter 150B of the North Carolina General Statutes.
2. All parties correctly have been designated and there is no question as to misjoinder or nonjoinder.
3. The State Health Plan for Teachers and State Employees is controlled by its governing statute, Article 3B of Chapter 135 of the North Carolina General Statutes.
4. Surgical benefits by a professional or facility provider on an inpatient or outpatient basis are covered by the Plan, including services of the surgeon or medical specialist, assistant, anesthetist or anesthesiologist, together with pre-operative and post-operative care. *Standard PPO Plan Benefits Booklet*, p. 17
5. The denial of surgical benefits at issue in this matter is subject to the provisions of N.C. Gen. Stat. §150B-23(a) and the decision of Respondent may be reversed if Petitioner shows, by a preponderance of the evidence, that in denying her claim Respondent (a) exceeded its authority or jurisdiction; (b) acted erroneously; (c) failed to use proper procedure; (d) acted arbitrarily or capriciously; or, (e) failed to act as required by law or rule.
6. Respondent acted erroneously in determining that it was not required to make a determination as to the medical necessity of the April 20, 2010 surgery *for Petitioner's general health*. Respondent has admitted that if the surgery were medically necessary for Petitioner's general health it would have been a covered benefit. Yet Respondent did not consider performing such an analysis and, instead, relied upon individuals who could not make such determinations.

7. Although Respondent is due deference for those areas where the demonstrated knowledge and expertise of the agency is applied to facts and inferences, Respondent did not apply demonstrated expertise to the question of whether Petitioner's surgery was covered under her general health benefits. Respondent did not tender an expert, qualified under Rule 702 of the North Carolina Rules of Evidence, to opine as to whether Petitioner's surgery medically was necessary for her general health and therefore fell within the definition of covered services in N.C. Gen. Stat. §135-48.1.
8. Respondent acted erroneously when Dr. Bonin applied a subjective basis--in the absence of specialized expertise in gynecologic disease--for deciding that Petitioner's surgery, which he admitted was in a "gray zone," was fertility treatment.
9. Petitioner proved by the preponderance of the evidence that the April 20, 2010, surgery was a medical necessity for her general health.
10. Petitioner proved by the preponderance of the evidence that her April 20, 2010, surgery was not a fertility treatment subject to the lifetime maximum benefits of \$5,000.

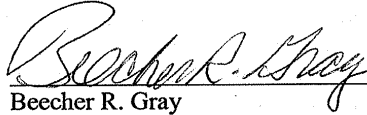
FINAL DECISION

Based upon the foregoing Findings of Fact and Conclusions of Law, the Administrative Law Judge determines that Respondent's denial of general health insurance benefits to Petitioner was erroneous and not supported by the evidence which should be, and the same hereby is, **REVERSED**.

NOTICE

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

This the 06 day of May, 2013.

A handwritten signature in cursive script, reading "Beecher R. Gray", is written over a horizontal line.


Beecher R. Gray
Administrative Law Judge

On this date mailed to:

MARY-ANN LEON
The Leon Law Firm
704 Cromwell Dr., Ste E
GREENVILLE, NC 27858
Attorney For Petitioner

HEATHER H FREEMAN
SPECIAL DEPUTY ATTORNEY GENERAL
NC DEPARTMENT OF JUSTICE
9001 MAIL SERVICE CENTER
RALEIGH, NC 27699
Attorney For Respondent

This the 7th day of May, 2013.


Office of Administrative Hearings
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Filed

STATE OF NORTH CAROLINA
COUNTY OF WAKE

2013 JAN 16 AM 8:12

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
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Office of
Administrative Hearings

JAN FJELSTED,
Petitioner,

vs.

NORTH CAROLINA STATE HEALTH PLAN
Respondent.

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FINAL DECISION

On October 10, 2012, the undersigned conducted an administrative hearing in this case in Raleigh, NC. At the conclusion of the hearing, the undersigned withheld ruling and directed the parties to submit a proposed decisions with in thirty (30) days after receipt of the hearing transcript. The record in the case is now closed.

APPEARANCES

For the Petitioner: Jan Fjelsted
210 Wyndham Drive
Garner, NC 27529

For the Respondent: Heather H. Freeman
Special Deputy Attorney General
North Carolina Department of Justice
Post Office Box 629
Raleigh, NC 27602-0629

ISSUES

Did the Respondent deprive Petitioner of property, fail to use proper procedure, act erroneously, arbitrarily or capriciously, or otherwise substantially prejudice Petitioner's rights when it denied the Petitioner's claim for dental treatment?

RELEVANT STATUTES AND POLICIES

N.C. Gen. Stat. §135, N.C. Gen. Stat. Chapter 150B, Article 3; and the State Health Plan PPO Benefit Booklet.

EXHIBITS

For Petitioner: Exhibit 1

For Respondent: Exhibits 1-5

WITNESSES

For Petitioner: Paul Fjelsted
Jan Fjelsted

For Respondent: Donna Williams

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

FINDINGS OF FACT

1. Petitioner is a member of the State Health Plan.
2. Respondent is an agency of the State of North Carolina, and offers health care benefits to eligible active and retired employees and their enrolled dependants in accordance with the applicable North Carolina General Statutes, the benefit booklet for Respondent's preferred provider organization (hereinafter "PPO") plan, and Respondent's health care policies.
3. At all times relevant to the issues in this contested case, Petitioner was a member of Respondent's Standard PPO plan.
4. Blue Cross Blue Shield of North Carolina (BCBSNC) is the claims processing contractor for the State Health Plan and administers State Health Plan member claims and billing.
5. On July 23, 2011, Petitioner suffered an accidental fall which resulted in injuries to her mouth and treatment at an emergency room. The State Health Plan provided coverage for Petitioner's claims for the treatment she received on July 23, 2011.

6. On December 1, 2011, Petitioner received dental treatment from Dr. Robert McArthur. Specifically, Petitioner received a root canal and resin restoration to her number seven and number eight teeth, and a laminate veneer to her number seven tooth.

7. Claims for Dr. McArthur's December 1, 2011 services to Petitioner were submitted to BCBSNC for payment. (Respondent's Exhibits 1 and 2) BCBSNC denied Petitioner's claims for the dental treatment Petitioner received on December 1, 2011 from Dr. McArthur as non-covered services under the State Health Plan.

8. Petitioner appealed the denial of payment for the December 1, 2011 dental treatment. (Respondent's Exhibit 3)

9. Petitioner's appeal for coverage of the December 1, 2011 treatment was denied and notice was provided by letter dated April 23, 2012. (Respondent's Exhibit 4) The letter states the basis of the denial of Petitioner's appeal and quotes the State Health Plan benefits booklet.

10. Donna Williams, Appeals Team Lead for BCBSNC, testified on behalf of Respondent. Mrs. Williams testified that the language in Respondent's benefit booklet, as stated in Respondent's Exhibit 5, applied to the dental services Petitioner received from Dr. McArthur on December 1, 2011.

11. The section titled "**COVERED SERVICES**" on page 13 of Respondent's benefit booklet contains a subsection titled "**Dental Treatment Covered Under Your Medical Benefit**", which describes dental treatment that is covered under the medical benefit pursuant to the Standard PPO Plan and is applicable to Petitioner's coverage. That subsection states:

Your health benefit plan provides benefits for diagnosis, therapeutic or surgical procedures, including oral *surgery* involving bones or joints of the jaw, when the procedure is related to one of the following conditions:

- Accidental injury of the natural teeth, jaw, cheeks, lips, tongue, roof and floor of the mouth

(Respondent's Exhibit 5)

12. Mrs. Williams further testified that the dental services Petitioner received on December 1, 2011 were non-covered services under Petitioner's plan, regardless of whether those services were related to an accidental injury. Mrs. Williams' interpretation of the benefits as stated in the booklet is erroneous.

13. Mrs. Williams testimony reveals an interpretation of the benefit booklet that is contrary to the ordinary and plain language of the sections cited. Mrs. Williams consistently testified that the coverage, if at all, only applied "to the jaw or jawbone." (See Tr. pp. 20, 22, 29). While testifying during the course of the contested case hearing, Mrs. Williams even incorrectly read a portion of the policy by stating that the benefits applied to "accidental injury other than natural tooth (sic)" (Tr. p. 29) (Emphasis added).

14. The very plain language of this section sets forth what dental treatment services are covered by the Plan. This section very plainly states “[Y]our health benefit plan provides benefits for diagnosis, therapeutic or surgical procedures . . . related to . . . [A]ccidental injury of the natural teeth. . . .” (Emphasis added) The omitted clauses are merely expansive of this language. The phrase set off by commas which states “including oral *surgery* involving bones or joints of the jaw” expands and clarifies that those particular items are indeed included. In no way does common English and grammatical usage make that clause a limitation on the types of services to be rendered. Apparently, and in accord with the testimony of Mrs. Williams, BCBSNC has been using that phrase incorrectly as a limitation that only those services were covered, contrary to the plain and ordinary language of the section. (Respondent’s Exhibit 5)

15. The second paragraph explaining what dental services are covered states: “Reconstructive *dental services* following accidental injury are only covered when the accident occurred while the *member* is covered by the *State Health Plan* and the services are provided within two years of the accident.” (Emphasis in the original) This section is very much on point with the services provided to Petitioner herein and was apparently overlooked or ignored by Respondent. There is no question that the services were performed within two years. While the booklet makes extensive use of italics, italics are used for emphasis and the fact that “dental services” is italicized show importance. It is not speaking of surgery or other less common types of treatment. (Respondent’s Exhibit 5)

16. Contained within the broad “COVERED SERVICES” section of Respondent’s benefit booklet, but specific to covered dental treatment, is the treatment exclusion for “[D]ental root form implants or root canals.” When read *in pari material* with what services are covered within the section, it must be read that the exclusion section does not apply to accidental injury cases. To read otherwise would make the exclusionary section of paramount importance to the inclusionary section and render the inclusionary section almost if not entirely without effect. General rules of grammatical interpretation would not favor such an interpretation. All parts of the section must be read as though they have equal value, equal worth, so that one does not negate the other. It must be assumed that the drafters of the booklet did not intend any part of the booklet to be mere surplusage or to be negated by another. (Respondent’s Exhibit 5)

17. Respondent’s benefit booklet sets forth “WHAT IS NOT COVERED?” on page 30, 30. It states that:

Exclusions that are specific to a type of service are stated along with the benefit description in “*Covered Services*.” Exclusions that apply to many services are listed in this section. To understand all of the exclusions that apply, read “*Covered Services*,” “Summary of Benefits” and “What Is Not Covered?” In addition, your health benefit plan does not cover services, supplies, drugs or charges that are:
(Underscore emphasis added; italics in the original)

18. The very plain language of this section is that exclusions are generally found in the specific sections, and especially if it is a specific type of service, then it will be in the

"Covered Services" section for that particular service. This listing of services not covered is a catch-all for services not otherwise specifically addressed in the benefits booklet.

19. The first bullet point within the exclusions list cited by Respondent is "for cosmetic purposes." This bullet point very specifically states "[F]or removal of excess skin from the abdomen, arms or thighs, except as specifically covered by your health benefit plan." While the Respondent had an extremely narrow and incorrect interpretation of the "covered" section, it has a greatly exaggerated and unwarranted interpretation of this section which would apparently include any cosmetic service. This bullet point has a definitive reference which is the only cosmetic procedure referenced. The section does not say "for example" or other qualifying language. (Respondent's Exhibit 5)

20. The next bullet point referenced by the Respondent is "[F]or any services that would not be necessary if a noncovered service had not been received, except for *emergency services* in the case of an *emergency*." This section would have applicability if the Petitioner's services were found not to be covered. (Respondent's Exhibit 5)

21. The third bullet point referenced by the Respondent is "[F]or dental care, dentures, dental implants, oral orthotic devices, palatal expanders and orthodontics except as specifically covered by your health benefit plan." The bullet point definitely applies to the issue at hand in that the question to be answered is whether or not Petitioner's dental care is "specifically covered by your health benefit plan." (Respondent's Exhibit 5)

22. Paul Fjelsted, Petitioner's husband, testified on Petitioner's behalf. He testified that after conferring with multiple providers for several months after Petitioner's accident she sought treatment with Dr. Robert McArthur, D.D.S.. Mr. Fjelsted testified that Dr. McArthur performed the root canals and resin restorations, which were part of the root canals procedures, and a veneer.

23. Petitioner entered into evidence a letter from Dr. Robert McArthur, D.D.S., dated October 4, 2012, which described the treatment he provided to Petitioner on December 1, 2011. In Dr. McArthur's letter he described providing Petitioner with endodontic therapy and lingual resin to close access to the endo therapy, followed by a resin veneer to increase functionality and cosmetic appearance to tooth number 7 and endodontic therapy followed by lingual resin to close access to endo procedure to tooth number 8. (Petitioner's Exhibit 1)

24. The uncontroverted evidence is that the "endo therapy" for each tooth at issue referred to by Dr. McArthur is a root canal. The "lingual resin placed to close the access" is put in to fill the void left by performing the root canal. Once the root canal has been performed it cannot simply be left open. It does not take a dental expert to understand that. It seemingly would be malpractice for a dentist to merely leave open the canal left by performing a root canal.

25. The submissions by Dr. McArthur to Respondent seeking compensation are in accord with his having performed root canals on tooth 7 and tooth 8 and then closing the canals with lingual resin after completion of the root canals. Dr. McArthur stated in his letter that his

was a very conservative approach avoiding more costly and perhaps more risky procedures such as orthodontics and implants. His more conservative approach has seemingly been successful.

26. As stated, Dr. McArthur used a resin veneer to strengthen tooth 7 and to increase the functionality of that tooth. Teeth numbered 7 and 8 are the large upper teeth in the front of the mouth. Without the veneer, there was a sizable gap in the front of her mouth which interfered with her biting and chewing; i.e. functionality. The fact that it also had a cosmetic affect does not negate the fact that it was placed on the tooth to increase strength to preserve the tooth and functionality of the tooth.

27. Both Petitioner and her husband stated that she contacted BCBSNC customer service prior to December 1, 2011 and was informed that coverage would be provided if due to an accident. Petitioner acknowledged that no one at BCBS told her that a root canal, resin restoration, or a veneer would be covered by the State Health Plan, simply that the procedures would be covered if due to accident. Petitioner could not provide the dates, times or full names of the BCBSNC representatives that she spoke to when she made calls to BCBSNC.

28. Mrs. Williams testified that BCBSNC maintains records of all customer service calls and that she reviewed the records of calls made by Petitioner, her providers, or anyone on her behalf, as part of her appeal. Mrs. Williams testified that there was no record of any BCBSNC representative informing Petitioner, her providers, or anyone else who called on her behalf, that the specific dental services she was going to receive from Dr. McArthur on December 1, 2011 would be covered by the State Health Plan. It is not known whether or not the records are full transcriptions of the conversations or exactly in what form the records are maintained.

29. In rendering the decision herein, it is not necessary to determine what if anything Petitioner may have been told in telephone conversations with Respondent's agents.

30. Petitioner acknowledges that she read her benefit booklet, including the specific exclusions regarding dental treatment covered under her medical benefit and the "What is Not Covered Section," before she received the treatment from Dr. McArthur.

CONCLUSIONS OF LAW

1. The Office of Administrative Hearings has jurisdiction over this contested case and the parties thereto.

2. In N.C. Gen. Stat. Chapter 135, the General Assembly created a State Health Plan for the benefit of its state employees, retired employees and certain of their eligible dependants. Pursuant to N.C. Gen. Stat. Chapter 135, Respondent is to provide comprehensive medical coverage under a group plan and benefits are to be provided under contracts between the Plan and the claims processor.

3. Petitioner has the burden of proof in this matter by a preponderance of the evidence regarding the issues presented in this contested case. N.C. Gen. Stat. § 150B-34(a).

4. Respondent's State Health Plan Benefit Booklet for the Standard PPO Plan sets forth the benefits available to members.

5. A preponderance of the evidence and a reasonable interpretation of the State Health Plan PPO benefit booklet shows that there was coverage for the dental treatment received by Petitioner from Dr. McArthur on December 1, 2011.

6. Petitioner met her burden of proving that Respondent deprived Petitioner of property, failed to use proper procedure, acted erroneously, and substantially prejudiced Petitioner's rights when it denied the Petitioner's claim for dental treatment.

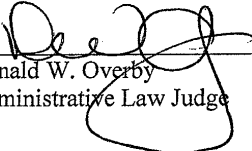
FINAL DECISION

NOW THEREFORE, based on the foregoing, the Undersigned hereby finds proper authoritative support of the Conclusions of Law noted above. It is hereby **ORDERED** that Respondent's denial of Petitioner's request for payment of claims for dental services be **REVERSED**.

NOTICE

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

This the 16th day of January, 2013.


Donald W. Overby
Administrative Law Judge

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On this date mailed to:

Jan Fjelsted
210 Wyndham Drive
Garner, NC 27529-
Petitioner

Heather H Freeman
Special Deputy Attorney General
NC Department of Justice
9001 Mail Service Center
Raleigh, NC 27699
Attorney - Respondent

This the 16th day of January, 2013.

Vicki Bullock

N. C. Office of Administrative Hearings
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Filed

STATE OF NORTH CAROLINA

COUNTY OF NORTHAMPTON

Office of
Administrative Hearings

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
FILE NO. 12 OSP 00246

VERA RICKS,

Petitioner,

v.

NORTH CAROLINA DEPARTMENT
OF PUBLIC SAFETY,

Respondent.

FINAL DECISION

THIS MATTER came on for hearing before the undersigned Donald W. Overby, Administrative Law Judge, on October 15, 2012 and December 6, 2012, in Edenton, North Carolina.

APPEARANCES

For Petitioner: Charles E. Monteith, Jr.
Shelli Henderson Rice
Monteith & Rice, PLLC
309 W. Millbrook Road, Suite 141
Raleigh, NC 27609

For Respondent: Kimberly Grande
Terrence D. Friedman
North Carolina Department of Justice
P.O. Box 629
Raleigh, North Carolina 27602-0629

ISSUE

Petitioner's Petition for Contested Case Hearing alleged that she was discharged without just cause and that Respondent discriminated against her on account of her age. During the course of the contested case hearing in this matter, Petitioner withdrew her claim that she was discharged and/or discriminated against on account of her age. As such, the sole issue that remains is whether Respondent had just cause to dismiss Petitioner in accordance with the applicable provisions of the State Personnel Act and the North Carolina Administrative Code.

APPLICABLE STATUTES AND RULES

N.C. Gen. Stat. § 126-34.1

N.C. Gen. Stat. § 126-35

N.C. Gen. Stat. § 150B-23

25 N.C.A.C. 01J.0604

25 N.C.A.C. 01J.0606

25 N.C.A.C. 01J.0614

PETITIONER'S WITNESSES

Petitioner

Christina Diane Boyd

RESPONDENT'S WITNESSES

Brian Wells

John Grimes

Petitioner

Kaisha Boddie

Corie Boone

Donald Sylvester Greene

Grady Massey

EXHIBITS

Petitioner Exhibits 2, 5-6, 19, 21-22 and 24 were admitted.

Respondent Exhibits 1-6 and 8-29 were admitted.

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

FINDINGS OF FACT

1. The parties acknowledged proper notice of the date, time and place of the hearing. There is no issue of jurisdiction in the Office of Administrative Hearings.

2. Petitioner has worked for Respondent's Caledonia Correctional Facility on two separate occasions. (Transcript p. 433) Her last period of employment began in 2004. (Transcript pp. 181, 433) She was employed as a registered staff nurse. Transcript pp. 21, 181-182. Respondent has established professional practice standards for Registered Nurses, of which Petitioner received a copy. (Transcript 13, Respondent Exhibit 1)

3. The incident that led to Respondent's decision to dismiss Petitioner from employment occurred on August 11, 2011. (Respondent Ex. 11)

4. On August 11, 2011, Petitioner was assigned to what the Respondent called the satellite clinic that was located in Unit 4 at the Caledonia Correctional Facility. (Petitioner's Exhibit 2, Transcript pp. 22, 438-439) Her duties on that day required her to take the designated medication cart to the satellite clinic in order to administer or distribute medications ("med-pass") to the inmates in Units 3 and 4. (Transcript, pp. 13-16, 15-18, 439) In addition to administering medication, Petitioner was also responsible for conducting sick call, completing medication administration records and doing lab draws. (Transcript pp. 24, 37, 439)

5. The policy and procedures of Respondent require that, during the medication passes, the cart is unlocked while it's manned by an employee. The cart is to be locked while within the clinic following medication pass or at any time the assigned nurse is not immediately near or beside and attentive to the cart. (Transcript 15-16, Respondent Exhibit. 2)

6. Petitioner had been assigned to the satellite clinic on multiple occasions prior to August 11, 2011. (Transcript pp. 182-183, 439) When Petitioner was assigned to the satellite clinic, she was at times accompanied by a medical technician who would help her by administering medications. (Transcript pp. 79, 154, 183-185, 257, 439-440) Petitioner has been assigned to the satellite clinic numerous times without the assistance of a medical technician. On August 11, 2011, Petitioner was the only nursing staff member assigned to the satellite clinic. (Petitioner's Exhibit 2, Transcript pp. 25, 80-81, 183, 439-440)

7. Respondent's drug storage policy requires that all medications be "located in a locked, sanitary and secure area." (Respondent's Exhibit 2, Transcript pp. 14, 124) When a staff nurse administers medications in the satellite unit, the nurse places the medication cart next to the door of the satellite clinic. The staff nurse administers the medication by passing the medications to the inmates through a window in that same door. (Transcript pp. 34-35) While the employer's drug storage policy makes no specific reference to the medication cart, staff nurses are expected to lock the medication cart when they are not manning the medication cart, which would be consistent with the drug storage policy. (Respondent's Exhibit 2, Transcript pp. 35, 131)

8. On August 11, 2011, Correctional Officer Kaisha Boddie was assigned to escort Unit 4 inmates to the satellite clinic and remain at the clinic while those inmates were being seen by Petitioner. (Transcript pp. 254-256) Correctional Officer Corie Boone was assigned to escort Unit 3 inmates to the satellite clinic and remain at the clinic while those inmates were being seen by Petitioner. (Transcript pp. 304-307) The correctional officers are assigned to transport the

inmates from their respective units to the satellite clinic, and in part to provide security. (Transcript pp. 428-430)

9. When Petitioner arrived at the satellite clinic on August 11, 2011, she placed the medication cart by the clinic door and began to administer medication to the Unit 4 inmates. (Transcript pp. 190-194, 442) While administering the medication, Petitioner directed Correctional Officer Boddie to allow an inmate to enter the clinic so that the inmate could have his blood drawn. (Transcript pp. 299, 444) Correctional Officer Boone arrived from unit 3 at approximately the same time that the inmate entered the clinic for his blood draw. Officer Boone also entered the clinic. (Transcript pp. 269, 291, 306, 312, 443) Petitioner admittedly did not lock the medication cabinet while she was drawing the inmate's blood. (Transcript pp. 199, 443)

10. The inmate who was having his blood drawn appeared to become faint. Petitioner stayed with the inmate to assist him and make sure that he did not fall to the floor. (Transcript p. 444) Petitioner stayed with the inmate for approximately three to five minutes. (Transcript pp. 204, 445) During that time, Petitioner occasionally glanced at the door while she was caring for the inmate inside. (Transcript p. 444) She did not observe any inmate come to the door and take medication from the medication cart. (Transcript p. 445)

11. Once the inmate was ready to leave the clinic, Correctional Officer Boddie escorted the inmate to the door and Petitioner resumed administering medication to the unit 3 inmates. (Transcript p. 273)

12. There is conflicting testimony about what was happening both inside and outside of the clinic at the time the inmate became faint. Officer Boddie testified that she would call her Sergeant when her inmates were finished and that she would remain until the Unit 3 Officer arrived. There is evidence that there is a policy that only one officer and one inmate are to be inside the clinic at any given time. Officer Boone stated that on his arrival he did not see any inmates that belonged to Unit 4 but he did see Officer Boddie. It is not clear whose inmate became faint. It is not clear why both officers were inside. It is not clear if more than one inmate was inside. It is not clear if inmates were in the area outside of the clinic; however with both officers inside, it seems apparent that inmates must have been milling about. There is even contradictory testimony of how/when the inmates come inside the locked gates to the area outside the clinic.

13. There is no question that the Correctional Officers are not responsible for the medical cart and that their attention should be directed to the inmates within their respective charge.

14. Neither Officer Boddie nor Officer Boone ever saw Petitioner use the key to lock the medication cart on August 11, 2011. Both observed the cart unlocked. (Transcript p. 263) Neither Officer Boddie nor Officer Boone observed any inmates take any medication from the medication cart on August 11, 2011. R. 19. There is no evidence that either Officer Boddie or Officer Boone were responsible in any regard for taking the medications.

15. Both Officer Boddie and Officer Boone were inside the satellite clinic when the inmate seemed as if he needed medical attention on August 11, 2011. (Transcript p. 268-273) Both witnessed Petitioner leave the medication cart and attend to the inmate who was seated beside the desk.

16. It was Officer Boddie's opinion that on August 11, 2011 Petitioner was attempting to do too many tasks at one time inside of the satellite clinic. Officer Boddie observed Petitioner trying to write inmate records from finger sticks, pass out medications, and fan another inmate all at the same time. (Transcript p. 297-298)

17. Officer Boone testified that his attention, on August 11, 2011, was on the inmate inside the satellite clinic. Officer Boone testified that it was not his responsibility to secure the medication cart and that he did not have a key to lock the medication cart. (Transcript p. 316)

18. Officer Boone stated that other nurses that he had observed in the satellite clinic kept the medication cart locked and would lock the medication cart each time they stepped or turned away from the cart. (Transcript p. 320 – 321)

19. After completing her duties in the satellite clinic, Petitioner left the clinic in order to administer medication in the segregation unit. Petitioner left the medication cart in the satellite clinic and locked the door to the clinic. (Transcript pp. 445-446) She contends that she did not lock the medication cart because she had pushed the cart away from the window and locked the door. (Transcript p. 447)

20. When Petitioner completed her duties in the segregation unit, she returned to the satellite clinic and unlocked the door. (Transcript p. 446) She began to count the medication in the medication cart and discovered that some Ultram and Neurontin were missing from the medication cart. (Transcript pp. 446-448) Petitioner promptly called lead nurse Alston and informed her that some medication was missing. (Transcript p. 448)

21. On August 11, 2011, Brian Wells was employed as Petitioner's Nurse Supervisor. (Transcript pp. 9, 40) He was notified that Petitioner had passed out medication at the satellite clinic that morning and that Petitioner had reported medications Ultram and Neurontin missing from the satellite clinic medication cart. (Transcript p. 40, Respondent Exhibit 9)

22. Ultram and Neurontin are medications used to treat pain which are known to be abused by inmates. (Transcript p. 41) Either Ultram and/or Neurontin could be considered dangerous. (Transcript p. 42) Neurontin could cause seizures, somnolence, dizziness, and affects the central nervous system. Ultram is very similar to a narcotic and causes dizziness, somnolence, and unstable gait. The sale or transmission of Ultram or Neurontin through the inmate population would pose a risk to the security of the institution and to the inmate population because either medication could cause serious injury or death to someone taking it for whom it was not prescribed. (Transcript pp. 146-147)

23. Mr. Wells reported to the satellite clinic and questioned Petitioner regarding the missing medication. It was determined that 53 Ultram and an unknown quantity of Neurontin

were missing. Mr. Wells assisted in searching the satellite clinic for the missing medication, and notified custodial staff regarding the missing medication. (Respondent Exhibit 9) After searching the clinic, the medication could not be located. (Transcript pp. 354-355, Respondent Exhibit 23) Mr. Wells reported the incident to his supervisor, John Grimes. (Transcript p. 74)

24. Mr. Wells also testified that, in the year 2010 to 2011, at least three of Petitioner's performance appraisals as documented in her "TAP" entries had been unsatisfactory or below good performance. (Transcript p. 62, Respondent Exhibit 12) Review of some of Petitioner's performance appraisals reveal that she had numerous instances of problems in satisfactorily performing her duties. Inasmuch as they were detailed in the performance reviews, she was counseled on such matters, given a plan of action and given an opportunity to correct any shortcomings.

25. Petitioner had two prior written warnings which were still active at the time of the August 11, 2011 incident. Mr. Wells stated more than once in his testimony that it was his understanding that Petitioner was dismissed because she had two prior active written warnings. It was his opinion that this issue alone warranted a written warning and that is what he thought was going to happen.

26. Through the investigation of this matter, some hypothesized that it was while Petitioner was at the segregation unit that the medicines were stolen. This begs the question of how would inmates be milling about in that area, even though the chaplain's office is in the same area. The credible testimony is that inmates would not be allowed to be in that area unless there was a guard present, which would contradict the theory that the event took place while Petitioner was at segregation. It is also not consistent with the version of facts which was related to Mr. Greene by an inmate who was involved.

27. Donald Greene was the assistant unit manager for Unit 3 on August 11, 2011, which is adjacent to Unit 4 where the satellite clinic is located. (Transcript pp. 352-353, Respondent Exhibit 23) When he first arrived at work he was notified that medication was missing from the satellite clinic. (Transcript p. 354) Mr. Greene went immediately to the satellite clinic and he instituted a search of unit 3 which led to the discovery of some of the missing medication. (Transcript pp. 359-360)

28. While searching the dormitories, Mr. Greene was notified that an inmate wished to speak to him. The inmate told Mr. Greene that he had witnessed the theft of the medication. Specifically, the inmate told Mr. Greene that the cart was left unsecured and that another inmate served as a distraction and inmate Hood took medication out of the cart. Hood split the medication between himself and several other inmates. The informant was one of the inmates that got some of the pills. (Transcript p. 357)

29. The informant told Mr. Greene that he had hidden his share of the medication, 26 pills, in the dayroom area. Mr. Greene located and recovered the medication from the dayroom. (Transcript p. 359, Respondent Exhibit 2)

30. Mr. Greene stated that the other inmates identified as being involved were interviewed, but denied any involvement in the incident. (Transcript p. 360)

31. Mr. Greene stated that the August 11, 2011 incident involving Petitioner was the only occasion of medication being stolen from the medication cart in the satellite clinic of which he was aware. There is conflicting evidence about whether or not there were other instances in which medication was missing. There was apparently at least one other occasion because the person suspected resigned immediately after being questioned about the missing meds. Mr. Greene stated that other nurses who work in the satellite clinic keep the medication cart locked. (Transcript p. 362)

32. Lieutenant Portress, the officer in charge (OIC) at the time of the August 11, 2011 incident, took written statements on that same date from the individuals involved in the incident. (Transcript p. 392) The following individuals gave written statements on August 11, 2011: Assistant Unit Manager Greene, Petitioner, Correctional Office Boddie, Correctional Officer Boone, and Nurse Supervisor Brian Wells. (Respondent's Exhibits 9, 17, 19, 21, 23)

33. Superintendent Grady Massey was employed at the Caledonia Correctional Facility at the time of the August 11, 2011 incident. (Transcript p. 390) On August 12, 2011, Superintendent Massey placed Petitioner on investigatory status pending an investigation of the August 11, 2011 incident. (Respondent's Exhibit 24, Transcript pp. 393-394) Superintendent Massey and John Grimes, Regional Nurse Supervisor, decided to have someone from outside of Caledonia conduct an investigation of the August 11, 2011 incident. (Transcript p. 395) Shannon Ayscue, a Nurse Supervisor II at Warren Correctional Institution, was asked to conduct the investigation. (Transcript, pp. 159-160, 395-396)

34. Nurse Supervisor Ayscue subsequently conducted an investigation and submitted a written report to Superintendent Massey. (Petitioner's Exhibit 19, Transcript pp. 396-397) In that report, Nurse Supervisor Ayscue identified two concerns: a security issue with respect to the manner in which the clinic door is secured by the correctional officers; and, Petitioner's failure to lock the medication cart. (Petitioner's Exhibit 19)

35. In her report, Ms. Ayscue stated that the inmates reached through the door into the unlocked medication cart and removed the medication. (Petitioner's Exhibit 19) That conclusion was consistent with the information that a confidential informant provided to Assistant Unit Manager Greene. (Respondent's Exhibit 23, Transcript pp. 357-359)

36. Ms. Ayscue determined that Petitioner had violated Respondent's policy and procedures by leaving the medication cart unsecured. Ayscue categorized Petitioner's violation as grossly inefficient job performance. (Transcript p. 397, Petitioner Exhibit 19)

37. Mr. Massey agreed that in his opinion Petitioner's behavior was grossly inefficient job performance because she had failed to secure the medication cart, which posed a risk of health and safety to both officers and inmates. Tr. 397-398. According to Massey, the risk was life threatening. (Transcript p. 398)

38. Following Ms. Ayscue's investigation, Mr. Massey conducted a pre-disciplinary conference with Petitioner on August 22, 2011, and subsequently recommended that Petitioner be dismissed from employment. (Transcript pp. 399, 401-403, Respondent Exhibit 25)

39. Following the pre-disciplinary conference with Petitioner and while his recommendation was under review, Mr. Massey was informed that Ms. Ayscue had not collected witness statements from witnesses she interviewed but relied on the statements they had previously supplied. (Transcript pp. 404-405)

40. Mr. Massey felt that Ms. Ayscue's investigation was not satisfactory. He contacted Mr. Grimes and requested that another investigation be conducted. (Transcript pp. 405) Once it became apparent to Mr. Massey that the second investigation would not be completed within 30 days of placing Petitioner on investigation, Petitioner was allowed to return to work. (Transcript pp. 405-406)

41. On August 16, 2011, Superintendent Massey sent Regional Director Randall Lee a file which included the investigation report submitted by Ms. Ayscue and Mr. Massey's request to conduct a pre-disciplinary conference with Petitioner. (Petitioner's Exhibit 24, Transcript pp. 411-415) Regional Director Lee approved Mr. Massey's request and also instructed him to "do some type of action on the CO's," meaning Corrections Officers Boddie and Boone. (Id.)

42. In conducting the second investigation, Mr. Grimes obtained written statements on September 7, 2011 from the following individuals: Lead Nurse Aundrea Alston, Correctional Officer Boddie, Correctional Officer Boone, and Petitioner (Respondent's Exhibits 14, 18, 20, 22) He submitted a written investigative report to Mr. Massey on that same date.

43. Mr. Grimes did not review Ms. Ayscue's report nor did he review the written statements that were obtained by the OIC on the date of the incident. (Transcript pp. 157-161) At the contested case hearing in this matter, Mr. Grimes acknowledged statements are more likely to be true if such statements are taken closer in time to the event. (Transcript p. 167) Mr. Grimes also admitted that it may have been a mistake for him not to review the prior statements that been provided on August 11, 2011, the date of the incident in question. (Id.) He made no comparison of the various statements to check for inconsistent statements or a change in anyone's account of the events.

44. Following Mr. Grimes investigation, Mr. Massey was informed of Mr. Grimes' conclusion that Petitioner violated Respondent's policy and procedures by failing to secure the medication cart. (Transcript p. 407, Respondent Exhibit 14)

45. Superintendent Massey conducted a second pre-disciplinary conference with Petitioner on September 15, 2011. (Respondent's Exhibit 10, Transcript pp. 409-410) Superintendent Massey subsequently recommended that Petitioner be dismissed from employment for grossly inefficient job performance. (Transcript p. 413) Such recommendation was approved and Petitioner was informed of her dismissal effective September 27, 2011. (Respondent's Exhibit 11, Transcript pp. 413-414) The dismissal letter that was given to

Petitioner on September 27, 2011 stated that Petitioner's failure to lock the medication cart on August 11, 2011 created the potential for a serious health risk to inmates and constituted grossly inefficient job performance. (Respondent's Exhibit 11)

46. The dismissal letter also reference two previous written warnings that were issued to Petitioner. (Respondent's Exhibit 11) Petitioner was issued a written warning on June 7, 2010 for failing to follow established medical protocol. (Respondent's Exhibit 12) She was also issued a written warning on October 22, 2010 for reporting to work earlier than her scheduled shift. (Respondent's Exhibit 11, Transcript pp. 66-67)

47. With respect to the events that led to the June 7, 2010 written warning, Petitioner forgot to document that she had given medication to an inmate. (Transcript p. 435) She also did not assess an inmate because the inmate was already scheduled to see a doctor later that week. (Transcript pp. 435-436)

48. With respect to the events that led to the October 22, 2010 written warning, Petitioner typically would arrive at work early because she did not wish to be late; however she would at times leave home as much as three hours early. (Transcript, pp. 436-437) When she arrived at work, she would wait in her car or the lobby until her shift was scheduled to begin. (Transcript p. 437) Her early arrival created a risk of liability for Respondent, and she was cautioned about early arrival several times.

49. Correctional Officers Boddie and Boone were issued a "coaching" as a result of the August 11, 2011 incident. (Transcript pp. 298, 345-346, 425) Both officers were coached because they failed to properly restrain the inmates in the clinic and failed to strip search inmates prior to those inmates entering the clinic which was not even their respective duties. (Transcript pp. 371-372) The coaching did not address the security issues raised by Ayscue's report. (Petitioner's Exhibit 19) At the time Correctional Officer Boone received his coaching, he was told "you got to get something." (Transcript p. 344) Since receiving the coaching, Correctional Officer Boone has been promoted to Sergeant. (Transcript p. 303)

50. The credible evidence is that an inmate reached into the clinic and removed the medications from the cart while the inmate inside the clinic was either physically ill or pretending to be physically ill. A correctional officer should have been responsible for the inmates outside the clinic. The evidence indicates that if indeed any inmates were in that area then Officer Boone would have been responsible for them. There is no evidence that Officer Boone had an inmate inside the clinic. Even if the medication was taken while Petitioner was at the segregation unit, some corrections officer had to have been responsible for any inmate in that area. Based upon the evidence produced at this hearing there should have been more punishment administered to the corrections officers than the "coaching" which appears to have been nothing more than a sham so that it could be said that the corrections officers were "punished" because medication was missing. This is borne out by the fact that Officer Boone has been promoted. It must be noted that the correctional officers were not the subject of this hearing and a full evidentiary hearing was not held on their culpability. Although this contested case hearing is not about the punishment for the corrections officers, it is germane to this case in determining

whether or not the punishment given to Petitioner was appropriate in light of all facts and circumstances.

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

CONCLUSIONS OF LAW

1. The parties are properly before the Office of Administrative Hearings and received proper notice of the hearing in this matter. This office has both subject matter and personal jurisdiction to hear this contested case.

2. At the time of her dismissal from employment, Petitioner was a career state employee and thus was entitled to the protections of the North Carolina State Personnel Act and the administrative regulations promulgated pursuant to said Act.

3. North Carolina General Statute (hereinafter NCGS) § 126-35(a), in pertinent part, provides:

No career State employee subject to the State Personnel Act shall be discharged...except for just cause. In cases of such disciplinary action, the employee shall, before the action is taken, be furnished with a statement in writing setting forth in numerical order the specific acts or omissions that are the reasons for the disciplinary action and the employees appeal rights.

4. Pursuant to NCGS § 126-35(d), Respondent has the burden of showing that Petitioner was discharged for just cause.

5. Both 25 N.C.A.C. 01I.2301 and 25 N.C.A.C. 01J.0604(b) provide:

There are two bases for the discipline or dismissal of employees under the statutory standard for "just cause" as set out in G.S. 126-35. These two bases are:

- (1) Discipline or dismissal imposed on the basis of unsatisfactory job performance, including grossly inefficient job performance.
- (2) Discipline or dismissal imposed on the basis of unacceptable personal conduct.

6. 25 N.C.A.C. 01J.0606(a) provides:

Dismissal on the basis of grossly inefficient job performance is administered in the same manner as for unacceptable personal conduct. Employees may be dismissed on the basis of a current incident of grossly inefficient job performance without any prior disciplinary action.

7. 25 N.C.A.C. 01J.0614(h) defines Gross Inefficiency (Grossly Inefficient Job Performance) as

unsatisfactory job performance that occurs in instances in which the employee: fails to satisfactorily perform job assignments as specified in the relevant job description, work plan, or as directed by the management of the work unit or agency; and, that failure results in: 1) the creation of the potential for death or serious bodily injury to an employee(s) or to member of the public or to a person(s) over whom the employee has responsibility; or 2) the loss of or damage to state property or funds that result in a serious impact on the State and/or work unit.

8. The North Carolina Supreme Court addressed the question of whether violation of a state law justified an employee's demotion in *N.C. Department of Environment and Natural Resources v. Carroll*, 358 N.C. 649, 599 S.E.2d 888 (2004). The Supreme Court noted that the fundamental question in a case brought under N.C.G.S. § 126-35 is whether the disciplinary action taken was "just." *Carroll*, 599 S.E.2d at 900. The Supreme Court further stated that "just cause" is a flexible concept, embodying notions of equity and fairness, which can only be determined upon an examination of the facts and circumstances of each individual case. *Id.* In *Warren v. North Carolina Department of Crime Control and Public Safety*, COA11-884, ___ N.C. App. ___, 726 S.E.2d 920 (2012), the North Carolina Court of Appeals interpreted *Carroll* to mean that not every instance of unacceptable personal conduct as defined by the North Carolina Administrative Code provides just cause for discipline.

9. Both *Carroll* and *Warren* involved state employees who had been disciplined for engaging in unacceptable personal conduct. Both *Carroll* and *Warren* should also apply to cases involving grossly inefficient job performance, and to this contested case in particular. As such, the crucial issue in this case is whether Petitioner's actions on August 11, 2011 amounted to just cause for the disciplinary action taken.

10. Petitioner concedes that she should have locked the medication cart and that she failed to lock the medication cart on August 11, 2011, resulting in medications being taken from the cart by inmates. Petitioner contends that the circumstances surrounding the August 11, 2011 incident and the subsequent investigation of said incident did not constitute just cause for her dismissal from career state employment.

11. On August 11, 2011, no nursing staff member was assigned to assist Petitioner in the clinic. That was not unusual and Petitioner had worked the satellite clinic many times before without the assistance of any additional staff.

12. Two correctional officers were in the satellite clinic with Petitioner at the time the medication was apparently taken from the medication cart. Two officers should not have been inside the clinic at the same time. Apparently, inmates were milling around outside the clinic otherwise the medications could not have been taken by an inmate. Had the inmates outside the clinic been properly supervised as provided by Respondent's policy and procedure, the medication most likely would not have been taken. The only conclusion that can be drawn is that

a correctional officer was derelict in his or her duties. However, the two officers present were only given a "coaching" and one was subsequently promoted.

13. While the correctional officer may or may not have been appropriately punished, that is not determinative of the case at bar. The issue here is the sufficiency of the punishment administered to this Petitioner. There is no question that the correctional officers were not responsible for the medication cart. That was the duty of Petitioner and she admits responsibility for the loss of the medication.

14. The investigations that were conducted by Nurse Ayscue and Supervisor Grimes were flawed. However, it is not disputed that Petitioner was responsible for the medication cart and that she left it unattended and unlocked and that medications were taken from the cart while she was responsible.

15. At the time of this incident, Petitioner had two active written warnings. She had received poor job evaluations and she had been counseled about deficiencies in performance of her job duties. Dismissal for grossly inefficient job performance may be for one incident alone and does not require any prior disciplinary actions against the employee.

16. There is credible evidence that Petitioner was attempting to do too many things at one time, and that such was often the case when she worked the satellite clinic. Despite any failings by the correctional officers, the duty to maintain the integrity of the medication cart was Petitioner's alone. She failed in the performance of that duty, which created the potential for death or serious bodily injury to the inmates, people for whom she had responsibility, as well as the potential for danger and harm to the staff of the institution.

17. Applying the "commensurate discipline" test of *Warren* to the facts and circumstances of this contested case it is concluded that the misconduct of Petitioner does indeed amount to "just cause" for the disciplinary action taken, i.e., her dismissal.

18. Respondent met its burden of proof and showed by the preponderance of credible evidence that Respondent had just cause to dismiss Petitioner from employment for grossly inefficient job performance.

DECISION

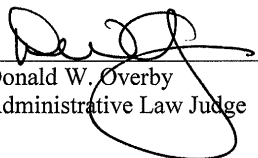
Based upon the foregoing Findings of Fact and Conclusions of Law, the undersigned determines that Respondent's decision to dismiss Petitioner should be and hereby is **AFFIRMED**.

NOTICE

Pursuant to N.C. Gen. Stat. § 150B-45, any party wishing to appeal the undersigned's decision may commence such an appeal by filing a Petition for Judicial Review in the Superior Court of Wake County or in the Superior Court of the county in which the party resides. The

appealing party must file the petition within 30 days after being served with a written copy of the Administrative Law Judge's Decision and Order. In conformity with 26 N.C.A.C. 03.012, this Decision and Order was served on the parties the date it was placed in the mail as indicated by the date on the attached Certificate of Service. N.C.G.S. §150B-46 describes the contents of the petition and requires service of the petition on all parties. Pursuant to N.C. Gen. Stat. § 150B-47, the Office of Administrative Hearings is required to file the official record in the contested case with the Clerk of Superior Court within 30 days of receipt of the Petition for Judicial Review. Consequently, a copy of the Petition for Judicial Review must be sent to the Office of Administrative hearings at the time the appeal is initiated in order to ensure the timely filing of the record.

This the 28th day of Mar., 2013.



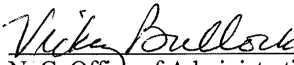
Donald W. Overby
Administrative Law Judge

On this date mailed to:

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This the 2nd day of April, 2013.



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