

# ***NORTH CAROLINA REGISTER***

**VOLUME 28 • ISSUE 11 • Pages 1169 - 1288**

**December 2, 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

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(919) 431-3000

Raleigh, North Carolina 27609

(919) 431-3104 FAX

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(919) 431-3083

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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

Abigail Hammond, Commission Counsel

abigail.hammond@oah.nc.gov

(919) 431 3076

### **Fiscal Notes & Economic Analysis and Governor's Review**

Office of State Budget and Management

116 West Jones Street

(919) 807-4700

Raleigh, North Carolina 27603-8005

(919) 733-0640 FAX

Contact: Anca Grozav, Economic Analyst

osbmruleanalysis@osbm.nc.gov

(919) 807-4740

NC Association of County Commissioners

215 North Dawson Street

(919) 715-2893

Raleigh, North Carolina 27603

contact: Amy Bason

amy.bason@ncacc.org

NC League of Municipalities

(919) 715-4000

215 North Dawson Street

Raleigh, North Carolina 27603

contact: Erin L. Wynia

ewynia@nclm.org

### **Legislative Process Concerning Rule-making**

Joint Legislative Administrative Procedure Oversight Committee

545 Legislative Office Building

300 North Salisbury Street

(919) 733-2578

Raleigh, North Carolina 27611

(919) 715-5460 FAX

contact: Karen Cochrane-Brown, Staff Attorney

Karen.cochrane-brown@ncleg.net

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**NORTH CAROLINA REGISTER**  
Publication Schedule for January 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 <sup>th</sup> 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

## EXECUTIVE ORDER NO. 28

### DISASTER DECLARATION FOR THE CITY OF ALBEMARLE

**WHEREAS**, the North Carolina Emergency Management Act, Chapter 166A of the North Carolina General Statutes authorizes the issuance of a disaster declaration for an emergency area as defined in N.C.G.S. § 166A-19.3(7) and categorizing the disaster as a Type I, Type II or Type III disaster as defined in N.C.G.S. § 166A-19.21(b); and

**WHEREAS**, on June 13, 2013, the City of Albemarle, located in Stanly County, North Carolina was impacted by a microburst storm event that produced severe winds; and

**WHEREAS**, as a result of the microburst storm the City of Albemarle proclaimed a local state of emergency on June 14, 2013; and

**WHEREAS**, due the impact of the microburst storm event, a joint preliminary damage assessment was done by local, state and federal emergency management officials on June 17, 2013; and

**WHEREAS**, I have determined that a Type I disaster, as defined in N.C.G.S. § 166A-19.21(b)(1), exists in the State of North Carolina, specifically in the City of Albemarle; and

**WHEREAS**, pursuant to N.C.G.S. § 166A-19.21(b)(1), the criteria for a Type I disaster are met if: (1) the Secretary of the Department of Public Safety has provided a preliminary damage assessment to the Governor and the General Assembly; (2) the City of Albemarle declared a local state of emergency pursuant to N.C.G.S. § 166A-19.22; (3) the preliminary damage assessment meets or exceeds the State infrastructure criteria set out in G.S. 166A-19.41(b)(2)a.; and (4) a major disaster declaration by the President of the United States pursuant to the Stafford Act has not been declared; and

**WHEREAS**, pursuant to N.C.G.S. § 166A-19.41(b), if a disaster is declared, the Governor may make State funds available for emergency assistance in the form of individual assistance and public assistance for recovery from those disasters for which federal assistance under the Stafford Act is either not available or does not adequately meet the needs of the citizens of the State in the emergency area.

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

**Section 1.** Pursuant to N.C.G.S. § 166A-19.21(b)(1), a Type I disaster is hereby declared for the City of Albemarle in Stanly County, North Carolina.

**Section 2.** I authorize state disaster assistance in the form of public assistance grants to eligible governments located within the emergency area that meet the terms and conditions under N.C.G.S. § 166A-19.41(b)(2). The public assistance grants are for the following:

- a. Debris removal
- b. Emergency protective measures.
- c. Roads and bridges.

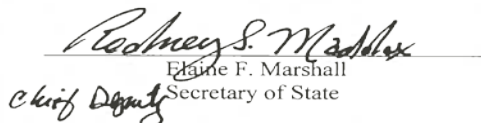
**Section 3.** I hereby order this declaration: (a) to be distributed to the news media and other organizations calculated to bring its contents to the attention of the general public; (b) to be promptly filed with the Secretary of the Department of Public Safety, the Secretary of State, and the clerks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

**Section 4.** This Type I disaster declaration shall expire 60 days after issuance unless renewed by the Governor or the General Assembly. Such renewals may be made in increments of 30 days each, not to exceed a total of 120 days from the date of first issuance.

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

  
Pat McCrory  
Governor

**ATTEST:**

  
Elaine F. Marshall  
Chief Deputy Secretary of State



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

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

## **TITLE 07 – DEPARTMENT OF CULTURAL RESOURCES**

**Notice** is hereby given in accordance with G.S. 150B-21.2 that NC Historical Commission intends to adopt the rule cited as 07 NCAC 04M .0107; amend the rules cited as 07 NCAC 04M .0104-.0106, .0202-.0204, .0301, .0401-.0403, .0501-.0503, .0507-.0512; and repeal the rules cited as 07 NCAC 04M .0101-.0103, .0205, .0302-.0304, .0505; 04V .0101-.0105, and .0201-.0202.

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

- ☒ **OSBM certified on:** October 22, 2013
- ☐ **RRC certified on:**
- ☐ **Not Required**

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

**Proposed Effective Date:** April 1, 2014

### **Public Hearing:**

**Date:** December 17, 2013

**Time:** 9:00 a.m.

**Location:** Archives & Library Building, 109 East Jones Street, Raleigh, NC 27601

**Reason for Proposed Action:** 07 NCAC Subchapter 04M applies to the Division of Archives and Records (Division) in the Department of Cultural Resources (DCR), previously identified as the Archives and Records Section. The entire subchapter was examined for moderate edits, including those reflecting the change in organizational structure within DCR that elevated the Archives and Records program to a division. Additional minor edits were suggested by agency legal counsel, including the use of the word "shall" in place of "will." Edits to portions of the subchapter governing rules for access to and use of public research facilities were undertaken in order to ensure that all facilities of the Division followed the same rules. Portions of the subchapter governing the rules for the State Records Center were updated to include more specific language on records destruction and electronic public records.

07 NCAC Subchapter 04V applies to one facility managed by the Division. Rule .0202 concerning rules for use of the gallery were moved to Subchapter 04M, Rule .0107. The rest of the subchapter has been deleted as all rules in it are subsumed in the proposed edits to Subchapter 04M.

**Comments may be submitted to:** Sarah Koonts, Director, Division of Archives and Records, 4614 Mail Service Center, Raleigh, NC 27699-4614

If the comment is an objection, the objection must identify the specific reason for the objection including the negative impact(s) the amended rule change could have to stakeholders.

**Comment period ends:** January 31, 2014

### **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 04 – OFFICE OF ARCHIVES AND HISTORY**

### **SUBCHAPTER 04M DIVISION OF ARCHIVE AND RECORDS**

#### **SECTION .0100 - STATE ARCHIVES OF NORTH CAROLINA: USE AND SERVICES**

#### **07 NCAC 04M .0101 STATEMENT OF PURPOSE OF ARCHIVES AND RECORDS SECTION**

~~It is the responsibility of the Archives and Records Section to promote and safeguard the documentary heritage of the state by preserving public records and private papers which have continuing research and reference value to scholars and private citizens; to make these records available to patrons of the Search Room and to answer letters of inquiry; to direct the records management and micrographic programs for state and local agencies and institutions; to assist these programs through educational programs, technical assistance, professional~~

services, and written standards; to operate a central microfilming service and a state records center; to microfilm for security purposes the permanently valuable records in county, state and municipal offices; and to assist in the orderly disposal of records no longer required for administrative or research purposes.

*Authority G.S. 121-4(3); 121-5(d); 143B-62(2)a.*

**07 NCAC 04M .0102 ARCHIVES SEARCH ROOM HOURS**

(a) ~~The North Carolina State Archives Search Room is open from 8:00 a.m. to 5:30 p.m. Tuesday through Friday, and from 9:00 a.m. to 5:00 p.m. on Saturday.~~

(b) ~~The Search Room is closed on Sundays and Mondays and on all state holidays. If a holiday occurs on either a Friday or a Saturday, the Search Room will be closed both Friday and Saturday. If a holiday is observed on Monday, the Search Room will be closed on the preceding Saturday. The Search Room will be closed for three days during the month of January for inventory.~~

*Authority G.S. 121-4(3); 121-5(d); 143B-62(2)a.*

**07 NCAC 04M .0103 ARCHIVES REFERENCE SERVICES**

~~Reference services available to the public are outlined in an Archives Information Circular available at the Search Room desk.~~

*Authority G.S. 121-4(3); 121-5(d); 143B-62(2)a.*

**07 NCAC 04M .0104 ARCHIVES STACKS**

(a) ~~Permission for limited access to the archives stacks area may be obtained by researchers providing that an application is submitted stating the records to be consulted, the purpose of the access, and the reason why the research cannot be conducted from the Search Room. Permission shall be granted only if necessary for the researcher to accomplish his purposes. The stacks storing archival collections are not public spaces.~~

(b) ~~An application for limited access may be approved by the Administrator, Archives and Records Section, the Assistant State Archivist, or the supervisor of the Reference Unit.~~

(c) ~~Permission for extended access to the archives stacks area may be obtained by researchers on the same basis for limited access, except that permission shall be obtained from the Administrator, Archives and Records Section, or his designated representative only.~~

*Authority G.S. 121-4(3); 121-5(d); 143B-62(2)a.*

**07 NCAC 04M .0105 PUBLIC RESEARCH FACILITIES REGULATIONS**

Regulations governing researchers' use of the North Carolina State Division of Archives Search Room and Records public research facilities are as follows:

- (1) Brief cases, attache cases, bags, coats, ~~toe bags~~, or other bulky clothing, notebooks, envelopes, pad folders, privately owned books, maps, and old manuscripts may not be taken

into the ~~Archives Search Room~~ research rooms. Lockers and coat racks are provided outside the ~~Search Room~~ research rooms for such items.

- (2) ~~Admission to the Search Room~~ Access to the archival collections shall only be by means of an identification card which shall be obtained from the ~~Security Personnel in the Search Room lobby upon~~ presentation of current photo identification, providing accurate name and address.

- (3) Researchers shall request archival records by filling in completely the call slips ~~provided~~; each slip must bear the identification number issued to the researcher. To receive records the identification card shall be surrendered to a member of the Search Room staff, or records request form provided by each facility. Information required to request records includes researcher's name, date, and citation or records to be requested.

- (4) Research facilities in Raleigh issue patrons identification cards to be used when requesting archival records. To receive records in Raleigh, the identification card shall be surrendered to a member of the research room staff. Upon leaving the research room in Raleigh, the researcher shall surrender his or her identification card to a member of the research room staff.

- (4)(5) A researcher may request more than one box or volume of records at the time; these shall be held at the reference desk until the researcher is ready for them. records. However, a researcher may access only one box of loose records or up to three volumes of records may be issued to the researcher at any one time. When use of the box or volumes or box is completed, the researcher shall return the ~~used~~ records prior to the reference desk in order to obtain obtaining another box or other volumes of records.

- (5)(6) Upon return of the records to the Search Room reference desk, they may be examined, and if the researcher has completed his work, the identification card shall then be returned to him. Upon leaving the Search Room, the researcher shall surrender the identification card to the Security Personnel who may Staff shall examine any materials the researcher brings into or removes from the research ~~Search Room room~~.

- (6)(7) Researchers ~~must~~ shall exercise care in handling records, manuscripts, books, or other materials. In particular, ~~the following patrons shall be observed~~ observe the following:

- (a) Manuscripts may not be marked or otherwise altered or defaced.



- (b) Pens, highlighters, and other writing instruments that create permanent marks shall not be permitted in research rooms.
- ~~(b)(c)~~ Pencils or other items are not to be used as "pointers" when reading original records.
- ~~(e)(d)~~ Tape and other office supplies, such as correction fluid and gum erasers, are shall not be permitted in the Search Room; research room; pencils are to shall be used with great care; care to ensure no marks or other damages are made to the materials.
- ~~(d)(e)~~ Books or other materials may shall not be returned to Search Room research room shelves; these shall be replaced by a Search Room staff member.
- ~~(e)(f)~~ All manuscripts, volumes and reference books from the Search Room research room shelves are to shall be placed on the tables or reading stands provided in the Search Room; research room; they are shall not to be held in the lap or propped against the edge of a table.
- ~~(f)(g)~~ Only one box or and one folder of loose papers may from that box shall be opened at one time in order to avoid mixing; mixing of records or folders.
- ~~(g)(h)~~ Papers are shall not to be rearranged under any circumstances. If a researcher thinks something is out of order, he should or she shall notify a Search Room staff member.
- ~~(h)(i)~~ Records from the stacks and reference materials from the Search Room are research room shall not be permitted in the microfilm reading room.
- ~~(7)(8)~~ Smoking, eating, or drinking is shall not be permitted in the Search Room; food is to be left in the outer lobby of the Search Room; research room. A researcher wishing to leave the Search Room temporarily leave the research room must turn in all pulled archival records in order to obtain his identification card to leave the Search Room and shall verify his registration when reentering the Search Room. Eating is not permitted in the lounge near the elevators. Space is provided at the Snack Bar in the basement for this purpose; reentering.
- ~~(8)(9)~~ Orders for copies placed in person by a researcher shall not exceed 50 copies per researcher per day. Such orders are shall be paid at the time the copies are made and may not be billed.

- (10) Equipment deemed by the Archives Conservator to be damaging to archival records may not be used in the research rooms. The Archives Conservator shall make this determination based upon harm caused by excessive light exposure, tearing, or otherwise defacing the document. This shall include the use of equipment that sits on top of or pulls an original item through it to capture the image or provides light levels that damage the document.

Authority G.S. 121-4(3); 121-5(d); 132-6.2; 143B-62(2)a.

#### **07 NCAC 04M .0106 DUPLICATION SERVICES**

The following duplication services are available for archival records in the ~~North Carolina State Archives~~; custody of the Division of Archives and Records:

- (1) photocopies of loose documents;
- (2) imaging of paper and photographic reproductions of maps, newspapers, mounted documents, and bound volumes; materials;
- (3) paper prints from microfilm;
- (4) negative, first-generation or "original" microfilm of records and manuscripts in the custody of the Division, except those under ~~restriction; restriction by law or donation agreement;~~
- (5) duplicate microfilm of entire rolls of microfilm in the collections of the ~~State Archives; Division;~~
- ~~(6) typed, certified transcripts of information from Revolutionary Army Accounts in the records of the North Carolina Treasurer and Comptroller; from "Register of the North Carolina Continental Line"; from John W. Moore's "Roster of North Carolina Troops in the War Between the States"; and from "Muster Rolls of the Soldiers of the War of 1812: Detached from the Militia of North Carolina in 1812 and 1814";~~
- ~~(7)(6)~~ certified photocopies of public records of state agencies, counties, municipalities or other political subdivisions of North Carolina; and
- ~~(8)(7)~~ exemplifications prepared in accordance with the requirements of the "Ancient Writings" rule for introduction as evidence in a court of law; and law.
- ~~(9) prints from the photographic negatives in the State Archives iconographic collection.~~

Authority G.S. 121-4(3); 121-5(d); 132-6.2; 143B-62(2)a.

#### **07 NCAC 04M .0107 OUTER BANKS HISTORY CENTER GALLERY REGULATIONS**

- (a) Eating, drinking, and smoking are not permitted in the Gallery.
- (b) Visitors may not touch artifacts, art works, or graphics.

(c) Children under 12 years of age must be accompanied by an adult over age 18.

*Authority G.S. 121-4(3); 121-5(d); 143B-62(2)a.*

## **SECTION .0200 - LISTING OF PROFESSIONAL RESEARCHERS**

### **07 NCAC 04M .0202 PROCEDURE FOR LISTING**

(a) A person wishing to have his name listed as professional researcher shall make application in writing to: ~~Administrator, Archives and Records Section, Director, Division of Archives and History, Records, 4614 Mail Service Center, Raleigh, North Carolina 27699-4614.~~

(b) The application shall include a brief resume of the applicant's experience which will demonstrate his qualifications and aid in establishing his credentials. No special form is required for the application.

(c) The application must be accompanied by three letters of recommendation from persons who have engaged the applicant in the capacity of a paid researcher.

(d) Letters of recommendation shall be from persons who are:

- (1) unrelated to the applicant or the applicant's spouse; and
- (2) unacquainted with the applicant except as a researcher.

(e) The recommendations shall:

- (1) outline the nature and extent of the research which the applicant undertook for pay; and
- (2) attest the satisfaction of the reference with the services rendered.

*Authority G.S. 121-4(3); 121-5(d); 143B-62(2)a.*

### **07 NCAC 04M .0203 APPROVAL OF REQUESTS**

The ~~Administrator, Director, Division of Archives and Records Section, Records,~~ shall review applications submitted for inclusion in the list of professional researchers. If determined that the applicant satisfies the procedures for ~~listing, listing that satisfies the procedures for listing as set forth in Rule .0202 of this Section,~~ then the name of the researcher shall be placed on the list of available researchers as published by the ~~North Carolina State Archives, State Archives of North Carolina.~~

*Authority G.S. 121-4(3); 121-5(d); 143B-62(2)a.*

### **07 NCAC 04M .0204 REMOVAL OF NAMES FROM THE LIST**

(a) The Director of the Division of Archives and ~~History Records~~ may for good cause remove any person from the list of professional researchers.

(b) The term "good cause" as used in this Rule shall mean:

- (1) misrepresentation of credentials or services to be provided; or
- (2) consistent complaints on the part of patrons about the work of the researcher.

*Authority G.S. 121-4(3); 121-5(d); 143B-62(2)a.*

### **07 NCAC 04M .0205 DEFINITION OF GOOD CAUSE**

The words "good cause" as used in this Section shall mean:

- (1) ~~misrepresentation of credentials or services to be provided; or~~
- (2) ~~consistent complaints on the part of patrons about the work of the researcher.~~

*Authority G.S. 121-4(3); 121-5(d); 143B-62(2)a.*

## **SECTION .0300 - ACCESSIONING PROCEDURES OF OTHER THAN PUBLIC RECORDS**

### **07 NCAC 04M .0301 ACCEPTANCE OF NON-GOVERNMENT PAPERS**

(a) ~~Original private papers materials~~ of historical and cultural significance may be accepted for custody in the State Archives of North Carolina State Archives either as a ~~gift or on a loan basis, gift,~~ subject to the approval of the ~~History, the Chief of the Archives and Records Section, Director of the Division of Archives and Records,~~ or a designated representative. Prior to acceptance, the Division shall provide a contract of gift for the donor(s) to execute. The contract of gift shall be maintained in the Division's permanent files.

(b) Materials that may be accepted include:

- (1) private manuscripts;
- (2) audio visual materials;
- (3) records of private, professional, or civic organizations;
- (4) copies of pre-1913 family Bible pages listing genealogical data; and
- (5) student and academic and financial aid records from defunct post-secondary schools and colleges having a campus in North Carolina.

*Authority G.S. 121-4(1); 121-4(3); 121-5(d); 143B-62(2)a.*

### **07 NCAC 04M .0302 VALUATION**

~~The North Carolina State Archives shall upon request by the donor, help arrange for the valuation of a gift for tax purposes by an independent appraiser, who shall report that valuation to the donor.~~

*Authority G.S. 121-4(3); 121-5(d); 143B-62(2)a.*

### **07 NCAC 04M .0303 ORGANIZATIONAL RECORDS**

~~The North Carolina State Archives may accept the records of private, professional, or civic organizations judged to be relevant to the history of the state. A contract of gift must accompany records of both defunct and active organizations.~~

*Authority G.S. 121-4(3); 121-5(d); 143B-62(2)a.*

### **07 NCAC 04M .0304 BIBLE RECORDS**

~~Family bibles are not accepted by the State Archives; however, pages containing pre 1913 information such as records of births, deaths, baptisms and marriages of North Carolina families will be photocopied and accessioned by the State Archives.~~

*Authority G.S. 121-4(3); 121-5(d); 143B-62(2)a.*

## **SECTION .0400 - DEACCESSIONING OF RECORDS**

### **07 NCAC 04M .0401 REVIEW**

~~Whenever, in the opinion of the Administrator of the Archives and Records Section, any accessioned records in the North Carolina State Archives should be destroyed, transferred to another institution, returned to the donor, or for some other reason de-accessioned, each record series of the subject records shall be inventoried in detail.~~

(a) The Director, Division of Archives and Records shall determine any accessioned records in the State Archives of North Carolina when records are:

- (1) duplicates;
- (2) not in keeping with the collection policies of the Division; or
- (3) no longer have permanent historical value.

(b) Each record series of the subject records shall be inventoried in detail. The inventory shall be forwarded to the Director of the Office of Archives and History.

*Authority G.S. 121-4(3); 121-5(d); 143B-62(2)a.*

### **07 NCAC 04M .0402 PREPARATION OF LISTS**

~~Following review by the Director of the Division of Archives and History, a list shall be prepared containing for each series of records a description, inclusive dates, and the volume of the subject records. There shall be attached to each item description a statement justifying the proposed disposal of the records involved.~~

If the Director of the Office of Archives and History concurs with the decision to deaccession the identified records series, the Director shall ask the staff of the Division of Archives and Records to prepare a detailed list for each series of records. The detailed list shall include:

- (1) series name;
- (2) description of the records;
- (3) inclusive date and volume of records;
- (4) statement of rationale for decision to deaccession the records; and
- (5) statement of proposed disposition of the records. Disposition methods include:
  - (a) destruction; or
  - (b) transfer to another institution; or
  - (c) return to donor or heirs.

*Authority G.S. 121-4(3); 121-5(d); 143B-62(2)a,b.*

### **07 NCAC 04M .0403 APPROVAL BY HISTORICAL COMMISSION**

~~The description and the statement of justification shall be reviewed by the Director of the Division of Archives and History, and shall be sent to each member of the North Carolina Historical Commission at least seven days in advance of the meeting in which the proposal will be considered.~~

Following approval by the North Carolina Historical Commission, a complete list of the records authorized to be destroyed by the Commission shall be entered into the minutes of the Commission.

~~The subject records may be destroyed following receipt of notification of the approval for destruction by the North Carolina Historical Commission.~~

(a) The Director of the Office of Archives and History shall send the list as set forth in Rule .0402, the rationale for the decision to deaccession the records, and the proposed disposal of the records to each member of the North Carolina Historical Commission at least seven days before the meeting at which the proposal will be considered.

(b) Following approval by the North Carolina Historical Commission, the complete list of records authorized for deaccessioning will be entered into the minutes, along with the proposed disposal method.

(c) Upon receipt of the minutes of the Commission granting permission for deaccessioning, the Director of the Division of Archives and Records may proceed as directed by the Commission, retaining complete records of the action within the Division's files.

*Authority G.S. 121-4(3); 121-5(d); 143B-62(2)a,b.*

## **SECTION .0500 - STATE RECORDS CENTER**

### **07 NCAC 04M .0501 TRANSFER OF RECORDS TO STATE RECORDS CENTER**

~~The State Records Center will shall accept for transfer to its physical custody the records of state agencies, county agencies, or municipal agencies, providing provided the records are scheduled to be transferred to the State Records Center on an approved records retention and disposition schedule or an approved records retention and disposition standard. A records retention and disposition schedule is approved when signed by the creating agency and the Department of Cultural Resources.~~

*Authority G.S. 121-4(2); 121-5(d); 132-8.1; 143B-62(2)b.*

### **07 NCAC 04M .0502 LEGAL CUSTODY OF RECORDS**

~~(a) Public records transferred sent to and physically stored in the State Records Center in accordance with the provisions of an approved records retention and disposition schedule or standard, schedule, or in accordance with any other agreement between the Department of Cultural Resources and the originating agency or department, are considered to remain in the legal and official custody of the agency that created or received the records and that transferred them to the State Records Center. A request for access to, or inspection of, paper or microfilm these records in the physical custody of the State Records Center by a person other than an authorized employee of the legal custodian will shall not be honored until authority in writing has been granted by an appropriate official of the agency having legal custody.~~

(b) Public records transferred to the Division of Archives and Records for permanent retention may be accessed through the public research areas of the Division.

*Authority G.S. 121-4(2); 121-5(d); 132-6; 143B-62(2)b.*

**07 NCAC 04M .0503      PROCEDURES FOR TRANSFER OF RECORDS**

~~(a) Physical transfer of records to the State Records Center shall be initiated by the agency or organization requesting transfer. A representative of the said agency or organization will submit to the State Records Center supervisor a records transfer notice including agency name, title of records, reference to schedule, volume of records, their inclusive dates, and the name and telephone number of the representative submitting the request.~~

~~(b) Records Center boxes, together with paper tape and instructions on packing and labeling, shall be sent to the agency transferring records upon request, and at the expense of the agency.~~

~~(c) Only records packed in Records Center boxes shall be accepted for storage in the State Records Center.~~

~~(d) The agency or organization initiating the transfer shall arrange records in the boxes and label boxes in accordance with instructions. Boxes which do not comply with instructions shall be returned to the agency or organization for correction.~~

~~(e) Records which cannot be identified clearly and completely by the information on the label of the Records Center box must be accompanied by a typewritten index or box list prepared by the agency or organization of origin.~~

~~(f) Records transferred from within ten miles of Capitol Square, Raleigh, shall be shipped by arrangement with the Supervisor, State Records Center. Records transferred from beyond ten miles of Capitol Square, Raleigh, must be shipped by the agency or organization concerned, and at its expense.~~

(a) An agency or organization shall initiate the transfer of records to the State Records Center. A representative of the agency or organization shall submit to the State Records Center supervisor a records transfer notice including agency name, title of records, reference to schedule, quantity of records, their inclusive dates, and the name and telephone number of the representative submitting the request.

(b) For transfer of paper and other physical media, the following guidelines shall be adhered to by the transferring agency:

- (1) Records Center boxes, together with paper tape and instructions on packing and labeling, shall be sent to the agency transferring records upon request, and at the expense of the agency.
- (2) Only records packed in Records Center boxes shall be accepted for storage in the State Records Center.
- (3) The agency or organization initiating the transfer shall arrange records in the boxes and label boxes in accordance with instructions. Boxes that do not comply with instructions shall be returned to the agency or organization for correction.
- (4) Records that cannot be identified clearly and completely by the information on the label of the Records Center box shall be accompanied by a typewritten index or box list prepared by the agency or organization of origin.
- (5) Records transferred from within 10 miles of Capitol Square, Raleigh, shall be shipped by arrangement with the Supervisor, State Records Center. Records transferred from

beyond 10 miles of Capitol Square, Raleigh, shall be shipped by the agency or organization concerned, and at its expense.

(c) For transfer of electronic public records, the following guidelines shall be adhered to by the transferring agency:

- (1) Transfers of databases shall be accompanied by index information required in G.S. 132-6.1.
- (2) Agencies shall scan records and find them to be free of viruses.
- (3) Agencies shall generate a hash algorithm for each file being transferred. The agency shall include the hash algorithm as part of the transfer.
- (4) Agencies shall include any metadata generated at the time of file creation and any subsequent metadata created during the use of the file in the records transfer.
- (5) Upon receipt of the transfer of electronic records, the State Records Center shall verify that the electronic records transferred were complete and unaltered prior to accepting them for storage by the Division of Archives and Records.

*Authority G.S. 121-4(2); 121-5(d); 143B-62(2)b.*

**07 NCAC 04M .0505      RECORDS CENTER REFERENCE SERVICE**

~~The agency or organization of origin retains legal custody of records transferred to the State Records Center. Anyone or any other agency desiring access to, or copies of, records must obtain written authorization from the legal custodian or his designated representative. Requests for records or reference service will be made on forms provided by the State Records Center. In an emergency, records or reference service may be provided after telephoned request and with the approval of the Chief, Archives and Records Section.~~

*Authority G.S. 121-4(2); 121-5(d); 143B-62(2)b.*

**07 NCAC 04M .0507      PERSONNEL RECORDS**

Any employee or former employee desiring access to personnel records ~~must~~ shall make the request through the personnel office of the agency ~~which~~ that retains legal custody of the records. Upon receipt of request from the appropriate personnel office, the State Records Center will forward personnel information to that office.

*Authority G.S. 121-4(2); 121-5(d); 143B-62(2)b.*

**07 NCAC 04M .0508      CERTIFICATION BY AGENCY WITH CUSTODY**

~~Only copies of records that are in the legal custody of the The Department of Cultural Resources may be shall certified by the Department. certify only copies of records that are in its legal custody. Copies of records that are in the physical custody of the State Records Center must be certified by the agency having legal custody, if such certification is requested. In the event that If records of terminated agencies are in the State Records Center~~

and are in the legal custody of the Department of Cultural Resources, copies may be certified by the Department of Cultural Resources.

*Authority G.S. 121-4(2),(3); 121-5(d); 132-4; 143B-62(2)b,c.*

**07 NCAC 04M .0509 DESTRUCTION OF RECORDS IN STATE RECORDS CENTER**

The provisions of an approved records retention and disposition schedule ~~will~~ shall apply to the records ~~in the physical custody of the State Records Center since the records that~~ remain in the legal custody of the agency concerned. ~~When the approved disposition is destruction, the records will not be destroyed until concurrence in writing of the agency with legal custody is received. The records shall not be destroyed until the agency with legal custody concurs in writing.~~

*Authority G.S. 121-4(2); 121-5(b),(c),(d); 132-8.1 143B-62(2)b.*

**07 NCAC 04M .0510 METHODS OF DESTRUCTION**

(a) When used in an approved records retention and disposition schedule, the provision that paper records are to be destroyed means that the records are to be:

- (1) burned, unless prohibited by local ordinance;
- (2) shredded or torn ~~up~~ so as to destroy the record content of the documents or materials concerned;
- (3) placed in acid vats so as to reduce the paper to pulp and to terminate the existence of the document or materials concerned; or
- ~~(4) buried under such conditions that the record nature of the documents or materials shall be terminated; or~~
- ~~(5)~~(4) sold as waste paper, provided that the purchaser agrees in writing that the documents or materials concerned will not be resold ~~as documents or records, without pulverizing or shredding the documents so that the information contained within cannot be practicably read or reconstructed.~~

(b) When used in an approved records retention and disposition schedule, the provision that electronic records are to be destroyed means that the data and metadata are to be overwritten, deleted, and unlinked so the data and metadata may not be practicably reconstructed.

(c) When used in an approved records retention and disposition schedule, the provision that confidential records of any format are to be destroyed means the data, metadata, and physical media are to be destroyed in such a manner that the information cannot be read or reconstructed under any means.

*Authority G.S. 121-4(2); 121-5(b),(c),(d); 132-3; 132-8.1; 132-8.2; 143B-62(1)g; 143B-62(2)b; 143B-62(2)b.*

**07 NCAC 04M .0511 DESTRUCTION OF CERTAIN RECORDS SCHEDULED FOR ARCHIVES**

Records scheduled in an approved records retention and disposition schedule to be transferred to the State ~~for review or accepted by the State Records Center for the State Archives~~

~~Archives, but not yet accessioned by the State Archives may be destroyed in accordance with procedures approved by the Director of the Division of Archives and History providing:~~

- (1) The records are considered by the Director of the Division of Archives and History not to have permanent ~~value~~; historical value; or
- (2) The records are exact duplicates or copies of other records in the records series transferred or accessioned.

*Authority G. S. 121-4(2); 121-5(b),(c),(d); 132-8.1; 132-8.2; 143B-62(1)g; 143B-62(2)b.*

**07 NCAC 04M .0512 RESTRICTED AREAS IN STATE RECORDS FACILITIES**

Access to the facilities controlled by the State Records Center is shall be limited to persons on official business. Visitors ~~are~~ shall not be permitted in the records storage ~~areas the microfilm areas, areas,~~ or beyond the administrative office without an escort provided by the State Records Center. All visitors ~~are required to~~ shall sign in when entering and ~~to~~ sign out when leaving the ~~State Records Center building. Visitors who are not known to the State Records Center staff will be required to produce identification before being given records requested by agencies. facilities.~~ Access by visitors not on official business ~~may~~ shall be denied.

*Authority G.S. 121-4(2); 132-6; 143B-62(2)b.*

**CHAPTER 04 - DIVISION OF ARCHIVES AND HISTORY**

**SUBCHAPTER 04V - OUTER BANKS HISTORY CENTER**

**SECTION .0100 - OUTER BANKS HISTORY CENTER: USE AND SERVICES**

**07 NCAC 04V .0101 STATEMENT OF PURPOSE**

~~The purpose of the Outer Banks History Center is to promote and safeguard the documentary and cultural heritage of the state by collecting, preserving, and cataloging published works, manuscripts, audio-visual, and graphic materials relevant to the Outer Banks; to make these materials available to the public on a regularly scheduled basis; to sponsor research projects in North Carolina coastal history; to provide professional and technical assistance to patrons; and to operate a public history gallery.~~

*History Note: Authority G.S. 121-4(3); 121-5(d); 143B-62(2)a.*

**07 NCAC 04V .0102 OUTER BANKS HISTORY CENTER SEARCH ROOM HOURS**

~~(a) The Outer Banks History Center Search Room is open to the public from 9:00 a.m. to 5:00 p.m. Monday through Friday.~~  
~~(b) The Outer Banks History Center Search Room is closed on Saturdays, Sundays, official state holidays, and two days in January for inventory.~~

*Authority G.S. 121-4(3); 121-5(d); 143B-62(2)a.*

**07 NCAC 04V .0103 OUTER BANKS HISTORY CENTER REFERENCE AND TECHNICAL SERVICES**

Reference and technical services available to the public are outlined in a brochure available in the lobby of the Outer Banks History Center.

*Authority G.S. 121-4(3); 121-5(d); 143B-62(2)a.*

**07 NCAC 04V .0104 ADMISSION TO OUTER BANKS HISTORY CENTER STACKS**

Permission for extended access to the Outer Banks History Center stacks may be obtained from the Curator, provided that a letter of application is submitted stating the material to be consulted and the reason why the research cannot be conducted from the Search Room. Upon verbal request, stack access not to exceed two hours may be granted by the Curator or his designated representative, provided that the person granted this access is accompanied by a member of the Outer Banks History Center staff.

*Authority G.S. 121-4(3); 121-5(d); 143B-62(2)a.*

**07 NCAC 04V .0105 OUTER BANKS HISTORY CENTER SEARCH ROOM REGULATIONS**

Regulations governing public use of the Outer Banks History Center Search Room are as follows:

- (1) ~~Briefcases, coats, privately owned books, papers, and similar materials considered inappropriate by the Outer Banks History Center Curator may not be carried into the Search Room. Lockers are provided in the lobby for such materials.~~
- (2) ~~Admission to the Search Room shall be granted only after proper identification is provided to the attending staff member. Researchers may be registered by either a daily admission slip or by a permanent patron identification card. The initial permanent identification card is provided free of charge to any requesting patron; a charge of one dollar (\$1.00) is assessed for a replacement card.~~
- (3) ~~Researchers will request materials by filling in call slips and surrendering their admission slip or patron card to the Search Room staff.~~
- (4) ~~When a researcher has completed use of the materials, a Search Room staff member must be notified. The staff member may inspect these materials and any personal property carried into the Search Room before returning the researcher's patron card or daily admission slip.~~
- (5) ~~Researchers must exercise care in the use of materials, specifically observing the following:~~
  - (a) ~~Materials may not be marked or otherwise altered or defaced.~~
  - (b) ~~Pencils are the only writing instruments permitted in the Search Room.~~

(c) ~~All materials are to be placed flat on tables or on stands; materials may not be held in the lap or propped against the edge of a table.~~

(d) ~~Materials, including those from the Search Room reference case, may not be removed from the Search Room area.~~

(e) ~~To avoid possible mixing of records, only one box or folder of loose material may be opened at one time.~~

(6) ~~Smoking, eating, and drinking are not permitted in the Search Room when any materials from the stacks are present.~~

(7) ~~Use of Outer Banks History Center computers is restricted to scheduled time periods; researchers may perform only on-line database searches and produce only terminal display reports; printouts and graphic reproductions may be made only by the center staff.~~

(8) ~~Printouts, graphic reproductions, and photocopies will be made on an "as you wait" basis if the equipment and operator are available. Descriptions of these and similar services, the procedures for requesting these services, and their current costs, are described in an informational brochure available in the Outer Banks History Center Lobby.~~

*Authority G.S. 121-4(3); 121-4(14); 121-5(d); 143B-62(2)a.*

**SECTION .0200 - PUBLIC HISTORY GALLERY USE**

**07 NCAC 04V .0201 PUBLIC HISTORY GALLERY HOURS**

(a) ~~The Public History Gallery of the Outer Banks History Center is open to the public from 10:00 a.m. to 4:00 p.m. Monday through Friday.~~

(b) ~~The Public History Gallery is closed on Saturdays, Sundays, official state holidays, and upon occasion, for announced meetings, special events, or exhibit preparation.~~

*Authority G.S. 121-4(3); 121-5(d); 143B-62(2)a.*

**07 NCAC 04V .0202 PUBLIC HISTORY GALLERY REGULATIONS**

(a) ~~Eating, drinking, and smoking are not permitted in the Gallery.~~

(b) ~~Visitors may not touch art works or graphics.~~

(c) ~~Children under 12 years of age must be accompanied by an adult.~~

*Authority G.S. 121-4(3); 121-5(d); 143B-62(2)a.*

**TITLE 12 – DEPARTMENT OF JUSTICE**

*Notice is hereby given in accordance with G.S. 150B-21.2 that Private Protective Services Board intends to amend the rules cited as 12 NCAC 07D .0106, .0501-.0504 and .1302.*

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

- ☐ OSBM certified on:  
☒ RRC certified on: *October 17, 2013*  
☐ Not Required

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

**Proposed Effective Date:** *April 1, 2014*

**Public Hearing:**

**Date:** *January 3, 2014*

**Time:** *2:00 p.m.*

**Location:** *4901 Glenwood Avenue, Suite 200, Raleigh, NC 27612*

**Reason for Proposed Action:**

*12 NCAC 07D .0106 – To conform the Board's rules on providing false information to the intent of the remainder of the rule now that private vendors are allowed to produce criminal history records checks for applicants.*

*12 NCAC 07D .0501 – Wording clarification.*

*12 NCAC 07D .0502 – To expand the number of approved schools for licensure.*

*12 NCAC 07D .0503, .0504 – To reflect the current industry standard which is transitioning from analog testing equipment to digital.*

*12 NCAC 07D .1302 – To increase the continuing education credit hours for attending a Board meeting.*

**Comments may be submitted to:** *Anthony Bonapart, PPSB Deputy Director, 4901 Glenwood Avenue, Suite 200, Raleigh, NC 27612*

**Comment period ends:** *January 31, 2014*

**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 – PRIVATE PROTECTIVE SERVICES**

**SUBCHAPTER 07D – PRIVATE PROTECTIVE SERVICES BOARD**

**SECTION .0100 – ORGANIZATION AND GENERAL PROVISIONS**

**12 NCAC 07D .0106 PROHIBITED ACTS**

(a) In addition to the prohibited acts set forth elsewhere in these ~~Regulations~~ Rules and in Chapter 74C of the General Statutes, any licensee, trainee, registrant, or firearms trainer who does any of the following may have his license, trainee permit, registration, or firearms trainer certificate revoked or suspended:

- (1) Displays or causes or allows to be displayed, or has in his possession any cancelled, revoked, suspended, fictitious, fraudulently altered license, trainee permit, registration identification card, or firearms trainer certificate, or any document simulating, purporting to be, or purporting to have been issued as a license, trainee permit, registration identification card, or firearms trainer certificate;
- (2) Lends his license, trainee permit, registration identification card, or firearms trainer certificate to any person or allows the use thereof by another;
- (3) Displays or represents any license, trainee permit, registration identification card, or firearms trainer certificate not issued to him as being his license, trainee permit, registration identification card, or firearms trainer certificate; or
- (4) Includes in any advertisement a statement which implies official state authorized certification or approval other than this statement: "Licensed by the Private Protective Services Board of the State of North Carolina." Licensees must include their license number.

(b) In addition to the prohibited acts set forth elsewhere in these Rules and in Chapter 74C of the General Statutes, it shall be grounds for application denial or license registration suspension or revocation for an applicant, licensee, trainee, registrant or trainer to make any false statement or give any false information to a third party in connection with any criminal history record check provided to the Board.

*Authority G.S. 74C-5; 74C-8.1; 74C-12; 74C-16.*

**SECTION .0500 – POLYGRAPH**

**12 NCAC 07D .0501 EXPERIENCE REQUIREMENTS FOR A POLYGRAPH LICENSE**

(a) In addition to the requirements of 12 NCAC 07D .0200, applicants for a polygraph license shall:

- (1) pass an examination and a performance test administered by a panel of polygraph examiners designated by the Board;
- (2) successfully complete a course of instruction at any polygraph school approved by the American Polygraph Association, the American Association of Police Polygraphist or the Board; and
- (3) have either:
  - (A) one year of polygraph experience; or
  - (B) complete at least six months of training as a holder of a polygraph trainee permit, and have administered no less than 50 polygraph examinations; or
- (4) establish to the Board's satisfaction a military occupational specialty and two years of verifiable experience within the past five years in the U.S. Armed Forces performing polygraph examinations.

(b) In addition to the requirements of 12 NCAC 07D .0200, an applicant for a polygraph license that is the spouse of an active duty member of the U.S. Armed Forces shall establish to the Board's satisfaction:

- (1) the spouse holds a current license, certification or registration from another jurisdiction and the other jurisdiction's requirements are substantially equivalent to or exceed the Board's requirements; and
- (2) the spouse has two years verifiable experience within the past five years performing polygraph examinations.

(c) Applicants for a polygraph license may take the examination required in Subparagraph (a)(1) of this Rule no more than twice in any calendar year. Any applicant who fails the polygraph examination four times shall retake the polygraph ~~school course~~ of instruction required in Paragraph (a)(2) of this Rule before taking the polygraph examination again.

(d) Polygraph operators who are duly licensed in another state may perform up to three examinations in this state without being licensed, provided that those examinations are for the purpose of an evaluation of that examiner and ~~provided that~~ the Director has given authorization for this evaluation in advance.

*Authority G.S. 74C-5; 93B-15.1.*

**12 NCAC 07D .0502 POLYGRAPH TRAINEE PERMIT REQUIREMENTS**

In addition to the requirements of 12 NCAC 07D .0200, the following requirements shall apply to polygraph trainees:

- (1) The applicant shall successfully complete a formal course of instruction at any polygraph school approved by the American Polygraph ~~Association~~ Association, the American

Association of Police Polygraphists or the Board;

- (2) The applicant shall be directly supervised by a polygraph examiner approved by the Board and that examiner shall supervise no more than 3 trainees at any given time;
- (3) An individual currently enrolled in a polygraph school may conduct examinations as a part of the course curriculum provided such examinations are on school premises, under the direct one-on-one supervision of a polygraph licensee, and the school provides, in writing, a notice to the client that such examinations are being conducted by students and not by licensed polygraph examiners. The school shall maintain a copy of such written notification;
- (4) Trainees who wish to apply for a license must submit an application to the Board in accordance with 12 NCAC 07D .0201. Applicants meeting license qualifications within one year of the issuance of a trainee permit shall not be required to pay an additional application fee;
- (5) Any request for renewal of a trainee permit or for issuance of a polygraph license shall be accompanied by an evaluation report of the trainee's performance submitted by the trainee's supervisor; and
- (6) In addition to the final evaluation report, supervisors shall submit ~~a minimum of~~ five monthly evaluation reports on a checklist provided by the Board.

*Authority G.S. 74C-5.*

**12 NCAC 07D .0503 POLYGRAPH EXAMINATION REQUIREMENTS**

Polygraph licensees and trainees ~~shall comply with the following:~~ shall:

- (1) Obtain written consent from the individual to be examined which shall be signed in the presence of ~~both the examiner and examinee.~~ examiner. The consent form shall include a statement advising the examinee that he may terminate the examination at any time;
- (2) A printed or reproducible electronic copy of each chart collected as well as documents associated with the examination such as reports, question sets and signed consent forms shall be retained by the examiner for a minimum of three years. The examiner shall record, at a minimum, the following information: Each chart shall be kept by the examiner. The examiner shall label the beginning of the first chart with the following information:
  - (a) name of the examinee,
  - (b) date of the examination,



- (c) type of examination,
- (d) time the examination started,
- (e) location of the examination, and
- (f) name and license number of the examiner.

This requirement may be completed by labeling the beginning of the first printed chart by hand, or by entering the information into the electronic polygraph file.

- (3) The examiner shall give the examinee a reasonable opportunity to explain reactions on the ~~charts~~ charts.
- (4) The examiner shall not issue or permit an employee of his to issue an examination report which is misleading, biased, or ~~falsified~~; falsified.
- (5) Each examination report shall be a factual, impartial, and objective account of the pertinent information developed during the examination and the examiner's professional conclusion, based on the analysis of the ~~charts~~; charts.
- (6) All questions to be considered for chart analysis shall be documented in writing or an electronic question set and shall be reviewed with the examinee prior to any ~~testing~~; testing.
- (7) An examiner shall not make a conclusive verbal or written examination report without having administered two or more ~~tests~~ charts consisting of the same ~~questions~~; and questions.
- (8) An examiner shall not inquire into the sexual conduct or preferences of a person to whom a polygraph examination is being given unless pertinent to an alleged sex-related crime, nor shall an examiner inquire into the activities, affiliations or beliefs on religion, politics or race, except where there is specific relevancy to an investigation.
- (9) Each chart shall be signed by the examinee and the examiner, at the end of the chart before the end of the ~~recording~~; recording if using an analog instrument or not retaining electronic copies of the charts for the specified three year period. Retaining reproducible electronic copies of all charts noting the names of the examiner and examinee as well as the date and time of testing will also meet the requirements of this Rule.
- (10) An examiner shall conduct no more than ~~ten~~ five examinations in a 24 hour ~~period~~; and period.
- (11) For adequate auditing of polygraph examiners each examiner shall keep a daily log of examinations.

Authority G.S. 74C-5.

## **12 NCAC 07D .0504 POLYGRAPH INSTRUMENTS**

(a) A polygraph examiner shall not conduct an examination unless the instrument used makes a simultaneous recording of at least three physiological tracings ~~including: the pneumograph, the cardiophymograph, and the galvanograph.~~ including the pneumo cardio and electrodermal changes. This recording must be in a form suitable for examination review by another polygraph examiner. Such recordings shall be available to the Board or its designated representative. This requirement shall not prohibit recording additional physiological phenomenon on the same charts.

(b) A polygraph examiner shall not conduct an examination on an instrument unless the ~~manufacturer has provided information for self calibration and sensitivity standards for that instrument.~~ A polygraph examiner shall calibrate his instrument at least monthly and keep a signed and dated record of the dates of calibration as well as a signed and dated chart of that calibration. examiner has ensured the instrument is properly functioning.

(c) A polygraph examiner shall:

- (1) complete a functionality check or calibration of the instrument at time intervals that comply with the manufacturer's recommendations; and
- (2) maintain a signed and dated record of the charts collected during the functionality check or calibration for a period of three years.

Authority G.S. 74C-5.

## **SECTION .1300 – CONTINUING EDUCATION**

### **12 NCAC 07D .1302 REQUIRED CONTINUING EDUCATION HOURS**

Each licensee shall complete ~~at least~~ 12 credit hours of continuing education training during each two year renewal period. Credit shall be given only for classes that have been approved by the ~~Board~~. Board as set forth in Rule .1303 of this Section. A licensee who attends a complete meeting of a regularly scheduled meeting of the Private Protective Services Board shall receive ~~one credit hour~~ two credit hours for each meeting that the licensee attends, with credit being given for a maximum of two meetings per year with no more than four credit hours per year and eight credit hours per renewal period.

Authority G.S. 74C-2; 74C-4; 74C-5; 74C-22.

## **TITLE 21 – OCCUPATIONAL LICENSING BOARDS AND COMMISSIONS**

### **CHAPTER 23 – IRRIGATION CONTRACTORS' LICENSING BOARD**

*Notice is hereby given in accordance with G.S. 150B-21.2 that NC Irrigation Contractors' Licensing Board intends to adopt the rule cited as 21 NCAC 23 .0105 and amend the rules cited as 21 NCAC 23 .0206-.0207 and .0505.*

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.nciclb.org](http://www.nciclb.org)

**Proposed Effective Date:** April 1, 2014

**Public Hearing:**

**Date:** January 16, 2014

**Time:** 9:30 a.m.

**Location:** 4300 Reedy Creek Road, Raleigh, NC 27607

**Reason for Proposed Action:**

**21 NCAC 23 .0105** – Like other self-regulating professional boards, the Board seeks to ensure the ethical integrity, transparency and accountability of its licensees in the course of their business conduct.

**21 NCAC 23 .0206** – The Board proposes to amend this rule in order to allow the Board to elect to refer contested cases to OAH for disposition as allowed under G.S. 150B-40(e). The rule currently requires that all contested cases be heard only by a majority of the Board.

**21 NCAC 23 .0207** – The intension is to allow the Board additional flexibility in the timely issuance of final agency decisions, insofar as they meet the requirements of the Administrative Procedures Act. This additional flexibility is necessary as the Board continues to hold regular Board meetings on a monthly basis.

**21 NCAC 23 .0505** – These amendments are proposed in order to reflect the increasing diversity in accepted industry practice in the treatment of the specified components.

**Comments may be submitted to:** Barbara Geiger, P.O. Box 41421, Raleigh, NC 27629

**Comment period ends:** January 31, 2014

**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

**SECTION .0100 – LICENSING**

**21 NCAC 23 .0105 ETHICS**

It shall be unethical to defame competitors by falsely imputing to them dishonorable conduct or competency. A licensee may be disciplined by the Board upon a showing of such defamation or harassment.

Authority G.S. 89G-5.

**SECTION .0200 – HEARING RULES OF THE NORTH CAROLINA IRRIGATION CONTRACTORS LICENSING BOARD**

**21 NCAC 23 .0206 CONDUCT OF HEARING**

(a) Hearings in contested cases shall be conducted by a majority of the ~~Board~~. Board or referred to the Office of Administrative Hearings pursuant to ~~The chair shall serve as presiding officer unless he is absent or disqualified, in which case the vice chair shall preside. Hearings shall be conducted as prescribed in G.S. 150B-40.~~

(b) Disqualification. An affidavit seeking disqualification of any Board member, if filed in good faith and in a timely manner, shall be ruled on by the remaining members of the Board. An affidavit is considered timely if it is filed:

- (1) Prior to the hearing; or
- (2) As soon after the commencement of the hearing as the affiant becomes aware of facts which give rise to his belief that a Board member should be disqualified.

(c) Evidence. The admission of evidence in a hearing in a contested case shall be as prescribed in G.S. 150B-41.

Authority G.S. 89G-5; 150B-38.

**21 NCAC 23 .0207 DECISION OF BOARD**

(a) The form and content of the Board's decision in a contested case shall be as prescribed by G.S. 150B-42(a), and its decision shall be served upon the parties in a manner consistent with the statute.

(b) At the conclusion of the hearing and deliberations, the Board shall announce its findings of fact and conclusions of law. If the Board concludes that the hearing respondent has violated a provision of the rules in this Chapter or of G.S. 89G, it shall announce the nature and extent of any sanction it orders be imposed upon the hearing respondent. The Board may then direct its legal counsel, the respondent's counsel, if represented, or such independent legal counsel as may be provided by the North Carolina Department of Justice for the purpose of advising the Board in the course of that hearing, to draft a proposed order consistent with its announcement. ~~The person tasked with drafting the order shall submit the original to the Board's administrator and a copy to all other counsel participating in the hearing at least 10 days prior to the Board's next regularly~~

~~scheduled meeting.~~ The Order shall be drafted in accordance with G.S. 150B-42.

(c) The official record of the hearing in a contested case shall contain those items specified in G.S. 150B-42(b).

*Authority G.S. 89G-5; 150B-38.*

**SECTION .0500 – IRRIGATION SYSTEM  
INSTALLATION MINIMUM STANDARDS**

**21 NCAC 23 .0505 TRENCHING AND PIPING**

(a) All portions of an irrigation system that do not meet the standards in this Rule must be noted on the record drawing.

(b) An irrigation contractor shall protect the root systems of the trees on the site by not trenching across the established root systems of existing trees and shrubs.

(c) When the irrigation contractor finds that it is necessary to trench into the root zone of an established plant, trenching shall be done so that the trench is at a right angle to the base of the tree or shrub.

(d) An irrigation contractor shall cut damaged roots cleanly at a right angle.

(e) Piping in irrigation systems must be designed and installed so that the flow of water in the pipe will not exceed a velocity of five feet per second for polyvinyl chloride (PVC), polyethylene (PE) and high density polyethylene (HDPE) pipe and seven feet per second for metal pipe.

(f) The main line and lateral line piping must be installed to provide a minimum of 12 inches between the top of the pipe and the natural grade.

(g) The bottom of the trench shall be smooth and provide a flat bed on which to rest the pipe.

(h) The irrigation contractor shall clean backfill material of any debris that may damage the pipe.

(i) If a utility, man-made structure or roots create an unavoidable obstacle which makes the 12 inch depth coverage requirement impractical, the piping shall be installed inside a larger section of pipe for added protection.

(j) When swing joints are used, the depth of the pipe must allow the swing joint to operate as designed.

(k) All trenches and holes created during installation of an irrigation system must be backfilled and compacted to the final grade. The trench shall be compacted in lifts no greater than six inches to insure proper compaction.

(l) All new irrigation systems that are installed using PVC shall be ~~cleaned with a PVC pipe cleaner or primer on male and female ends~~ prepared according to manufacturer's recommendations prior to applying the PVC cement connection.

(m) When the irrigation contractor uses PR 200 pipe, the manufacturer's directions shall be followed. ~~primer shall not be used.~~

(n) The irrigation contractor shall use the manufacturer's approved lubricant.

(o) The irrigation contractor shall use Teflon tape on all threaded fittings, wrapping the tape three times to insure a proper seal.

(p) When the irrigation system uses reclaimed water the irrigation contractor shall use purple pipe or mark the pipe with purple tape placed above all piping in the system. Tape must be within six inches of the top of the pipe. The irrigation contractor shall use purple valve box covers and purple quick coupler flaps and place an eight inch by eight inch sign with purple background stating "RECLAIMED WATER-DO NOT DRINK," and "AQUA DE RECUPERION-NO BEBER."

*Authority G.S. 89G-5.*

*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 October 17, 2013.*

**REGISTER CITATION TO THE  
NOTICE OF TEXT**

**BANKS, OFFICE OF THE COMMISSIONER OF**

<u>Definitions</u>	04	NCAC	03B	.0219*	n/a G.S. 150B-21.5(a)(3)
<u>Appointment of Appellate Panel</u>	04	NCAC	03B	.0301*	n/a G.S. 150B-21.5(a)(3)
<u>Definitions</u>	04	NCAC	03F	.0201*	n/a G.S. 150B-21.5(a)(3)
<u>Application for a License</u>	04	NCAC	03F	.0301*	n/a G.S. 150B-21.5(a)(3)
<u>Revocation or Cancellation of Surety Bond</u>	04	NCAC	03F	.0506*	n/a G.S. 150B-21.5(a)(3)
<u>Impairment of Minimum Net Worth</u>	04	NCAC	03F	.0508*	n/a G.S. 150B-21.5(a)(3)
<u>Record and Bookkeeping Requirements</u>	04	NCAC	03F	.0601*	n/a G.S. 150B-21.5(a)(2)&(3)
<u>Examination Fee</u>	04	NCAC	03F	.0602*	n/a G.S. 150B-21.5(a)(2)&(b)
<u>Definitions</u>	04	NCAC	03L	.0101*	n/a G.S. 150B-21.5(a)(3)&(b)(1)
<u>Posting of Fees</u>	04	NCAC	03L	.0403*	n/a G.S. 150B-21.5(a)(3)&(a)(5)
<u>Books and Records</u>	04	NCAC	03L	.0501*	n/a G.S. 150B-21.5(a)(3)&(b)(1)
<u>Report of Information to Commissioner for the...</u>	04	NCAC	03L	.0604*	n/a G.S. 150B-21.5(b)(1)

**SHERIFFS EDUCATION AND TRAINING STANDARDS COMMISSION**

<u>Administration of Justice Officer Schools and...</u>	12	NCAC	10B	.0702*	27:02 NCR
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**WILDLIFE RESOURCES COMMISSION**

<u>Black Bass</u>	15A	NCAC	10C	.0305	27:24 NCR
<u>Crappie</u>	15A	NCAC	10C	.0306*	27:24 NCR
<u>Flounder, Sea Trout and Red Drum</u>	15A	NCAC	10C	.0307	27:24 NCR
<u>Kokanee Salmon</u>	15A	NCAC	10C	.0308	27:24 NCR
<u>Muskellunge</u>	15A	NCAC	10C	.0309	27:24 NCR
<u>Pickerel</u>	15A	NCAC	10C	.0310	27:24 NCR
<u>Roanoke and rock bass</u>	15A	NCAC	10C	.0311*	27:24 NCR
<u>Sauger</u>	15A	NCAC	10C	.0312	27:24 NCR
<u>Shad</u>	15A	NCAC	10C	.0313*	27:24 NCR
<u>Striped Bass</u>	15A	NCAC	10C	.0314*	27:24 NCR
<u>Sunfish</u>	15A	NCAC	10C	.0315*	27:24 NCR
<u>Trout</u>	15A	NCAC	10C	.0316	27:24 NCR
<u>Walleye</u>	15A	NCAC	10C	.0317	27:24 NCR
<u>White Bass</u>	15A	NCAC	10C	.0318	27:24 NCR
<u>White Perch</u>	15A	NCAC	10C	.0319	27:24 NCR
<u>Yellow Perch</u>	15A	NCAC	10C	.0320	27:24 NCR
<u>Safety Equipment</u>	15A	NCAC	10F	.0201*	27:24 NCR

**DENTAL EXAMINERS, BOARD OF**

<u>Equipment</u>	21	NCAC	16Q	.0202*	27:20 NCR
<u>Clinical Requirements and Equipment</u>	21	NCAC	16Q	.0302*	27:20 NCR
<u>Off Site Use of Sedation Permits</u>	21	NCAC	16Q	.0304*	27:20 NCR
<u>Annual Renewal Required</u>	21	NCAC	16Q	.0501*	27:20 NCR

**HEARING AID DEALERS AND FITTERS BOARD**

<u>Visual Inspection and Hearing Test</u>	21	NCAC	22I	.0103*	27:22 NCR
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**MEDICAL BOARD**

<u>Reinstatement of Physician License</u>	21	NCAC	32B	.1350*	28:01 NCR
<u>Application of Resident's Training License</u>	21	NCAC	32B	.1402*	28:01 NCR
<u>Application for Medical School Faculty License</u>	21	NCAC	32B	.1502*	28:01 NCR
<u>Special Purpose License</u>	21	NCAC	32B	.1602	28:01 NCR
<u>Scope of Practice Under Limited Volunteer License and...</u>	21	NCAC	32B	.1701	28:01 NCR
<u>Application for Limited Volunteer License</u>	21	NCAC	32B	.1702*	28:01 NCR
<u>Application for Retired Limited Volunteer License</u>	21	NCAC	32B	.1704*	28:01 NCR
<u>Expedited Application for Physician License</u>	21	NCAC	32B	.2001*	28:01 NCR
<u>Process for Approval to Practice</u>	21	NCAC	32M	.0104*	28:01 NCR
<u>Inactive Status</u>	21	NCAC	32M	.0108*	28:01 NCR
<u>Exemption from License</u>	21	NCAC	32S	.0209	28:01 NCR

**NURSING, BOARD OF**

<u>Issuance of a License by a Compact Party State</u>	21	NCAC	36	.0702*	28:01 NCR
<u>Process for Approval to Practice</u>	21	NCAC	36	.0804*	28:01 NCR
<u>Inactive Status</u>	21	NCAC	36	.0808*	28:01 NCR

The following rule is subject to the next Legislative Session. (See G.S. 150B-21.3)

**FUNERAL SERVICE, BOARD OF**

<u>Fees and Other Payments</u>	21	NCAC	34A	.0201	28:01 NCR
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**TITLE 04 – DEPARTMENT OF COMMERCE**

**04 NCAC 03B .0219 DEFINITIONS**

As used in this Subchapter:

- |  |  |
|--|--|
| <p>(1) "Appellate panel" means an appellate review panel appointed pursuant to G.S. 53C-2-6(b).</p> <p>(2) "Commission" means the North Carolina State Banking Commission.</p> <p>(3) "Commissioner" means the North Carolina Commissioner of Banks.</p> <p>(4) "Court" means a North Carolina District or Superior Court.</p> | <p>(5) "Day" means a calendar day, other than a Saturday, Sunday or North Carolina state holiday.</p> <p>(6) "Hearing officer" means the Commissioner or an individual appointed by the Commissioner pursuant to G.S. 53C-2-6(c).</p> <p>(7) "Rules of Civil Procedure" means the North Carolina Rules of Civil Procedure, G.S. 1A-1, et seq., as the same may be amended from time to time.</p> <p>(8) Terms used herein which are defined by G.S. 150B shall be defined as in G.S. 150B.</p> |
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*History Note: Authority G.S. 53C-2-5; 53C-2-6;*

*Eff. August 1, 2004;*  
*Amended Eff. November 1, 2013.*

**04 NCAC 03B .0301 APPOINTMENT OF APPELLATE PANEL**

In the event the Chairman of the Commission, pursuant to G.S. 53C-2-6(b) appoints an appellant panel to consider an appeal and make a recommended decision to the State Banking Commission, the Commissioner's staff shall send all parties written notice of that appointment.

*History Note: Authority G.S. 53C-2-1(e); 53C-2-6(b); 53-215; 53-224.30; 53-231; 53-232.17; 53-244.121; 53-252; 53-272; 53-289; 53-350; 53-410; 53-412(d);*  
*Eff. August 1, 2004;*  
*Amended Eff. November 1, 2013.*

**04 NCAC 03F .0201 DEFINITIONS**

(a) As used in this Subchapter, unless the context clearly requires otherwise:

- (1) "Agent" shall mean a person, partnership, corporation, or other entity authorized by a licensee to sell or issue checks of the licensee in this State as a service or for a fee or other consideration on the behalf of the licensee;
- (2) "Applicant" shall mean a person who applies for a license under the Money Transmitters Act;
- (3) "Controlling person" shall mean any person as defined in G.S. 53-208.2(16) who owns or holds with the power to vote 10% or more of the equity securities of the applicant or licensee, or who has the power to direct the management and policy of the applicant or licensee;
- (4) "Executive officer" shall have the same meaning as set forth in Regulation "O," promulgated by the Board of Governors of the Federal Reserve System and codified in the Code of Federal Regulations at Title 12, Chapter II, Subchapter A, Part 215.2;
- (5) "Location" shall mean any place of business within this State operated by the licensee or the licensee's agent at which checks of the licensee are issued or sold;
- (6) "Money Transmitters Act" shall mean the Money Transmitters Act codified at Chapter 53, Article 16A of the North Carolina General Statutes (G.S. 53-208.1, et seq.);
- (7) "State" shall mean the State of North Carolina;
- (8) Terms defined in G.S. 53-208.2 shall have the same meaning in this Subchapter.

(b) An application for a license, amendment to the application, annual statement, notice, or any other document which is required by law or rule to be filed with the Commissioner shall be addressed as follows:

Mailing Address:  
 Office of the Commissioner of Banks  
 4309 Mail Service Center

Raleigh, North Carolina 27699-4309.

Street Address:  
 Office of the Commissioner of Banks  
 316 West Edenton Street  
 Raleigh, North Carolina 27603

*History Note: Authority G.S. 53-208.27;*  
*Eff. February 1, 1993;*  
*Amended Eff. November 1, 2013; September 1, 2006; June 1, 1995.*

**04 NCAC 03F .0301 APPLICATION FOR A LICENSE**

(a) Any person who wishes to sell or issue checks in this State pursuant to the Money Transmitters Act must first obtain a license issued by the Commissioner. An application for a license can be obtained from and shall be filed pursuant to Rule .0201(b) of this Subchapter.

(b) An application for a Money Transmitters' license shall include information required by G.S. 53-208.5 through G.S. 53-208.10 of Chapter 53, Article 16A. The application must be submitted on a form provided by the Commissioner.

(c) In addition to the documents and information listed in Paragraph (b) of this Rule, the Commissioner may require additional information necessary to complete an investigation pursuant to G.S. 53-208.10.

(d) Incomplete application files shall be closed and deemed denied without prejudice when the applicant has not submitted information requested by the Commissioner within 30 days of such request.

*History Note: Authority G.S. 53-208.3; 53-208.27;*  
*Eff. February 1, 1993;*  
*Amended Eff. November 1, 2013.*

**04 NCAC 03F .0506 REVOCATION OR CANCELLATION OF SURETY BOND**

(a) No later than 30 days after the renewal of its surety bond, a licensee shall file pursuant to Rule .0201(b) of this Subchapter:

- (1) a certificate of continuation of the surety bond required by G.S. 53-208.8; or
- (2) evidence of continued compliance with G.S. 53-208.8(b) which shall consist of a safekeeping receipt received directly from the trustee of securities with a par value equal to the amount of the surety bond in G.S. 53-208.8.

(b) A licensee shall notify the Commissioner in writing of revocation or cancellation of its surety bond furnished pursuant to G.S. 53-208.8.

*History Note: Authority 53-208.8; 53-208.27;*  
*Eff. February 1, 1993;*  
*Amended Eff. November 1, 2013; June 1, 1995.*

**04 NCAC 03F .0508      IMPAIRMENT OF MINIMUM NET WORTH**

A licensee shall notify the Commissioner in writing if, at any time, it fails to meet the minimum net worth requirement of G.S. 53-208.5(a). The notification shall be accompanied by a plan to restore the minimum net worth.

*History Note:    Authority 53-208.5; 53-208.27;  
Eff. February 1, 1993;  
Amended Eff. November 1, 2013.*

**04 NCAC 03F .0601      RECORD AND BOOKKEEPING REQUIREMENTS**

- (a) Licensee. Each licensee shall maintain at an office information required by G.S. 53-208.16(a) of Chapter 53, Article 16A.
- (b) Authorized delegate. Each authorized delegate shall maintain at its office a record of the disposition of all transactions or monetary instruments received from the licensee. The record shall contain an accounting of all proceeds from those transactions or monetary instruments paid to the licensee and all proceeds due to the licensee.

*History Note:    Authority 53-208.16; 53-208.20; 53-208.27;  
Eff. February 1, 1993;  
Amended Eff. November 1, 2013.*

**04 NCAC 03F .0602      EXAMINATION FEE**

Each licensee shall pay the cost of an examination conducted by the Commissioner or his designee pursuant to G.S. 53-208.15. The cost of such examination shall be the hourly rate established pursuant to 04 NCAC 03C .1601 plus travel expenses and the per diem subsistence allowance provided for State employees pursuant to G.S. 138-5 through G.S. 138-7, and any rules promulgated thereunder.

*History Note:    Authority 53-208.15; 53-208.27; 53-282(c);  
Eff. February 1, 1993;  
Amended Eff. November 1, 2013.*

**04 NCAC 03L .0101      DEFINITIONS**

(a) As used in this Subchapter unless the context or the language of G.S. 53, Article 22 indicates a contrary intention, the following definitions shall apply:

- (1) "Any one maker" shall mean any single signatory on a personal checking account.
- (2) "Branch location" shall mean any location, including a mobile unit, but not the principal place of business, where the licensee holds itself out to the public as engaging in a check-cashing business.
- (3) "Business day" shall mean a calendar day, other than Saturday, Sunday or holiday.
- (4) "Check" shall mean a draft (other than a draft payable upon presentation of documentation such as securities) payable on demand and drawn on a bank. The term "check" may also include any cashier's check or teller's check or other check, draft, or money order, but shall

not include travelers checks or foreign denomination payment instruments.

- (5) "Conspicuously posted" shall mean placed in plain public view in such a location and in such a way and of such form and size and typeface that any person seeking the services of a licensee could easily see and read the contents of the posted notice.
  - (6) "Controlling person" shall mean any person who owns or holds with the power to vote 10% or more of the equity securities of an applicant or licensee, or who has the power to direct the management and policy of the licensee.
  - (7) "Draft" shall mean a written order to pay money signed by one person, the drawer who signs the document, to another person, the drawee.
  - (8) "Liquid assets" shall mean cash, bank deposit accounts, and money market accounts or similar property owned by the applicant or licensee, plus undeposited checks cashed by a licensee, less any returned checks doubtful of collection and cash remittances due others.
  - (9) "Location" shall mean any place of business where check-cashing activity is conducted.
  - (10) "Mobile unit" shall mean a vehicle or other movable means from which the business of check cashing is conducted.
  - (11) "Principal" shall mean any person who controls directly, or indirectly through one or more intermediaries, alone or in concert with others, a 10% or greater interest in a partnership, company, association or corporation; the owner of a sole proprietorship; any natural person acting with apparent authority for or on behalf of an owner, officer, member, or director of a licensee; or any natural person who directs the performance of other employees as manager of a branch of any licensee.
  - (12) "Principal place of business" shall mean the location where the licensee holds itself out to the public as engaging in a check cashing business and which the licensee has declared to the Commissioner to be its main site of business operations.
  - (13) "Receipt" shall mean a written record of the check-cashing transaction.
- (b) Unless a term is defined herein or in G.S. 53, Article 22, that term shall have the meaning given it, if any, by Article 3 "Negotiable Instruments" of Chapter 25, North Carolina Uniform Commercial Code.

*History Note:    Authority G.S. 53C-2-1; 53C-2-2; 53-288;  
Eff. July 1, 2000;  
Amended Eff. November 1, 2013.*

**04 NCAC 03L .0403 POSTING OF FEES**

- (a) The notice of fees required by G.S. 53-280(c) shall be clear, legible, and in bold and blocked letters and numbers not less than one inch in height. The information shall be posted in a conspicuous location in the unobstructed view of the public within the check casher's premises.
- (b) A licensee shall file with the Commissioner on paper 8 1/2 x 11 inches a scaled duplicate of the notice required by G.S. 53-280(c) and Paragraph (a) of this Rule.

*History Note: Authority G.S. 53C-2-1; 53C-2-2; 53-280; 53-288;*  
*Eff. July 1, 2000;*  
*Amended Eff. November 1, 2013.*

**04 NCAC 03L .0501 BOOKS AND RECORDS**

(a) Each check-cashing business licensed by the Commissioner of Banks shall record all transactions of receipts and disbursements pertaining to checks cashed. All entries shall be made as of the exact date the transactions occur. A licensee shall maintain books and accounting records which shall include, at a minimum:

- (1) a daily transaction journal, or equivalent record, which shall show the customer's name for each transaction;
- (2) the written receipt required by G.S. 53-282(b); and
- (3) the bank statements of the licensee. If the statements are not maintained on the premises of the licensee, they must be made available upon request by the Office of the Commissioner of Banks.

(b) These records shall be maintained at each business location and shall be made available by the close of business on the next business day upon request to the Commissioner of Banks or his designee for inspection or examination for a period of not less than three years from the date of final entry.

(c) No books or records of the licensee required hereunder shall show any account or reflect any transaction other than those related to the check-cashing business within the provisions of the Check-Cashing Businesses Act.

(d) Books and records retained by a licensee which arise from or relate to a prior accounting period may be maintained in the form of magnetic tape, magnetic disk, or other form of computer, electronic or microfilm media available for examination on the basis of computer printed reproduction, video display, or other medium so long as any books and records kept in such manner are convertible into legible, tangible documents within 72 hours of request of the Commissioner. The time for such conversion may be extended if the Commissioner determines that the burden to the licensee of such conversion exceeds the benefit to the Commissioner and the public.

*History Note: Authority G.S. 53C-2-1; 53C-2-2; 53-282; 53-288;*  
*Eff. July 1, 2000;*  
*Amended Eff. November 1, 2013.*

**04 NCAC 03L .0604 REPORT OF INFORMATION TO COMMISSIONER FOR THE GENERAL ASSEMBLY**

*History Note: Authority G.S. 53-92; 53-93;*  
*Eff. July 1, 2000;*  
*Repealed Eff. November 1, 2013.*

**TITLE 12 – DEPARTMENT OF JUSTICE**

**12 NCAC 10B .0702 ADMINISTRATION OF JUSTICE OFFICER SCHOOLS**

The rules covering the administration of Criminal Justice Schools and training programs or courses of instruction, codified as Title 12, Subchapter 9B, Section .0200 of the North Carolina Administrative Code, effective 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 material to apply to actions of the North Carolina Sheriffs' Education and Training Standards Commission with the exception of the Detention Officer Certification Course and the Telecommunicator Certification Course. Copies of the incorporated materials may be obtained at no cost from the Criminal Justice Standards Division, North Carolina Department of Justice, 1700 Tryon Park Drive, Post Office Drawer 149, Raleigh, North Carolina 27692, or at <http://ncdoj.gov/About-DOJ/Law-Enforcement-Training-and-Standards/Criminal-Justice-Education-and-Training-Standards/Training-Certification-Programs.aspx>.

*History Note: Authority G.S. 17E-4;*  
*Eff. January 1, 1989;*  
*Amended Eff. January 1, 1996; January 1, 1990;*  
*Temporary Amendment Eff. March 1, 1998;*  
*Amended Eff. November 1, 2013; August 1, 1998.*

**TITLE 15A – DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES**

**15A NCAC 10C .0305 BLACK BASS**

(a) The daily creel limit for Largemouth, Smallmouth and Spotted Bass — collectively known as Black Bass — is five fish, except in waters identified in Paragraphs (b) and (c) of this Rule. There is no minimum size limit for these fish, but only two of them may be less than 14 inches except in waters identified in Paragraphs (b), (c), (d), (e), (f), (g), (h), (i), (j) and (k) of this Rule. There is no closed season, except for waters identified in Paragraph (k) of this Rule.

(b) In Lake Cammack in Alamance County and Lake Holt in Granville County the daily creel limit for Largemouth Bass is 10 fish and no more than two fish greater than 14 inches may be possessed.

(c) In Lake Santeetlah in Graham County, there is no daily creel limit for Black Bass less than 14 inches. The daily creel limit for Black Bass greater than 14 inches is five fish.



(d) The minimum size limit for Black Bass is 14 inches, with no exceptions in:

- (1) Lake Raleigh in Wake County;
- (2) Lake Mattamuskeet and associated canals in Hyde County;
- (3) Pungo Lake in Washington and Hyde counties;
- (4) New Lake in Hyde County;
- (5) and the Currituck, Roanoke, Croatan and Albemarle sounds and all their tributaries including Roanoke River downstream of Roanoke Rapids Dam, Chowan River, Yeopim River, Pasquotank River, Perquimans River, North River, Northwest River, Scuppernon River and Alligator River (including the Alligator/Pungo Canal east of the NC Hwy 264/45 bridge).

(e) In Cane Creek Lake in Union County, and Buckhorn Reservoir in Wilson and Nash counties, the minimum size limit for Largemouth Bass is 16 inches, with no exceptions.

(f) In Lake Phelps the minimum size limit is 14 inches, with no exceptions, and no fish between 16 and 20 inches may be possessed.

(g) In Shearon Harris Reservoir, there is no minimum size limit for Black Bass, but only two Black Bass less than 14 inches and no Black Bass between 16 and 20 inches may be possessed.

(h) In Randleman Reservoir, there is no minimum size limit for Largemouth Bass, but only two Largemouth Bass less than 14 inches and only one Largemouth Bass greater than 20 inches may be possessed.

(i) In Lake Thom-A-Lex in Davidson County, the minimum size limit for Black Bass is 18 inches with no exceptions.

(j) In the Alleghany County portion of New River downstream of Fields Dam (Grayson County, Virginia) there is no minimum size limit for Black Bass, but no fish between 14 and 20 inches in length may be possessed and only one Black Bass greater than 20 inches may be possessed.

(k) In Sutton Lake, the minimum size limit for Black Bass is 14 inches with no exceptions and no Black Bass may be possessed from December 1 through March 31.

(l) For purposes of this Rule, creel limits apply to Largemouth, Smallmouth and Spotted Bass in aggregate unless otherwise specified.

*History Note: Authority G.S. 113-134; 113-292; 113-304; 113-305;*

*Eff. February 1, 1976;*

*Temporary Amendment Eff. May 10, 1990, for a period of 180 days to expire on November 1, 1990;*

*Temporary Amendment Eff. May 22, 1990, for a period of 168 days to expire on November 1, 1990;*

*Temporary Amendment Eff. May 1, 1991, for a period of 180 days to expire on November 1, 1991;*

*Amended Eff. July 1, 1994; July 1, 1993; October 1, 1992;*

*Temporary Amendment Eff. December 1, 1994 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;*

*Amended Eff. July 1, 1998; July 1, 1997; July 1, 1996; July 1, 1995;*

*Temporary Amendment Eff. November 1, 1998;*

*Amended Eff. April 1, 1999;*

*Temporary Amendment Eff. July 1, 1999;*

*Amended Eff. July 1, 2000;*

*Temporary Amendment Eff. July 1, 2001;*

*Temporary Amendment Eff. March 8, 2002 [This rule replaces the rule proposed for permanent amendment effective July 1, 2002 and approved by RRC in May 2001];*

*Amended Eff. August 1, 2002 (approved by RRC in April 2002);*

*Temporary Amendment Eff. June 1, 2003;*

*Amended Eff. June 1, 2004 (this amendment replaces the amendment approved by RRC on July 17, 2003);*

*Amended Eff. November 1, 2013; August 1, 2012; March 1, 2012; August 1, 2011; August 1, 2010; May 1, 2009; July 1, 2008; May 1, 2008; May 1, 2007; May 1, 2006; June 1, 2005.*

#### **15A NCAC 10C .0306 CRAPPIE**

(a) There is no daily creel limit for Crappie, except for waters identified in Paragraphs (b), (c), and (d) of this Rule. There is no minimum size limit for these fish, except for waters identified in Paragraphs (c) and (d). There is no closed season.

(b) In Buckhorn Reservoir in Wilson and Nash counties the daily creel limit is 20 fish.

(c) In the following waters, the daily creel limit is 20 fish and the minimum size limit is 10 inches:

- (1) B. Everett Jordan Reservoir,
- (2) Roanoke River and its tributaries downstream of Roanoke Rapids dam,
- (3) Cashie River and its tributaries,
- (4) Middle River and its tributaries, and
- (5) Eastmost River and its tributaries.

(d) In the following waters, the daily creel limit is 20 fish and the minimum size limit is eight inches:

- (1) South Yadkin River downstream of Cooleemee Dam;
- (2) Yadkin River downstream from Idols Dam;
- (3) Pee Dee River from Blewett Falls Dam to the South Carolina state line;
- (4) High Rock Lake;
- (5) Tuckertown Lake;
- (6) Badin Lake;
- (7) Falls Lake (Stanly and Montgomery counties);
- (8) Lake Tillery;
- (9) Blewett Falls Lake;
- (10) Lake Norman;
- (11) Lake Hyco;
- (12) Lake Ramseur;
- (13) Cane Creek Lake;
- (14) Tar River downstream of Tar River Reservoir Dam;
- (15) Neuse River downstream of Falls Lake Dam;
- (16) Haw River downstream of Jordan Lake Dam;
- (17) Deep River downstream of Lockville Dam;
- (18) Cape Fear River;
- (19) Waccamaw River downstream of Lake Waccamaw Dam;
- (20) Lumber River including Drowning Creek;
- (21) all other public fishing waters east of Interstate 95, except Tar River Reservoir in Nash County, Sutton Lake in New Hanover County,

and waters listed in Paragraph (c) of this Rule;  
and

(22) all public waters west of Interstate 77.

For waters in Subparagraphs (14) through (22), the restrictions apply to all tributaries.

*History Note:* Authority G.S. 113-134; 113-292;  
*Eff. November 1, 2013.*

**15A NCAC 10C .0307 FLOUNDER, SEA TROUT, AND RED DRUM**

In inland fishing waters, Sea Trout (Spotted or Speckled), Flounder, and Red Drum (also known as Channel Bass, Red Fish or Puppy Drum) recreational seasons, size limits and creel limits are the same as those established in the Rules of the Marine Fisheries Commission or proclamations issued by the Fisheries Director in adjacent joint or coastal fishing waters.

*History Note:* Authority G.S. 113-134; 113-292; 113-304; 113-305;  
*Eff. November 1, 2013*

**15A NCAC 10C .0308 KOKANEE SALMON**

The daily creel limit for Kokanee Salmon is seven fish. There is no minimum size limit for these fish. There is no closed season for Kokanee Salmon.

*History Note:* Authority G.S. 113-134; 113-292;  
*Eff. November 1, 2013.*

**15A NCAC 10C .0309 MUSKELLUNGE**

The daily creel limit for Muskellunge is one fish. The minimum size limit for this fish is 42 inches. There is no closed season for Muskellunge.

*History Note:* Authority G.S. 113-134; 113-292;  
*Eff. November 1, 2013.*

**15A NCAC 10C .0310 PICKEREL**

There is no daily creel limit and no minimum size limit for Pickerel (Chain and Redfin). There is no closed season for Pickerel.

*History Note:* Authority G.S. 113-134; 113-292;  
*Eff. November 1, 2013.*

**15A NCAC 10C .0311 ROANOKE AND ROCK BASS**

(a) There is no daily creel limit and no minimum size limit for Roanoke and Rock Bass, except for waters identified in Paragraph (b) of this Rule. There is no closed season for Roanoke and Rock Bass.

(b) In all public fishing waters east of Interstate 77, the daily creel limit for Roanoke and Rock Bass is two fish in the aggregate and the minimum size for these fish is eight inches.

*History Note:* Authority G.S. 113-134; 113-292;  
*Eff. November 1, 2013.*

**15A NCAC 10C .0312 SAUGER**

The daily creel limit for Sauger is eight fish. The minimum size limit for these fish is 15 inches. There is no closed season for Sauger.

*History Note:* Authority G.S. 113-134; 113-292;  
*Eff. November 1, 2013.*

**15A NCAC 10C .0313 SHAD (AMERICAN AND HICKORY)**

(a) The daily creel limit for American and Hickory Shad in the aggregate is 10 fish, except for waters identified in Paragraphs (b), (c) and (d) of this Rule. There is no minimum size limit for these fish. There is no closed season, except for waters identified in Paragraph (e) of this Rule.

(b) In the inland waters of Roanoke River, Neuse River, and their tributaries, the daily creel limit for American and Hickory Shad is 10 in the aggregate, only one of which may be an American Shad.

(c) In the inland waters of the Cape Fear River and its tributaries, the daily creel limit for American and Hickory Shad is 10 in the aggregate, only five of which may be American Shad.

(d) In Roanoke Rapids Reservoir, Lake Gaston and John H. Kerr Reservoir, no American Shad may be possessed.

(e) The season for taking American and Hickory Shad with bow nets is March 1 through April 30.

*History Note:* Authority G.S. 113-134; 113-292; 113-304; 113-305;  
*Eff. November 1, 2013.*

**15A NCAC 10C .0314 STRIPED BASS**

(a) The daily creel limit for Striped Bass and its hybrids is eight fish in the aggregate, except in waters identified in Paragraphs (b), (c), (d), (e), (f), (g), (h), (i) and (j) of this Rule. There is no minimum size limit for these fish, but only two of them may be less than 16 inches, except in waters identified in Paragraphs (b), (c), (d), (e), (f), (g), (h), (i) and (j) of this Rule. There is no closed season, except for waters identified in Paragraphs (g), (h), (i), (j) and (k) of this Rule.

(b) In the Dan River upstream from its confluence with Bannister River to the dam at Union Street in Danville, VA and in John H. Kerr Reservoir, the daily creel limit on Striped Bass and its hybrids is two in the aggregate and the minimum size limit is 24 inches from October 1 through May 31. From June 1 through September 30, the daily creel limit on Striped Bass and its hybrids is four in the aggregate with no minimum size limit.

(c) In the Cape Fear River upstream of Buckhorn Dam; the Deep River to the first impoundment; the Haw River to the first impoundment; B. Everett Jordan Reservoir; Lake Rhodhiss; Lake Hickory; and Lookout Shoals Reservoir, the daily creel limit on Striped Bass and its hybrids is four in the aggregate and the minimum size limit is 20 inches.

(d) In Lake Gaston and Roanoke Rapids Reservoir, the daily creel limit on Striped Bass and its hybrids is four in the aggregate. The minimum size limit for these fish is 20 inches from October 1 through May 31. There is no minimum size limit for these fish from June 1 through September 30.

(e) In Lake Norman the daily creel limit on Striped Bass and its hybrids is four in the aggregate. The minimum size limit for these fish is 16 inches from October 1 through May 31. There is no minimum size limit for these fish from June 1 through September 30.

(f) In Lake Matamuskeet and in the Pee Dee River and its tributaries downstream from the Blewett Falls Dam to the South Carolina state line, the daily creel limit is three fish in the aggregate and the minimum size limit is 18 inches.

(g) In the inland fishing waters of Neuse, Pungo and Tar Pamlico rivers and their tributaries extending upstream to the first impoundment of the main course on the river or its tributaries, and in all other inland fishing waters east of Interstate 95 not specified in Paragraphs (f), (h), (i) and (j) of this Rule, the daily creel limit for Striped Bass and its hybrids is two fish in the aggregate. The minimum size limit is 18 inches but no Striped Bass or hybrids between the lengths of 22 inches and 27 inches shall be possessed. In these waters, the season for taking and possessing Striped Bass is closed from May 1 through September 30.

(h) In the inland fishing waters of the Cape Fear River and its tributaries downstream of Buckhorn Dam, the season for taking and possessing Striped Bass is closed year-round.

(i) In the inland and joint fishing waters [as identified in 15A NCAC 10C .0107(1)(e)] of the Roanoke River Striped Bass Management Area, which includes the Roanoke, Cashie, Middle and Eastmost rivers and their tributaries, the open season for taking and possessing Striped Bass and its hybrids is March 1 through April 30 from the joint-coastal fishing waters boundary at Albemarle Sound upstream to Roanoke Rapids Lake dam. During the open season the daily creel limit for Striped Bass and its hybrids is two fish in the aggregate, the minimum size limit is 18 inches. No fish between 22 inches and 27 inches in length shall be retained in the daily creel limit. Only one fish larger than 27 inches may be retained in the daily creel limit.

(j) In designated inland fishing waters of Roanoke Sound, Croatan Sound, Albemarle Sound, Chowan River, Currituck Sound, Alligator River, Scuppernong River, and their tributaries (excluding the Roanoke River and Cashie River and their tributaries), Striped Bass fishing season, size limits and creel limits are the same as those established by rules or proclamations of the Marine Fisheries Commission in adjacent joint or coastal fishing waters.

(k) The Executive Director may, by proclamation, suspend or extend the hook-and-line season for Striped Bass in the inland and joint waters of coastal rivers and their tributaries. It is unlawful to violate the provisions of any proclamation issued under this authority.

*History Note: Authority G.S. 113-134; 113-292; 113-304; 113-305;  
Eff. November 1, 2013.*

#### **15A NCAC 10C .0315 SUNFISH**

(a) For purposes of this Rule, Sunfish include bluegill, redbreast, redear, pumpkinseed, warmouth, flier and all other species of the sunfish family (Centrarchidae) not specified in 15A NCAC 10C .0305, 15A NCAC 10C .0306 and 15A NCAC 10C .0311.

(b) There is no daily creel limit for Sunfish, except for waters identified in Paragraph (c) of this Rule. There is no minimum size limit for these fish. There is no closed season.

(c) In the following waters and all their tributaries, the daily creel limit for Sunfish is 30 in the aggregate, no more than 12 of which may be Redbreast Sunfish:

- (1) Roanoke River downstream of Roanoke Rapids Dam;
- (2) Tar River downstream of Tar River Reservoir Dam;
- (3) Neuse River downstream of Falls Lake Dam;
- (4) Haw River downstream of Jordan Lake Dam;
- (5) Deep River downstream of Lockville Dam;
- (6) Cape Fear River;
- (7) Waccamaw River downstream of Lake Waccamaw Dam;
- (8) Lumber River including Drowning Creek; and
- (9) all other public fishing waters east of Interstate 95, except Tar River Reservoir in Nash County.

*History Note: Authority G.S. 113-134; 113-292;  
Eff. November 1, 2013.*

#### **15A NCAC 10C .0316 TROUT**

(a) The daily creel limit for trout in Hatchery-Supported Trout Waters is seven fish. There is no minimum size limit for these fish. The open season is from 7 a.m. on the first Saturday in April until March 1, except for waters designated in Paragraphs (d) and (g) of this Rule.

(b) The daily creel limit for trout in Wild Trout Waters and Wild Trout/Natural Bait Trout Waters is four fish. The minimum size limit for these fish is seven inches. There is no closed season.

(c) No trout may be harvested from Catch and Release/Artificial Lures Only Trout Waters or Catch and Release/Artificial Flies Only Trout Waters. Trout may not be possessed while fishing these waters.

(d) The daily creel limit for trout in Delayed Harvest Trout Waters is seven fish. There is no minimum size limit for these fish. The Youth-only Delayed Harvest Trout Water Season is from 6 a.m. on the first Saturday in June until 12 p.m. that same day. During this season only individuals under the age of 16 may fish. From 12 p.m. on the first Saturday in June until September 30, the Delayed Harvest Trout Waters Season is open for all anglers. From October 1 to one-half hour after sunset on the Friday before the first Saturday in June, trout may not be harvested or possessed while fishing these waters. Delayed Harvest Trout Waters are closed to all fishing from one-half hour after sunset on the Friday before the first Saturday in June to 6 a.m. on the first Saturday in June.

(e) The daily creel limit for trout in Special Regulation Trout Waters is seven fish. There is no minimum size limit for these fish, but only one may be greater than 14 inches. There is no closed season.

(f) The daily creel limit for trout in undesignated trout waters is seven fish. There is no minimum size limit for these fish. Trout may not be possessed while fishing these waters from March 1

until 7 a.m. on the first Saturday in April, except waters designated in Paragraph (g) of this Rule.

(g) There is no closed season on taking trout from Linville River within Linville Gorge Wilderness Area and the impounded waters of power reservoirs and municipally-owned water supply reservoirs open to the public for fishing.

(h) In designated Public Mountain Trout Waters the season for taking all species of fish is the same as the trout fishing season.

(i) All trout water designations and manners of take are set forth in 15A NCAC 10C .0205.

*History Note: Authority G.S. 113-134; 113-292;  
Eff. November 1, 2013.*

**15A NCAC 10C .0317 WALLEYE**

(a) The daily creel limit for Walleye is eight fish except for waters identified in Paragraphs (b) and (d) of this Rule. There is no minimum size limit for these fish except for waters identified in Paragraphs (c) and (d) of this Rule. There is no closed season.

(b) In Linville River upstream upstream from the NC 126 bridge, the daily creel limit for Walleye is four fish.

(c) In Lake James and its tributaries, except the Linville River upstream from the N.C. 126 bridge, the minimum size limit for walleye is 15 inches.

(d) In John H. Kerr Reservoir, Lake Gaston, and Roanoke Rapids Lake, the daily creel limit is five fish and the minimum size limit for Walleye is 18 inches.

*History Note: Authority G.S. 113-134; 113-292;  
Eff. November 1, 2013.*

**15A NCAC 10C .0318 WHITE BASS**

The daily creel limit for White Bass is 25 fish. There is no minimum size limit for these fish. There is no closed season for White Bass.

*History Note: Authority G.S. 113-134; 113-292;  
Eff. November 1, 2013.*

**15A NCAC 10C .0319 WHITE PERCH**

There is no daily creel limit and no minimum limit size for White Perch. There is no closed season for White Perch.

*History Note: Authority G.S. 113-134; 113-292; 113-304;  
113-305;  
Eff. November 1, 2013.*

**15A NCAC 10C .0320 YELLOW PERCH**

There is no daily creel limit and no minimum size limit for Yellow Perch. There is no closed season for Yellow Perch.

*History Note: Authority G.S. 113-134; 113-292; 113-304;  
113-305;  
Eff. November 1, 2013.*

**15A NCAC 10F .0201 SAFETY EQUIPMENT**

(a) Federal Regulations Adopted. As its regulations governing required equipment of vessels as defined in G.S. 75A-2(5),

pursuant to G.S. 75A-6, the Wildlife Resources Commission incorporates by reference, including subsequent amendments and editions, the following federal regulations, to be applicable to vessels operated on all waters of this state as defined by G.S. 75A-2(6): Code of Federal Regulations, Title 46, Part 25, and Title 33, Part 175, as supplemented by the Federal Register. To the extent that the vessel equipment requirements of G.S. 75A-6 conflict with these federal regulations, they are hereby modified to conform to the federal regulations as authorized by G.S. 75A-6(m) and 113-307.

Without limitation to the adoption of the Federal regulations named herein, Paragraphs (b) through (g) apply to vessels operating in State waters.

(b) Personal flotation devices (hereinafter referred to as PFDs) are required as follows except as provided in Subparagraph (6) of this Paragraph:

- (1) No person may operate a vessel unless at least one Type I, II or III PFD is on board and readily accessible for each person.
- (2) No person shall operate a vessel 16 feet or more in length unless one type IV PFD is on board and immediately available for use, in addition to the total number of PFDs required in Subparagraph (1) of this Paragraph.
- (3) No person shall operate a vessel while such vessel is underway with any child under 13 years old aboard unless each such child is:
  - (A) wearing an appropriate PFD approved by the Coast Guard; or
  - (B) below decks; or
  - (C) in an enclosed cabin.

This Subparagraph does not apply to a vessel that is registered as a commercial vessel.

- (4) A Type V PFD may be carried *in lieu* of any PFD required under Subparagraph (1) of this Paragraph provided:
  - (A) the approval label for the Type V PFD indicates that the device is approved for the activity for which the vessel is used; or
  - (B) the Type V PFD is used in accordance with the requirements on the approval label and with the requirements in its owner's manual.
- (5) No person shall operate a vessel unless each required PFD is:
  - (A) in serviceable condition;
  - (B) of appropriate size and fit for the intended wearer;
  - (C) USCG approved; and
  - (D) legibly marked with its approval number, as specified in CFR Title 46 Part 25 and CFR Title 33 Part 175.

- (6) Exemptions:
  - (A) Canoes and kayaks 16 feet in length and over are exempted from the requirements for carriage of the additional Type IV PFD as specified in Subparagraph (b)(2) of this Rule.

- (B) Sailboards, surfboards, tubes, swimming rafts, inflatable toys and similar devices routinely used as water toys or swimming aids are exempted from the requirements for carriage of any type PFD required under this Paragraph.
- (C) Manually propelled vessels such as racing shells, rowing sculls, racing canoes and racing kayaks that are recognized by national and international racing associations for use in competitive racing, that are not designed to carry any equipment not solely for competitive racing, and in which all occupants with the exception of a coxswain, if one is provided, row, scull, or paddle, are exempted from the requirements for carriage of any type PFD required under this Paragraph.

(c) Fire Extinguishers are required as follows:

- (1) All motorboats shall carry at least the minimum number of USCG approved hand portable fire extinguishers specified in this Rule if any one of the following conditions exist:
  - (A) closed compartments under thwarts and seats wherein portable fuel tanks may be stored;
  - (B) double bottoms not sealed to the hull or which are not completely filled with flotation material;
  - (C) closed living spaces;
  - (D) closed stowage compartments in which combustible or flammable materials are stowed;
  - (E) permanently installed fuel tanks; or
  - (F) motorboats of Class 2 or longer.
- (2) Motorboats of Class A and 1 (less than 26 feet): One Type B-I
- (3) Motorboats of Class 2 Two Type B-I extinguishers
- (4) Motorboats of Class 3 Three Type B-I extinguishers
- (5) One Type B-II hand held fire extinguisher may be substituted for two B-I hand portable fire extinguishers. A fixed fire extinguishing system installed in the engine compartment is equal to one Type B-I hand portable fire extinguisher.

Exemption to fire extinguisher requirements: Open Vessels. Vessels less than 26 feet in length, propelled by outboard motors and not carrying passengers for hire, need not carry such portable fire extinguishers if the construction of such motorboats will not permit the entrapment of explosive or flammable gases or vapors.

(d) Every engine, except outboard motors, using gasoline as fuel and installed in a vessel must be equipped with an acceptable

means of backfire flame control. An acceptable means of backfire flame control must meet the requirements of CFR Title 46 Part 25 and CFR Title 33 Part 175.

(e) Every vessel, except those open vessels defined in Paragraph (c) of this Rule, using as fuel any liquid of a volatile nature, shall be provided with such means of properly and efficiently ventilating the bilges of the engine and fuel tank compartments so as to remove any explosive or flammable gases. Proper and efficient ventilation meets the requirements of CFR Title 46 Part 25 and CFR Title 33 Part 175.

(f) Sound Devices

- (1) Vessels of less than 12 meters (39.4 feet) in length shall be equipped with some means of making an efficient sound signal; and
- (2) Vessels equal to or greater than 12 meters (39.4 feet) in length shall be provided with a whistle and a bell which complies with 33 USC 2033.

(g) Lights. The lights prescribed by this Paragraph shall be exhibited from sunset to sunrise and in fog, mist, falling snow, heavy rainstorms, sandstorms, or any other similar circumstances of restricted visibility. During such times no other lights shall be exhibited, except such lights as cannot be mistaken for the lights specified in these Rules or do not impair their visibility or distinctive character, or interfere with keeping a proper lookout. They may be exhibited in all other circumstances when deemed necessary:

- (1) Vessels equal to or greater than 12 meters (39.4 feet) but less than 20 meters (65.6 feet) in length shall exhibit:
  - (A) A masthead light forward visible for three miles;
  - (B) Sidelights, green to starboard and red to port visible for two miles; and
  - (C) A stern light visible for two miles;
- (2) Vessels less than 12 meters (39.4 feet) in length shall exhibit:
  - (A) An all-round white light visible for two miles; and
  - (B) Sidelights, green to starboard and red to port visible for 1 mile;
- (3) Sailing vessels underway that are seven meters (23 feet) in length or greater shall exhibit:
  - (A) A stern light visible for two miles; and
  - (B) Sidelights, green to starboard and red to port visible for two miles;
- (4) In a sailing vessel less than 20 meters in length the lights prescribed in Subparagraph (3) of this Paragraph may be combined in one lantern carried at or near the top of the mast where it can be best seen;
- (5) A sailing vessel of less than seven meters (23 feet) in length shall, if practicable, exhibit the lights prescribed in Subparagraph (3) or (4) of this Paragraph; if not the vessel shall have ready at hand an electric torch or lighted lantern showing a white light which shall be

- exhibited in sufficient time to prevent a collision;
- (6) A vessel under oars may exhibit the lights prescribed in this Rule for sailing vessels; but if not, it shall have ready at hand an electric torch or lighted lantern showing a white light which shall be exhibited in sufficient time to prevent a collision; and
- (7) Vessels of 10 Horsepower or Less. On waters of this State not subject to the jurisdiction of the United States, vessels propelled by machinery of 10 horsepower or less, *in lieu* of the foregoing requirements, may carry from one-half hour after sunset to one-half hour before sunrise a white light in the stern or have on board a hand flashlight in good working condition which shall be ready at hand and shall be temporarily displayed in sufficient time to prevent collision. On waters of this State that are subject to the jurisdiction of the United States, this exception, though permissible under state law, is not sanctioned by any federal law or regulation.

*History Note: Authority G.S. 75A-3; 75A-6; 113-307; Eff. February 1, 1976; Amended Eff. November 1, 2013; April 1, 2009; March 1, 2008; April 1, 1999; August 1, 1988; May 1, 1976.*

- (B) Oral and nasal airways of various sizes;
- (C) Blood pressure monitoring device;
- (D) Electrocardiograph;
- (E) Pulse oximeter; and
- (F) Defibrillator;
- (3) The following emergency equipment is maintained:
- (A) I.V. set-up as necessary for specific procedures, including hardware and fluids;
- (B) Laryngoscope with current batteries;
- (C) Intubation forceps and endotracheal tubes;
- (D) Tonsillar suction with back-up suction;
- (E) Syringes as necessary for specific procedures;
- (F) Tourniquet & tape; and
- (G) Blood pressure monitoring device;
- (4) The following drugs are maintained with a current shelf life and with access from the operatory and recovery room:
- (A) Epinephrine;
- (B) Atropine;
- (C) Lidocaine;
- (D) Antihistamine;
- (E) Antihypertensive;
- (F) Bronchial dilator;
- (G) Antihypoglycemic agent;
- (H) Vasopressor;
- (I) Corticosteroid;
- (J) Anticonvulsant;
- (K) Muscle relaxant;
- (L) Appropriate reversal agents;
- (M) Appropriate anti-arrhythmic medication;
- (N) Nitroglycerine; and
- (O) Antiemetic;
- (5) Written emergency and patient discharge protocols and training to familiarize office personnel in the treatment of clinical emergencies are provided; and
- (6) The following records are maintained:
- (A) Patient's current written medical history, including known allergies and previous surgery;
- (B) Base line vital signs, including blood pressure and pulse;
- (C) An anesthesia record which shall include:
- (i) Periodic vital signs taken at intervals during the procedure;
- (ii) Drugs administered during the procedure, including route of administration, dosage, time and sequence of administration;

## **TITLE 21 – OCCUPATIONAL LICENSING BOARDS AND COMMISSIONS**

### **CHAPTER 16 – BOARD OF DENTAL EXAMINERS**

#### **21 NCAC 16Q .0202 EQUIPMENT**

(a) A dentist administering general anesthesia is solely responsible for providing that the environment in which the general anesthesia is to be administered meets the following requirements:

- (1) The facility is equipped with:
- (A) An operatory of size and design to permit access of emergency equipment and personnel and to permit effective emergency management;
- (B) A chair or table for emergency treatment, including chair suitable for CPR or CPR Board;
- (C) Lighting as necessary for specific procedures; and
- (D) Suction equipment as necessary for specific procedures, including non-electrical back-up suction;
- (2) The following equipment is maintained:
- (A) Positive pressure oxygen delivery system, including full face masks for adults and pediatric patients;

- (iii) Duration of the procedure;
- (iv) Documentation of complications or morbidity; and
- (v) Status of patient upon discharge.

(b) During an inspection or evaluation, the applicant or permit holder shall demonstrate the administration of anesthesia while the evaluator observes. During the demonstration, the applicant or permit holder shall demonstrate competency in the following areas:

- (1) Monitoring of blood pressure, pulse, and respiration;
- (2) Drug dosage and administration;
- (3) Treatment of untoward reactions including respiratory or cardiac depression;
- (4) Sterilization;
- (5) Use of CPR certified personnel;
- (6) Monitoring of patient during recovery; and
- (7) Sufficiency of patient recovery time.

(c) During an inspection or evaluation, the applicant or permit holder shall verbally demonstrate competency to the evaluator in the treatment of the following clinical emergencies:

- (1) Laryngospasm;
- (2) Bronchospasm;
- (3) Emesis and aspiration;
- (4) Respiratory depression and arrest;
- (5) Angina pectoris;
- (6) Myocardial infarction;
- (7) Hypertension/Hypotension;
- (8) Syncope;
- (9) Allergic reactions;
- (10) Convulsions;
- (11) Bradycardia;
- (12) Insulin shock; and
- (13) Cardiac arrest.

(d) A dentist administering general anesthesia shall ensure that the facility is staffed with auxiliary personnel who shall document annual successful completion of basic life support training and be capable of assisting with procedures, problems, and emergency incidents that may occur as a result of the general anesthetic or secondary to an unexpected medical complication.

*History Note: Authority G.S. 90-28; 90-30.1; 90-48; Effective February 1, 1990; Amended Eff. November 1, 2013; August 1, 2002; August 1, 2000.*

## **21 NCAC 16Q .0302 CLINICAL REQUIREMENTS AND EQUIPMENT**

(a) A dentist administering moderate conscious sedation or moderate pediatric conscious sedation or supervising the administration of moderate conscious sedation or moderate pediatric conscious sedation by a certified registered nurse anesthetist shall ensure that the facility in which the sedation is to be administered meets the following requirements:

- (1) The facility is equipped with:

- (A) An operatory of size and design to permit access of emergency equipment and personnel and to permit effective emergency management;
- (B) A CPR Board or a dental chair without enhancements, suitable for providing emergency treatment;
- (C) Lighting as necessary for specific procedures; and
- (D) Suction equipment as necessary for specific procedures, including non-electrical back-up suction.

(2) The following equipment is maintained:

- (A) Positive oxygen delivery system, including full face masks for adults and pediatric patients and back-up E-cylinder portable oxygen tank apart from the central system;
- (B) Oral and nasal airways of various sizes;
- (C) Blood pressure monitoring device;
- (D) Pulse oximeter; and
- (E) Automatic External Defibrillator (AED).

(3) The following emergency equipment is maintained:

- (A) I.V. set-up as necessary for specific procedures, including hardware and fluids, if anesthesia is intravenous;
- (B) Syringes as necessary for specific procedures; and
- (C) Tourniquet and tape.

(4) The following drugs are maintained with a current shelf life and with access from the operatory and recovery area:

- (A) Epinephrine;
- (B) Atropine;
- (C) Appropriate reversal agents;
- (D) Antihistamine;
- (E) Corticosteroid;
- (F) Nitroglycerine;
- (G) Bronchial dilator;
- (H) Antiemetic; and
- (I) 50% Dextrose.

(5) Written emergency and patient discharge protocols are maintained and training to familiarize office personnel in the treatment of clinical emergencies is provided; and

(6) The following records are maintained for at least 10 years:

- (A) Patient's current written medical history, including known allergies and previous surgery;
- (B) Drugs administered during the procedure, including route of administration, dosage, strength, time and sequence of administration;

- (C) A sedation record which shall include:
- (i) blood pressure;
  - (ii) pulse rate;
  - (iii) respiration;
  - (iv) duration of procedure;
  - (v) documentation of complications or morbidity; and
  - (vi) status of patient upon discharge.

(b) During an inspection or evaluation, the applicant or permit holder shall demonstrate the administration of moderate conscious sedation on a patient, or where applicable, moderate pediatric conscious sedation on a patient, including the deployment of an intravenous delivery system, while the evaluator observes. Practices limited to pediatric dentistry will not be required to demonstrate the deployment of an intravenous delivery system. Instead, they will orally describe to the evaluator the technique of their training in intravenous and intraosseous deployment. During the demonstration, the applicant or permit holder shall demonstrate competency in the following areas:

- (1) Monitoring blood pressure, pulse, and respiration;
- (2) Drug dosage and administration;
- (3) Treatment of untoward reactions including respiratory or cardiac depression, if applicable;
- (4) Sterile technique;
- (5) Use of CPR certified personnel;
- (6) Monitoring of patient during recovery; and
- (7) Sufficiency of patient recovery time.

(c) During an inspection or evaluation, the applicant or permit holder shall verbally demonstrate competency to the evaluator in the treatment of the following clinical emergencies:

- (1) Laryngospasm;
- (2) Bronchospasm;
- (3) Emesis and aspiration;
- (4) Respiratory depression and arrest;
- (5) Angina pectoris;
- (6) Myocardial infarction;
- (7) Hypertension/Hypotension;
- (8) Allergic reactions;
- (9) Convulsions;
- (10) Syncope;
- (11) Bradycardia;
- (12) Insulin shock; and
- (13) Cardiac arrest.

(d) A dentist administering moderate conscious sedation or moderate pediatric conscious sedation shall ensure that the facility is staffed with sufficient auxiliary personnel for each procedure performed who shall document annual successful completion of basic life support training and be capable of assisting with procedures, problems, and emergency incidents that may occur as a result of the sedation or secondary to an unexpected medical complication.

*History Note: Authority G.S. 90-28; 90-30.1; 90-48; Eff. February 1, 1990;*

*Amended Eff. August 1, 2002; August 1, 2000; Temporary Amendment Eff. December 11, 2002; Amended Eff. November 1, 2013; July 1, 2010; July 3, 2008; August 1, 2004.*

#### **21 NCAC 16Q .0304 OFF SITE USE OF SEDATION PERMITS**

(a) Upon request, the holder of a moderate pediatric conscious sedation or moderate conscious sedation permit may travel to the office of a licensed dentist who does not hold such a permit and provide sedation services at the level for which the traveling dentist holds a valid permit, as well as minimal sedation or moderate conscious sedation limited to oral routes for the patients of that dentist who are undergoing dental procedures. The permit holder is solely responsible for providing that the facility in which the sedation is administered meets the requirements established by the Board, that the required drugs and equipment are present, and that the permit holder utilizes sufficient auxiliary personnel for each procedure performed based on the standard of care who shall document annual successful completion of basic life support training and be capable of assisting with procedures, problems, and emergency incidents that may occur as a result of the sedation or secondary to an unexpected medical complication.

(b) Holders of moderate conscious sedation permits limited to oral routes and nitrous oxide inhalation may not provide sedation at the office of a licensed dentist who does not hold an appropriate sedation permit.

*History Note: Authority G.S. 90-28; 90-30; 90-48; Recodified from 21 NCAC 16Q .0302(e)(f), Eff. November 1, 2013.*

#### **21 NCAC 16Q .0501 ANNUAL RENEWAL REQUIRED**

(a) General anesthesia and all sedation permits shall be renewed by the Board annually. Such renewal shall be accomplished in conjunction with the license renewal process, and applications for permits shall be made at the same time as applications for renewal of licenses. A one hundred (\$100.00) annual renewal fee shall be paid at the time of renewal.

(b) All sedation permits shall be subject to the same renewal deadlines as are dental practice licenses, in accordance with G.S. 90-31. If the permit renewal application is not received by the date specified in G.S. 90-31, continued administration of general anesthesia or any level of conscious sedation shall be unlawful and shall subject the dentist to the penalties prescribed by Section .0700 of this Subchapter.

(c) As a condition for renewal of the general anesthesia permit, the permit holder shall meet the requirements of 21 NCAC 16Q .0202 and document current, successful completion of advanced cardiac life support (ACLS) training, or its age-specific equivalent or other equivalent course, and auxiliary personnel shall document annual, successful completion of basic life support (BLS) training.

(d) As a condition for renewal of the moderate conscious sedation permit or moderate pediatric conscious sedation permit,



the permit holder shall meet the requirements of 21 NCAC 16Q .0302 and:

- (1) document annual, successful completion of BLS training and obtain three hours of continuing education each year in one or more of the following areas, which may be counted toward fulfillment of the continuing education required each calendar year for license renewal:
  - (A) sedation;
  - (B) medical emergencies;
  - (C) monitoring IV sedation and the use of monitoring equipment;
  - (D) pharmacology of drugs and agents used in IV sedation;
  - (E) physical evaluation, risk assessment, or behavioral management;
  - (F) audit ACLS/Pediatric Advanced Life Support (PALS) courses; and
  - (G) airway management; or
- (2) document current, successful completion of ACLS training or its age-specific equivalent, or other equivalent course and annual successful completion of BLS.

(e) moderate pediatric conscious sedation permit holders must have current PALS at all times.

(f) As a condition for renewal of the minimal conscious sedation permit and the moderate conscious sedation permit limited to oral routes and nitrous oxide inhalation, the permit holder shall meet the requirements of 16Q .0402 and shall document annual, successful completion of BLS training and obtain six hours of continuing education every two years in one or more of the following areas, which may be counted toward fulfillment of the continuing education required each calendar year for license renewal:

- (1) pediatric or adult sedation;
- (2) medical emergencies;
- (3) monitoring sedation and the use of monitoring equipment;
- (4) pharmacology of drugs and agents used in sedation;
- (5) physical evaluation, risk assessment, or behavioral management; or
- (6) audit ACLS/PALS courses; and
- (7) airway management.

(g) Any dentist who fails to renew a general anesthesia or sedation permit on or before March 31 of each year must complete a reinstatement application, pay the one hundred dollar (\$100.00) renewal fee and a one hundred dollar (\$100.00) penalty and comply with all conditions for renewal set out in this Rule for the permit sought. Dentists whose anesthesia or sedation permits have been lapsed for more than 12 calendar months must pass a facilities inspection as part of the reinstatement process.

*History Note:* Authority G.S. 90-28; 90-30.1; 90-48;  
 Eff. February 1, 1990;  
 Amended Eff. August 1, 2002;  
 Transferred and Recodified from 16Q .0401 to 16Q .0501;

*Temporary Amendment Eff. December 11, 2002;  
 Amended Eff. November 1, 2013; July 3, 2008; August 1, 2004.*

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## **CHAPTER 22 - HEARING AID DEALERS AND FITTERS BOARD**

### **21 NCAC 22I .0103 VISUAL INSPECTION AND HEARING TEST**

(a) All licensees and registered apprentices shall make a visual inspection of the external auditory canal and the tympanic membrane, using a device having its own light source in order to fulfill the requirements of 21 CFR 801.420 concerning the warning to hearing aid dispensers.

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

(c) A hearing test shall be conducted within 90 days prior to the dispensing of a hearing aid and a copy of the hearing test shall be maintained for a period of at least three years.

(d) The hearing test shall be conducted in an environment conducive to obtaining accurate results and shall include the following, unless physiologic testing is utilized:

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

(e) All licensees and registered apprentices shall evaluate dispensed products to determine effectiveness and shall maintain documentation of the verification for a period of at least three years. Measures of evaluation shall include at least one of the following:

- (1) sound field measurements;
- (2) real ear measurements; or
- (3) client evaluation sheets.

*History Note:* Authority G.S. 93D-3(c);  
 Eff. April 23, 1976;  
 Amended Eff. November 1, 2013; April 1, 2013; April 1, 1989;  
 May 1, 1988.

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**CHAPTER 32 – MEDICAL BOARD****21 NCAC 32B .1350 REINSTATEMENT OF PHYSICIAN LICENSE**

(a) Reinstatement is for a physician who has held a North Carolina License, but whose license either has been inactive for more than one year, or whose license became inactive as a result of disciplinary action (revocation or suspension) taken by the Board. It also applies to a physician who has surrendered a license prior to charges being filed by the Board.

(b) All applicants for reinstatement shall:

- (1) submit a completed application, attesting under oath or affirmation that information on the application is true and complete, and authorizing the release to the Board of all information pertaining to the application;
- (2) submit documentation of a legal name change, if applicable;
- (3) supply a certified copy of applicant's birth certificate if the applicant was born in the United States or a certified copy of a valid and unexpired US passport. If the applicant does not possess proof of U.S. citizenship, the applicant must provide information about applicant's immigration and work status which the Board will use to verify applicant's ability to work lawfully in the United States;
- (4) If a graduate of a medical school other than those approved by LCME, AOA, COCA or CACMS, shall furnish an original ECFMG certification status report of a currently valid certification of the ECFMG. The ECFMG certification status report requirement shall be waived if:
  - (A) the applicant has passed the ECFMG examination and successfully completed an approved Fifth Pathway program (original ECFMG score transcript from the ECFMG required); or
  - (B) the applicant has been licensed in another state on the basis of a written examination before the establishment of the ECFMG in 1958;
- (5) submit the AMA Physician Profile; and, if applicant is an osteopathic physician, also submit the AOA Physician Profile;
- (6) submit a NPDB/HIPDB report dated within 60 days of the application's submission;
- (7) submit a FSMB Board Action Data Bank report;
- (8) submit documentation of CME obtained in the last three years, upon request;
- (9) submit two completed fingerprint cards supplied by the Board;

- (10) submit a signed consent form allowing a search of local, state, and national files to disclose any criminal record;
- (11) provide two original references from persons with no family or material relationship to the applicant. These references must be:
  - (A) from physicians who have observed the applicant's work in a clinical environment within the past three years;
  - (B) on forms supplied by the Board;
  - (C) dated within six months of submission of the application; and
  - (D) bearing the original signature of the author;
- (12) pay to the Board a non-refundable fee pursuant to G.S. 90-13.1(a), plus the cost of a criminal background check; and
- (13) upon request, supply any additional information the Board deems necessary to evaluate the applicant's qualifications.

(c) In addition to the requirements of Paragraph (b) of this Rule, the applicant shall submit proof that the applicant has:

- (1) within the past 10 years taken and passed either:
  - (A) an exam listed in G.S. 90-10.1 (a state board licensing examination; NBME; NBOME; USMLE; FLEX; COMLEX; or MCCQE or their successors);
  - (B) SPEX (with a score of 75 or higher); or
  - (C) COMVEX (with a score of 75 or higher);
- (2) within the past ten years:
  - (A) obtained certification or recertification of CAQ by a specialty board recognized by the ABMS, CCFP, FRCP, FRCS or AOA; or
  - (B) met requirements for ABMS MOC (maintenance or certification) or AOA OCC (Osteopathic continuous Certification);
- (3) within the past 10 years completed GME approved by ACGME, CFPC, RCPSC or AOA; or
- (4) within the past three years completed CME as required by 21 NCAC 32R .0101(a), .0101(b), and .0102.

(d) All reports must be submitted directly to the Board from the primary source, when possible.

(e) An applicant shall be required to appear in person for an interview with the Board or its agent to evaluate the applicant's competence and character if the Board needs more information to complete the application.

(f) An application must be complete within one year of submission. If not, the applicant shall be charged another application fee plus the cost of another criminal background check.

*History Note:* Authority G.S. 90-8.1; 90-9.1; 90-10.1; 90-13.1;  
*Eff. August 1, 2010;*  
*Amended Eff. November 1, 2013; November 1, 2011.*

**21 NCAC 32B .1402 APPLICATION FOR  
 RESIDENT'S TRAINING LICENSE**

(a) In order to obtain a Resident's Training License, an applicant shall:

- (1) submit a completed application, attesting under oath or affirmation that the information on the application is true and complete, and authorizing the release to the Board of all information pertaining to the application;
- (2) submit documentation of a legal name change, if applicable;
- (3) submit a photograph, two inches by two inches, affixed to the oath or affirmation which has been attested to by a notary public;
- (4) submit proof on the Board's Medical Education Certification form that the applicant has completed at least 130 weeks of medical education.
- (5) If a graduate of a medical school other than those approved by LCME, AOA, COCA or CACMS, furnish an original ECFMG certification status report of a currently valid certification of the ECFMG. The ECFMG certification status report requirement shall be waived if:
  - (A) the applicant has passed the ECFMG examination and successfully completed an approved Fifth Pathway program (original ECFMG score transcript from the ECFMG required); or
  - (B) the applicant has been licensed in another state on the basis of a written examination before the establishment of the ECFMG in 1958;
- (6) submit an appointment letter from the program director of the GME program or his appointed agent verifying the applicant's appointment and commencement date;
- (7) submit two completed fingerprint record cards supplied by the Board;
- (8) submit a signed consent form allowing a search of local, state, and national files for any criminal record;
- (9) pay a non-refundable fee pursuant to G.S. 90-13.1(b), plus the cost of a criminal background check;
- (10) provide proof that the applicant has taken and passed:
  - (A) the COMLEX Level 1 within three attempts and each component of COMLEX Level 2 (cognitive evaluation and performance evaluation) within three attempts; or

(B) the USMLE Step 1 within three attempts and each component of the USMLE Step 2 (Clinical Knowledge and Clinical Skills) within three attempts; and

- (11) upon request, supply any additional information the Board deems necessary to evaluate the applicant's competence and character.

(b) An applicant shall be required to appear in person for an interview with the Board or its agent to evaluate the applicant's competence and character, if the Board needs more information to complete the application.

*History Note:* Authority G.S. 90-8.1; 90-12.01; 90-13.1;  
*Eff. August 1, 2010;*  
*Amended Eff. November 1, 2013; August 1, 2012; November 1, 2011.*

**21 NCAC 32B .1502 APPLICATION FOR MEDICAL  
 SCHOOL FACULTY LICENSE**

(a) The Medical School Faculty License is limited to physicians who have expertise which can be used to help educate North Carolina medical students, post-graduate residents and fellows but who do not meet the requirements for Physician licensure.

(b) In order to obtain a Medical School Faculty License, an applicant shall:

- (1) submit a completed application, attesting under oath or affirmation that the information on the application is true and complete, and authorizing the release to the Board of all information pertaining to the application;
- (2) submit the Board's form, signed by the Dean or his appointed representative, indicating that the applicant has received full-time appointment as either a lecturer, assistant professor, associate professor, or full professor at a medical school in the state of North Carolina;
- (3) submit documentation of a legal name change, if applicable;
- (4) submit a photograph, two inches by two inches, affixed to the oath or affirmation which has been attested to by a notary public;
- (5) submit proof on the Board's Medical Education Certification form that the applicant has completed at least 130 weeks of medical education. However, the Board shall waive the 130 week requirement if the applicant has been certified or recertified by an ABMS, DDFP, FRCP, FRCS or AOA approved specialty board within the past 10 years;
- (6) supply a certified copy of applicant's birth certificate or a certified copy of a valid and unexpired US passport if the applicant was born in the United States. If the applicant does not possess proof of US citizenship, the applicant must provide information about applicant's immigration and work status which

the Board will use to verify applicant's ability to work lawfully in the United States;

- (7) submit proof of satisfactory completion of at least one year of GME approved by ACGME, CFPC, RCPSC, or AOA; or evidence of other education, training or experience, determined by the Board to be equivalent;
- (8) submit reports from all medical or osteopathic boards from which the applicant has ever held a medical or osteopathic license, indicating the status of the applicant's license and whether or not any action has been taken against the license;
- (9) submit an AMA Physician Profile; and, if applicant is an osteopathic physician, submit an AOA Physician Profile;
- (10) submit a NPDB report, HIPDB report, dated within 60 days of applicant's oath;
- (11) submit a FSMB Board Action Data Bank report;
- (12) submit two completed fingerprint record cards supplied by the Board;
- (13) submit a signed consent form allowing a search of local, state, and national files to disclose any criminal record;
- (14) provide two original references from persons with no family or marital relationship to the applicant. These letters must be:
  - (A) from physicians who have observed the applicant's work in a clinical environment within the past three years;
  - (B) on forms supplied by the Board;
  - (C) dated within six months of the applicant's oath; and
  - (D) bearing the original signature of the writer.
- (15) pay to the Board a non-refundable fee pursuant to G.S. 90-13.1(a), plus the cost of a criminal background check; and
- (16) upon request, supply any additional information the Board deems necessary to evaluate the applicant's competence and character.

(c) All reports must be submitted directly to the Board from the primary source, when possible.

(d) An applicant may be required to appear in person for an interview with the Board or its agent to evaluate the applicant's competence and character.

(e) An application must be completed within one year of the date of the applicant's oath.

(f) This Rule applies to licenses granted after the effective date of this Rule.

*History Note:* Authority G.S. 90-12.3; 90-13.2;

*Eff. June 28, 2011;*

*Amended Eff. November 1, 2013.*

## **21 NCAC 32B .1602 SPECIAL PURPOSE LICENSE**

(a) The Special Purpose License is for physicians who wish to come to North Carolina for a limited time, scope and purpose, such as to demonstrate or learn a new technique, procedure or piece of equipment, or to educate physicians or medical students.

(b) In order to obtain a Special Purpose License, an applicant shall:

- (1) submit a completed application, attesting under oath that the information on the application is true and complete, and authorizing the release to the Board of all information pertaining to the application;
- (2) submit a recent photograph, at least two inches by two inches, affixed to the oath, and attested by a notary public;
- (3) submit documentation of a legal name change, if applicable;
- (4) supply a certified copy of applicant's birth certificate if the applicant was born in the United States or a certified copy of a valid and unexpired US passport. If the applicant does not possess proof of U.S. citizenship, the applicant must provide information about applicant's immigration and work status which the Board will use to verify applicant's ability to work lawfully in the United States;
- (5) comply with all requirements of G.S. 90-12.2A;
- (6) submit the Board's form, completed by the mentor, showing that the applicant has received an invitation from a medical school, medical practice, hospital, clinic or physician licensed in the state of North Carolina, outlining the need for the applicant to receive a special purpose license and describing the circumstances and timeline under which the applicant will practice medicine in North Carolina;
- (7) submit an AMA Physician Profile and, if applicant is an osteopathic physician, also submit AOA Physician Profile;
- (8) submit an FSMB Board Action Data Bank report;
- (9) submit two completed fingerprint record cards supplied by the Board;
- (10) submit a signed consent form allowing a search of local, state, and national files for any criminal record;
- (11) pay to the Board a non-refundable fee pursuant to G.S. 90-13.1(a), plus the cost of a criminal background check;
- (12) upon request, supply any additional information the Board deems necessary to evaluate the applicant's competence and character.

(c) All reports must be submitted directly to the Board from the primary source, when possible.

(d) An applicant may be required to appear in person for an interview with the Board or its agent to evaluate the applicant's competence and character.

(e) An application must be completed within one year of submission. If not, the applicant shall be charged another application fee, plus the cost of another criminal background check.

*History Note: Authority G.S. 90-8.1; 90-9.1; 90-12.2A; 90-13.1;*

*Eff. August 1, 2010;*

*Amended Eff. November 1, 2013.*

**21 NCAC 32B .1701 SCOPE OF PRACTICE UNDER LIMITED VOLUNTEER LICENSE AND RETIRED LIMITED VOLUNTEER LICENSE**

The holder of a Limited Volunteer License or a Retired Volunteer Limited License may practice medicine and surgery only at clinics that specialize in the treatment of indigent patients, and may not receive any compensation for services rendered, either direct or indirect, monetary, in-kind, or otherwise for the provision of medical services.

*History Note: Authority G.S. 90-8.1; 90-12.1A;*

*Eff. August 1, 2010;*

*Amended Eff. November 1, 2013.*

**21 NCAC 32B .1702 APPLICATION FOR LIMITED VOLUNTEER LICENSE**

(a) The Limited Volunteer License is available to physicians who hold an active license in a state or jurisdiction other than North Carolina, and who wish to volunteer at civilian indigent clinics.

(b) In order to obtain a Limited Volunteer License, an applicant shall:

- (1) submit a completed application, attesting under oath or affirmation that the information on the application is true and complete, and authorizing the release to the Board of all information pertaining to the application;
- (2) submit a photograph, two inches by two inches, affixed to the oath or affirmation attested to by a notary public;
- (3) submit documentation of a legal name change, if applicable;
- (4) submit proof of active licensure from another state or jurisdiction indicating the status of the license and whether or not any action has been taken against the license;
- (5) submit a certified copy of applicant's birth certificate if the applicant was born in the United States or a certified copy of a valid and unexpired US passport. If the applicant does not possess proof of U.S. citizenship, the applicant must provide information about applicant's immigration and work status which the Board will use to verify applicant's ability to work lawfully in the United States;
- (6) submit a NPDB report, dated within 60 days of submission of the application;

(7) submit a FSMB Board Action Data Bank report;

(8) submit two completed fingerprint record cards supplied by the Board;

(9) submit a signed consent form allowing a search of local, state, and national files for any criminal record;

(10) pay to the Board a non-refundable fee pursuant to G.S. 90-13.1(a) to cover the cost of a criminal background check;

(11) upon request, supply any additional information the Board deems necessary to evaluate the applicant's competence and character.

(c) All materials must be submitted directly to the Board from the primary source, when possible.

(d) An applicant may be required to appear in person for an interview with the Board or its agent to evaluate the applicant's competence and character.

(e) An application must be completed within one year of the date of submission.

*History Note: Authority G.S. 90-8.1; 90-12.1A;*

*Eff. August 1, 2010;*

*Amended Eff. November 1, 2013.*

**21 NCAC 32B .1704 APPLICATION FOR RETIRED LIMITED VOLUNTEER LICENSE**

(a) The Retired Limited Volunteer License is available to physicians who have been licensed in North Carolina or another state or jurisdiction, have an inactive license, and who wish to volunteer at indigent clinics.

(b) An applicant who has never held a North Carolina license but held an active license in another state or jurisdiction, which is currently inactive, shall:

- (1) submit a completed application, attesting under oath or affirmation that the information on the application is true and complete, and authorizing the release to the Board of all information pertaining to the application;
- (2) submit a photograph, two inches by two inches, affixed to the oath or affirmation which has been attested to by a notary public;
- (3) submit documentation of a legal name change, if applicable;
- (4) supply a certified copy of applicant's birth certificate if the applicant was born in the United States or a certified copy of a valid and unexpired US passport. If the applicant does not possess proof of U.S. citizenship, the applicant must provide information about applicant's immigration and work status which the Board will use to verify applicant's ability to work lawfully in the United States;
- (5) submit proof of licensure from another state or jurisdiction indicating the status of the license and whether or not any action has been taken against the license;

- (6) submit two completed fingerprint record cards supplied by the Board;
- (7) submit a signed consent form allowing a search of local, state and national files for any criminal record;
- (8) pay to the Board a non-refundable fee pursuant to G.S. 90-13.1(a) to cover the cost of a criminal background check;
- (9) submit a FSMB Board Action Data Bank report;
- (10) submit a NPDB report, dated within 60 days of submission of the application;
- (12) upon request, supply any additional information the Board deems necessary to evaluate the applicant's competence and character.
- (13) All materials must be submitted to the Board from the primary source, when possible.

(c) An applicant who holds an active North Carolina physician license may convert that to a Retired Limited Volunteer License by completing the Application for Retired Volunteer License.

(d) An applicant who held a North Carolina license which has been inactive less than six months may convert to a Retired Limited Volunteer License by completing the Application for Retired Volunteer License.

(e) An applicant who held a North Carolina license which has been inactive for more than six months but less than two years shall meet the requirements set forth in 21 NCAC 32B .1360.

(f) An applicant who held a North Carolina license which has been inactive for more than two years shall meet the requirements set forth at 21 NCAC 32B .1350.

(g) A physician who has been out of practice for more than two years will be required to complete a reentry program as set forth in 21 NCAC 32B .1370.

(h) An applicant may be required to appear in person for an interview with the Board or its agent to evaluate the applicant's competence and character.

(i) An application must be completed within one year of the date of submission.

*History Note: Authority G.S. 90-8.1; 90-12.1A;  
Eff. August 1, 2010;  
Amended Eff. November 1, 2013.*

## **21 NCAC 32B .2001 EXPEDITED APPLICATION FOR PHYSICIAN LICENSE**

(a) A specialty board-certified physician who has been licensed in at least one other state, the District of Columbia, U.S. territory or Canadian province for at least five years, has been in active clinical practice the past two years; and who has a clean license application, as defined in Paragraph (c) of this Rule may apply for a license on an expedited basis.

(b) An applicant for an expedited Physician License shall:

- (1) complete the Board's application form, attesting under oath or affirmation that the information on the application is true and complete, and authorizing the release to the Board of all information pertaining to the application;

- (2) submit documentation of a legal name change, if applicable;
- (3) on the Board's form, submit a photograph taken within the past year, two inches by two inches, attested to or affirmed by the applicant as a true likeness of the applicant before a notary public;
- (4) supply a certified copy of applicant's birth certificate if the applicant was born in the United States or a certified copy of a valid and unexpired US passport. If the applicant does not possess proof of U.S. citizenship, the applicant must provide information about applicant's immigration and work status which the Board will use to verify applicant's ability to work lawfully in the United States;
- (Note: there may be some applicants who are not present in the U.S. and who do not plan to practice physically in the U.S. Those applicants shall submit a statement to that effect);
- (5) provide proof that applicant has held an active license to practice medicine in at least one other state, the District of Columbia, U.S. Territory or Canadian province for at least five years immediately preceding this application;
- (6) provide proof of clinical practice providing patient care for an average of 20 hours or more per week, for at least the last two years;
- (7) provide proof of:
  - (A) current certification or current recertification by an ABMS, CCFP, FRCP, FRCS, or AOA approved specialty board obtained within the past 10 years; or
  - (B) obtained certification or recertification of CAQ by a specialty board recognized by the ABMS, CCFP, FRCP, FRCS or AOA; or
  - (C) met requirements for ABMS MOC (maintenance of certification) or AOA OCC (Osteopathic continuous Certification);
- (8) submit an AMA Physician Profile; and, if applicant is an osteopathic physician submit an AOA Physician Profile;
- (9) submit a NPDB/HIPDB report dated within 60 days of the applicant's oath;
- (10) submit a FSMB Board Action Data Bank report;
- (11) submit two completed fingerprint record cards supplied by the Board;
- (12) submit a signed consent form allowing a search of local, state and national files to disclose any criminal record;
- (13) pay to the Board a non-refundable fee pursuant to G.S. 90-13.1(a) of three hundred fifty dollars (\$350.00), plus the cost of a criminal background check; and

(14) upon request, supply any additional information the Board deems necessary to evaluate the applicant's qualifications.

(c) A clean license application means that the physician has none of the following:

- (1) professional liability insurance claim(s) or payment(s);
- (2) criminal record;
- (3) medical condition(s) which could affect the physician's ability to practice safely;
- (4) regulatory board complaint(s), investigation(s), or action(s) (including applicant's withdrawal of a license application);
- (5) adverse action taken by a health care institution;
- (6) investigation(s) or action(s) taken by a federal agency, the U.S. military, medical societies or associations;
- (7) suspension or expulsion from any school, including medical school.
- (8) graduation from any United States or Canadian medical school that is not LCME or CACMS approved; or
- (9) has passed no licensing examination other than Puerto Rico Written Examination/Revalida.

(d) All reports must be submitted directly to the Board from the primary source, when possible.

(e) The application process must be completed within one year of the date on which the application fee is paid. If not, the applicant shall be charged a new applicant fee.

*History Note: Authority G.S. 90-9.1; 90-5; 90-11; 90-13.1; Eff. August 1, 2010; Amended Eff. November 1, 2013.*

## **21 NCAC 32M .0104 PROCESS FOR APPROVAL TO PRACTICE**

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

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

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

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

(d) The nurse practitioner's approval to practice is terminated when the nurse practitioner discontinues working within the approved nurse practitioner collaborative practice agreement or experiences an interruption in her or his registered nurse licensure status, and the nurse practitioner shall so notify the Board of Nursing in writing. The Boards shall extend the nurse practitioner's approval to practice in cases of emergency such as sudden injury, illness or death of the primary supervising physician.

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

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

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

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

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

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

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

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

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

*History Note: Authority G.S. 90-18(c)(14); 90-18.2; 90-171.20(7); 90-171.23(b); 90-171.42; Eff. January 1, 1991; Paragraph (b)(1) was recodified from 21 NCAC 32M .0104 Eff. January 1, 1996; Amended Eff. December 1, 2006; May 1, 1999; January 1, 1996; Recodified from 21 NCAC 32M .0103 Eff. August 1, 2004; Amended Eff. November 1, 2013; January 1, 2013; December 1, 2009; November 1, 2008; January 1, 2007; August 1, 2004.*

**21 NCAC 32M .0108 INACTIVE STATUS**

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

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

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

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

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

*Eff. January 1, 1996;*

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

**21 NCAC 32S .0209 EXEMPTION FROM LICENSE**

Nothing in this Subchapter shall be construed to require licensure for:

- (1) a student enrolled in a Physician Assistant Educational Program accredited by the Commission on Accreditation of Allied Health Education Programs or its successor organizations;
- (2) a physician assistant employed by the federal government while performing duties incident to that employment; or
- (3) an agent or employee of a physician who performs delegated tasks in the office of a physician but who is not rendering services as a physician assistant and identifying him/herself as a physician assistant.

*History Note:* Authority G.S. 90-9.3; 90-18(c)(13); 90-18.1; *Eff. September 1, 2009;*

*Amended Eff. November 1, 2013.*

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**CHAPTER 34 – BOARD OF FUNERAL SERVICE**

**21 NCAC 34A .0201 FEES AND OTHER PAYMENTS**

(a) Fees for funeral service shall be as follows:

Establishment permit	
Application	\$250.00
Annual renewal	\$200.00
Late renewal fee	\$100.00
Establishment and embalming facility reinspection fee	\$100.00
Courtesy card	
Application	\$ 75.00
Annual renewal	\$ 50.00
Out-of-state licensee	
Application	\$200.00
Embalmer, funeral director, funeral service	
Application, North Carolina resident	\$150.00
Application, non-resident	\$200.00
Annual renewal	
Embalmer	\$ 75.00
Funeral Director	\$ 75.00
Total fee, embalmer and funeral director, when both are held by same person	\$100.00
Funeral service	\$100.00
Inactive status	\$ 30.00
Reinstatement fee	\$ 50.00
Resident trainee permit	
Application	\$ 50.00
Voluntary change in supervisor	\$ 50.00
Annual renewal	\$ 35.00
Late renewal	\$ 25.00
Duplicate License certificate	\$ 25.00
Chapel registration	
Application	\$150.00



Annual renewal	\$100.00
Late renewal	\$ 75.00
(b) Fees for crematories shall be as follows:	
License	
Application	\$400.00
Annual renewal	\$150.00
Late renewal fee	\$ 75.00
Crematory reinspection fee	\$100.00
Per-cremation fee	\$ 10.00
Late filing or payment fee for each cremation	\$ 10.00
Late filing fee for cremation report, per month	\$ 75.00
Crematory Manager Permit	
Application	\$150.00
Annual renewal	\$ 40.00
(c) Fees for preneed funeral contract regulation shall be as follows:	
Preneed funeral establishment license	
Application	\$150.00
Annual renewal	\$150.00
Late renewal fee	\$100.00
Reinspection fee	\$100.00
Preneed sales license	
Application	\$ 20.00
Annual renewal	\$ 20.00
Late renewal fee	\$ 25.00
Preneed contract filings	
Filing fee for each contract	\$ 20.00
Late filing or payment fee for each contract	\$ 25.00
Late filing fee for each certificate of performance	\$ 25.00
Late filing fee for annual report	\$150.00
(d) Fees for Transportation Permits	
Application	\$125.00
Annual renewal	\$ 75.00
Late fee	\$ 50.00

*History Note: Authority G.S. 90-210.23(a); 90-210.25(c); 90-210.28; 90-210.67(b),(c),(d),(d1); 90-210.68(a); Eff. September 1, 1979; Amended Eff. January 1, 1991; July 1, 1988; January 1, 1988; October 1, 1983; Recodified from 21 NCAC 34. 0123 Eff. February 7, 1991; Amended Eff. December 1, 1993; August 2, 1993; May 1, 1993, July 1, 1991; Temporary Amendment Eff. October 1, 1997; Amended Eff. March 1, 2004; August 1, 1998; Amended Eff. Pending Legislative Review.*

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## **CHAPTER 36 - BOARD OF NURSING**

### **21 NCAC 36 .0702 ISSUANCE OF A LICENSE BY A COMPACT PARTY STATE**

For the purpose of the Compact:

- (1) A nurse applying for a license in a home state shall produce evidence of the nurse's primary state of residence. Such evidence shall include a declaration signed by the licensee attesting to the licensee's primary state of residence. Further evidence that may be requested includes, but is not limited to:
  - (a) Driver's license with a home address;

- (b) Voter registration card displaying a home address;
  - (c) Federal income tax return declaring the primary state of residence;
  - (d) Military Form No. 2058 – state of legal residence certificate; or
  - (e) W2 from US Government or any bureau, division or agency thereof indicating the declared state of residence.
- (2) A nurse changing primary state of residence, from one party state to another party state, may continue to practice under the former home state license and multistate licensure privilege during the processing of the nurse's licensure application in the new home state for a period not to exceed 90 days.

- (3) The licensure application in the new home state of a nurse under pending investigation by the former home state shall be held in abeyance. The 90-day period in Item (2) of this Rule shall be stayed until resolution of the pending investigation.
  - (4) The former home state license shall no longer be valid upon the issuance of a new home state license.
  - (5) If a decision denying licensure is made by the new home state, the new home state shall notify the former home state within 10 business days and the former home state may take action in accordance with that state's laws and rules.
  - (6) No individual shall be issued a multistate licensure privilege unless the applicant provides evidence of successful completion of the licensing examination developed by the National Council of State Boards of Nursing, Inc.
  - (7) A nurse on a visa from another country applying for licensure in a party state may declare either the country of origin or the party state as the primary state of residence. If the foreign country is declared the primary state of residence, a single state license will be issued by the party state.
  - (8) A license issued by a party state is valid for practice in all other party states unless clearly designated as valid only in the state which issued the license.
- (c) The nurse practitioner shall not practice until notification of approval to practice is received from the Board of Nursing after both Boards have approved the application.
  - (d) The nurse practitioner's approval to practice is terminated when the nurse practitioner discontinues working within the approved nurse practitioner collaborative practice agreement, or experiences an interruption in her or his registered nurse licensure status, and the nurse practitioner shall so notify the Board of Nursing in writing. The Boards shall extend the nurse practitioner's approval to practice in cases of emergency such as injury, sudden illness or death of the primary supervising physician.
  - (e) Applications for approval to practice in North Carolina shall be submitted to the Board of Nursing and then approved by both Boards as follows:
    - (1) the Board of Nursing shall verify compliance with Rule .0803 and Paragraph (a) of this Rule; and
    - (2) the Medical Board shall verify that the designated primary supervising physician holds a valid license to practice medicine in North Carolina and compliance with Paragraph (a) of this Rule.
  - (f) Applications for approval of changes in practice arrangements for a nurse practitioner currently approved to practice in North Carolina shall be submitted by the applicant as follows:
    - (1) addition or change of primary supervising physician shall be submitted to the Board of Nursing and processed pursuant to protocols developed by both Boards; and
    - (2) request for change(s) in the scope of practice shall be submitted to the Joint Subcommittee.
  - (g) A registered nurse who was previously approved to practice as a nurse practitioner in this state who reapplies for approval to practice shall:
    - (1) meet the nurse practitioner approval requirements as stipulated in Rule .0808(c) of this Section; and
    - (2) complete the appropriate application.
  - (h) Volunteer Approval to Practice. The North Carolina Board of Nursing shall grant approval to practice in a volunteer capacity to a nurse practitioner who has met the qualifications to practice as a nurse practitioner in North Carolina.
  - (i) The nurse practitioner shall pay the appropriate fee as outlined in Rule .0813 of this Section.
  - (j) A Nurse Practitioner approved under this Section shall keep proof of current licensure, registration and approval available for inspection at each practice site upon request by agents of either Board.

*History Note: Authority G.S. 90-171.82(6); 90-171.83(a)(b); 90-171.85(b); 90-171.87(4); Eff. July 1, 2000; Amended Eff. November 1, 2013; July 1, 2012; July 1, 2005.*

**21 NCAC 36 .0804 PROCESS FOR APPROVAL TO PRACTICE**

- (a) Prior to the performance of any medical acts, a nurse practitioner shall:
  - (1) meet registration requirements as specified in 21 NCAC 36 .0803;
  - (2) submit an application for approval to practice;
  - (3) submit any additional information necessary to evaluate the application as requested; and
  - (4) have a collaborative practice agreement with a primary supervising physician.
- (b) A nurse practitioner seeking approval to practice who has not practiced as a nurse practitioner in more than two years shall complete a nurse practitioner refresher course approved by the Board of Nursing in accordance with Paragraphs (o) and (p) of 21 NCAC 36 .0220 and consisting of common conditions and their management directly related to the nurse practitioner's area of education and certification. A nurse practitioner refresher course participant shall be granted an approval to practice that is limited to clinical activities required by the refresher course.

*History Note: Authority G.S. 90-18(13), (14); 90-18.2; 90-171.20(7); 90-171.23(b); Recodified from 21 NCAC 36 .0227(c) Eff. August 1, 2004; Amended Eff. November 1, 2013; January 1, 2013; December 1, 2009; November 1, 2008; January 1, 2007; August 1, 2004.*

**21 NCAC 36 .0808        INACTIVE STATUS**

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

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

(c) A nurse practitioner with an inactive approval to practice status who reapplies for approval to practice shall meet the qualifications for approval to practice in Rules .0803(a)(1), .0804(a) and (b), .0807, and .0810 of this Section and receive notification from the Board of Nursing of approval prior to beginning practice after the application is approved by both Boards.

(d) A nurse practitioner who has not practiced as a nurse practitioner in more than two years shall complete a nurse

practitioner refresher course approved by the Board of Nursing in accordance with Paragraphs (o) and (p) of 21 NCAC 36 .0220 and consisting of common conditions and management of these conditions directly related to the nurse practitioner's area of education and certification. A nurse practitioner refresher course participant shall be granted an approval to practice that is limited to clinical activities required by the refresher course.

*History Note:*     *Authority G.S. 90-18(13); 90-18.2; 90-171.36; 90-171.83;*

*Recodified from 21 NCAC 36 .0227(g) Eff. August 1, 2004;*  
*Amended Eff. November 1, 2013; January 1, 2013; December 1, 2009; December 1, 2006; August 1, 2004.*

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## **RULES REVIEW COMMISSION**

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*This Section contains information for the meeting of the Rules Review Commission on October 17 and November 21, 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 2<sup>nd</sup> 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  
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
Abigail Hammond	(919)431-3076

### **RULES REVIEW COMMISSION MEETING DATES**

December 19, 2013	January 16, 2014
February 20, 2014	March 20, 2014

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### **AGENDA**

#### **RULES REVIEW COMMISSION**

**Thursday, December 19, 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 October 23, 2013 and November 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
- VI. Commission Business
  - Next meeting: January 16, 2014

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### **Commission Review**

#### **Log of Permanent Rule Filings**

**October 23, 2013 through November 20, 2013**

### **NC RURAL ELECTRIFICATION AUTHORITY**

The rules in Chapter 8 concern the rural electrification authority including general provisions (.0100); electric membership corporations (.0200); telephone membership corporations (.0300); and petitions: hearings: temporary rules: declaratory rulings: contested cases (.0400).

Purpose  
Amend/\*

04 NCAC 08 .0101

<u>Address of the NCREA</u>	04	NCAC	08	.0102
Amend/*				
<u>Meetings</u>	04	NCAC	08	.0107
Amend/*				
<u>Notification of Meetings</u>	04	NCAC	08	.0108
Repeal/*				
<u>Authority Staff</u>	04	NCAC	08	.0109
Amend/*				
<u>Correspondence and Communications</u>	04	NCAC	08	.0110
Repeal/*				
<u>Board Proceedings</u>	04	NCAC	08	.0111
Repeal/*				
<u>Member Visitation</u>	04	NCAC	08	.0112
Repeal/*				
<u>Definitions</u>	04	NCAC	08	.0201
Amend/*				
<u>Loan Applications and Categories</u>	04	NCAC	08	.0202
Amend/*				
<u>Loan Categories</u>	04	NCAC	08	.0203
Repeal/*				
<u>Documents Required for Loan</u>	04	NCAC	08	.0204
Amend/*				
<u>Presentation of Documents</u>	04	NCAC	08	.0205
Repeal/*				
<u>Operating Rules and Regulations</u>	04	NCAC	08	.0206
Amend/*				
<u>Operating Rules and Regulations</u>	04	NCAC	08	.0207
Repeal/*				
<u>Bylaws</u>	04	NCAC	08	.0208
Repeal/*				
<u>Rate Schedules</u>	04	NCAC	08	.0209
Repeal/*				
<u>Complaints</u>	04	NCAC	08	.0210
Amend/*				
<u>Data Sheets for Progress Reports</u>	04	NCAC	08	.0211
Repeal/*				
<u>Operating Budget</u>	04	NCAC	08	.0212
Repeal/*				
<u>Definitions</u>	04	NCAC	08	.0301
Amend/*				
<u>Loan Applications</u>	04	NCAC	08	.0302
Amend/*				
<u>Loan Categories</u>	04	NCAC	08	.0303
Repeal/*				
<u>Presentation of Documents</u>	04	NCAC	08	.0305
Repeal/*				
<u>Operating Rules and Regulations</u>	04	NCAC	08	.0306
Amend/*				
<u>Operating Rules and Regulations</u>	04	NCAC	08	.0307
Repeal/*				
<u>Bylaws</u>	04	NCAC	08	.0308
Repeal/*				

<u>Tariffs</u>	04	NCAC	08	.0309
Repeal/*				
<u>Complaints</u>	04	NCAC	08	.0310
Repeal/*				
<u>Data Sheets for Progress Reports</u>	04	NCAC	08	.0311
Repeal/*				
<u>Operating Budget</u>	04	NCAC	08	.0312
Repeal/*				
<u>Petitions for Rule-Making Hearings</u>	04	NCAC	08	.0401
Amend/*				
<u>Declaratory Rulings</u>	04	NCAC	08	.0404
Amend/*				

## **PUBLIC HEALTH, COMMISSION FOR**

The rules in Chapter 43 are personal health rules.

The rules in Subchapter 43H are rules of the Sickle Cell Syndrome, genetic counseling and children and youth section including rules about the sickle cell syndrome program (.0100); sickle cell contract funds (.0200); and genetic health care (.0300).

<u>Medical Services Covered</u>	10A	NCAC	43H	.0111
Amend/*				

The rules in Chapter 45 are general procedures for public health programs.

The rules in Subchapter 45A are rules about payment programs including general provisions (.0100); eligibility determinations (.0200); eligibility procedures (.0300); reimbursement (.0400); and quality control (.0500).

<u>General</u>	10A	NCAC	45A	.0101
Amend/*				
<u>Definitions</u>	10A	NCAC	45A	.0102
Amend/*				
<u>Determination of Financial Eligibility</u>	10A	NCAC	45A	.0202
Amend/*				
<u>Determination</u>	10A	NCAC	45A	.0204
Amend/*				
<u>Authorization</u>	10A	NCAC	45A	.0302
Amend/*				
<u>Payment</u>	10A	NCAC	45A	.0303
Amend/*				
<u>General</u>	10A	NCAC	45A	.0401
Amend/*				
<u>Reimbursement for Inpatient Hospitalization</u>	10A	NCAC	45A	.0402
Amend/*				
<u>Reimbursement for Professional Outpatient Other Services</u>	10A	NCAC	45A	.0403
Amend/*				
<u>Reimbursement for Services not Covered by Medicaid</u>	10A	NCAC	45A	.0404
Amend/*				
<u>Billing the Patient Prohibited</u>	10A	NCAC	45A	.0405
Amend/*				

## **HOME INSPECTOR LICENSURE BOARD**

The rules in Chapter 8 are the engineering and building codes including the approval of school maintenance electricians (.0400); qualification board-limited certificate (.0500); qualification board-probationary certificate (.0600); qualification board-standard certificate (.0700); disciplinary actions and other contested matters (.0800); manufactured housing board (.0900); NC Home Inspector Licensure Board (.1000); home inspector standards of practice and code of ethics (.1100); disciplinary actions (.1200); home inspector continuing education (.1300); Manufactured Housing Board continuing education (.1400); and alternate designs and construction appeals (.1500).

<u>Complaints</u> Amend/*	11	NCAC	08	.1202
<u>Board Staff</u> Repeal/*	11	NCAC	08	.1203
<u>Investigation</u> Amend/*	11	NCAC	08	.1204
<u>Disciplinary Hearing</u> Amend/*	11	NCAC	08	.1205

## **ENVIRONMENTAL MANAGEMENT COMMISSION**

The rules in Subchapter 2D are air pollution control requirements including definitions and references (.0100); air pollution sources (.0200); air pollution emergencies (.0300); ambient air quality standards (.0400); emission control standards (.0500); air pollutants monitoring and reporting (.0600); complex sources (.0800); volatile organic compounds (.0900); motor vehicle emission control standards (.1000); control of toxic air pollutants (.1100); control of emissions from incinerators (.1200); oxygenated gasoline standard (.1300); nitrogen oxide standards (.1400); general conformity for federal actions (.1600); emissions at existing municipal solid waste landfills (.1700); control of odors (.1800); open burning (.1900); transportation conformity (.2000); risk management program (.2100); special orders (.2200); emission reduction credits (.2300); clean air interstate rules (.2400); mercury rules for electric generators (.2500); and source testing (.2600).

<u>Applicability</u> Amend/*	15A	NCAC	02D	.1002
<u>Definitions</u> Amend/*	15A	NCAC	02D	.1003
<u>On-Board Diagnostic Standards</u> Amend/*	15A	NCAC	02D	.1005
<u>Sale and Service of Analyzers</u> Amend/*	15A	NCAC	02D	.1006
<u>Model Year 2008 &amp; Subsequent Model Year</u> Repeal/*	15A	NCAC	02D	.1009
<u>Toxic Air Pollutant Guidelines</u> Amend/*	15A	NCAC	02D	.1104

The rules in Subchapter 2Q are from the EMC and relate to applying for and obtaining air quality permits and include general information (.0100); fees (.0200); application requirements (.0300); acid rain program requirements (.0400); establishment of an air quality permitting program (.0500); transportation facility requirements (.0600); toxic air pollutant procedures (.0700); exempt categories (.0800); and permit exemptions (.0900).

<u>Emission Rates Requiring a Permit</u> Amend/*	15A	NCAC	02Q	.0711
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## **ENVIRONMENT AND NATURAL RESOURCES, DEPARTMENT OF**

The rules in Subchapter 12B concern parks and recreation areas including general provisions (.0100); preservation of the park (.0200); bathing (.0300); refuse and rubbish (.0400); traffic and parking (.0500); boating and camping (.0600);

sports and games (.0700); hunting and fishing (.0800); firearms, explosives, fires, etc. (.0900); disorderly conduct, public nuisance, etc. (.1000); commercial enterprises, advertising, meetings, exhibitions, etc. (.1100); and miscellaneous (.1200).

Firearms; Weapons; Explosives  
Amend/\*

15A NCAC 12B .0901

## **PUBLIC HEALTH, COMMISSION FOR**

The rules in Chapter 13 concern Solid Waste Management. The rules in Subchapter 13B concern Solid Waste Management including general provisions (.0100); permits for solid waste management facilities (.0200); treatment and processing facilities (.0300); transfer facilities (.0400); disposal sites (.0500); monitoring requirements (.0600); administrative penalty procedures (.0700); septage management (.0800); yard waste facilities (.0900); solid waste management loan program (.1000); scrap tire management (.1100); medical waste management (.1200); disposition of remains of terminated pregnancies (.1300); municipal solid waste compost facilities (.1400); standards for special tax treatment of recycling and resource recovery equipment and facilities (.1500); requirements for municipal solid waste landfill facilities (.1600); and requirements for beneficial use of coal combustion by-products (.1700).

General Provisions  
Amend/\*

15A NCAC 13B .0832

## **SECRETARY OF STATE, DEPARTMENT OF**

The rules in Chapter 12 concern lobbying including general provisions (.0100); forms completion (.0200); submission, review, amendment, and correction of documents (.0300); fees (.0400); economic information confidentiality protection (.0500); registration requirements and ending of lobbyist-principal relationship (.0600); disclosure of lobbyist and principal identity (.0700); lobbyist reporting (.0800); reporting by principal (.0900); solicitors and the solicitation of others (.1000); liaison personnel (.1100); confidentiality and records (.1200); preservation of records by lobbyists, principals, solicitors and liaisons (.1300); and department provision of lists to designated individuals (.1400).

Limitations on Fee Reduction or Waiver  
Repeal/\*

18 NCAC 12 .0404

Nonprofits to Which No Fee Reduction or Waiver Shall Be G...  
Repeal/\*

18 NCAC 12 .0405

Nonprofit Fee Reduction Procedure  
Repeal/\*

18 NCAC 12 .0406

Submission of Reduced Fee  
Repeal/\*

18 NCAC 12 .0407

Submission of Documentation Supporting Fee Reduction Request  
Repeal/\*

18 NCAC 12 .0408

Fee Reduction Applies to Both Lobbyist and Principal  
Repeal/\*

18 NCAC 12 .0409

Payment of Remainder of Fee if Reduction  
Repeal/\*

18 NCAC 12 .0410

Consequences of Failure to Pay Reminder of Fee  
Repeal/\*

18 NCAC 12 .0411

Nonprofit Fee Waiver Procedure  
Repeal/\*

18 NCAC 12 .0412

Submission of Fee with Request for Waiver  
Repeal/\*

18 NCAC 12 .0413

Refund of Fee if Request for Waiver Granted  
Repeal/\*

18 NCAC 12 .0414

Submission of Documentation Supporting Fee Waiver Request  
Repeal/\*

18 NCAC 12 .0415



<u>Fee Waiver Applies to Both Lobbyist and Principal</u> Repeal/*	18	NCAC	12	.0416
<u>General Proof of Nonprofit Status</u> Repeal/*	18	NCAC	12	.0417
<u>Officers or Persons Authorized to Demonstrate Nonprofit S...</u> Repeal/*	18	NCAC	12	.0418
<u>Submission of Federal Tax-Exempt Determination Letter</u> Repeal/*	18	NCAC	12	.0421
<u>Documents to be Submitted by Nonprofit Principals Without...</u> Repeal/*	18	NCAC	12	.0422
<u>Additional Information for Fee Reduction for Nonprofit wi...</u> Repeal/*	18	NCAC	12	.0423
<u>Additional Information for Fee Reduction for Nonprofit wi...</u> Repeal/*	18	NCAC	12	.0424
<u>Contents for Fee Reduction Request for Nonprofit Without ...</u> Repeal/*	18	NCAC	12	.0425
<u>Additional Information for Fee Waiver</u> Repeal/*	18	NCAC	12	.0426

### **CERTIFIED PUBLIC ACCOUNTANT EXAMINERS, BOARD OF**

The rules in Subchapter 8A are departmental rules including organizational rules (.0100), board procedures (.0200), and definitions (.0300).

<u>Definitions</u> Amend/*	21	NCAC	08A	.0301
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The rules in Subchapter 8F are the requirements for CPA examination and certificate applicants including general provisions (.0100), fees and refunds (.0200), educational requirements (.0300), experience (.0400), and applications (.0500).

<u>Filing of Examination Applications and Fees</u> Amend/*	21	NCAC	08F	.0103
<u>Application for CPA Certificate</u> Amend/*	21	NCAC	08F	.0502

The rules in Subchapter 8G are the continuing professional education requirements including general provisions (.0100); responsibilities to clients and colleagues (.0200); and other responsibilities and requirements (.0300 and .0400).

<u>CPE Requirements for CPAS</u> Amend/*	21	NCAC	08G	.0401
<u>Qualification of CPE Sponsors</u> Amend/*	21	NCAC	08G	.0403
<u>Computation of CPE Credits</u> Amend/*	21	NCAC	08G	.0409
<u>Professional Ethics and Conduct CPE</u> Amend/*	21	NCAC	08G	.0410

The rules in Subchapter 8I concern revocation of certificates and other disciplinary action.

<u>Modification of Discipline</u> Amend/*	21	NCAC	08I	.0104
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The rules in Subchapter 8J concern renewals and registrations.

<u>Retired and Inactive Status: Change of Status</u>	21	NCAC	08J	.0105
Amend/*				
<u>Forfeiture or Inactivation of Certificate and Reissuance ...</u>	21	NCAC	08J	.0106
Amend/*				
<u>Mailing Addresses of Certificate Holders and CPA Firms</u>	21	NCAC	08J	.0107
Amend/*				

The rules in Subchapter 8M relate to the State Quality Review program including general requirements (.0100), duties of the reviewed firm (.0200), review team qualifications and duties (.0300), and advisory committee (.0400).

<u>Peer Review Requirements</u>	21	NCAC	08M	.0105
Amend/*				

The rules in Subchapter 8N are professional ethics and conduct rules including scope and applicability (.0100); rules applicable to all CPAs (.0200); rules applicable to CPAs who use the CPA title in offering or rendering products or services to clients (.0300); and rules applicable to CPAs performing attest services (.0400).

<u>Deceptive Conduct Prohibited</u>	21	NCAC	08N	.0202
Amend/*				
<u>Discreditable Conduct Prohibited</u>	21	NCAC	08N	.0203
Amend/*				
<u>Reporting Convictions Judgments and Disciplinary Actions</u>	21	NCAC	08N	.0208
Amend/*				

## **COSMETIC ART EXAMINERS, BOARD OF**

The rules in Subchapter 14G give the requirements for the establishment of cosmetic art schools.

<u>Requirements for Operating Cosmetic Art Schools</u>	21	NCAC	14G	.0101
Repeal/*				
<u>Equipment and Teachers</u>	21	NCAC	14G	.0107
Repeal/*				
<u>Visitation</u>	21	NCAC	14G	.0108
Repeal/*				
<u>Student Credit</u>	21	NCAC	14G	.0109
Repeal/*				
<u>Transferability of Letters of Approval</u>	21	NCAC	14G	.0110
Repeal/*				
<u>Changes of Location Ownership or Management</u>	21	NCAC	14G	.0111
Repeal/*				
<u>Condition of Equipment</u>	21	NCAC	14G	.0112
Repeal/*				
<u>Teacher/Student Ratio</u>	21	NCAC	14G	.0113
Repeal/*				
<u>Changes in Teaching Staff</u>	21	NCAC	14G	.0117
Repeal/*				
<u>School Curriculum Approval (A) No Cosmetic Art Shop or an...</u>	21	NCAC	14G	.0118
Repeal/*				

The rules in Subchapter 14I govern the operation of cosmetic art schools including record keeping (.0100); the reception area (.0200); classrooms (.0300); and licensure of convicted felons (.0400).

<u>Permanent Files</u>	21	NCAC	14I	.0101
Repeal/*				
<u>Daily Record</u>	21	NCAC	14I	.0102
Repeal/*				
<u>Inspection Reports and Reports of Students Hours</u>	21	NCAC	14I	.0103
Repeal/*				
<u>Withdrawals</u>	21	NCAC	14I	.0104
Repeal/*				
<u>Transfer of Credit</u>	21	NCAC	14I	.0105
Repeal/*				
<u>Student Daily Records</u>	21	NCAC	14I	.0106
Repeal/*				
<u>Report of Enrollment</u>	21	NCAC	14I	.0107
Repeal/*				
<u>Seal</u>	21	NCAC	14I	.0108
Repeal/*				
<u>Summary of Cosmetic Art Education</u>	21	NCAC	14I	.0109
Repeal/*				
<u>Uniform</u>	21	NCAC	14I	.0110
Repeal/*				
<u>Reception Area</u>	21	NCAC	14I	.0201
Repeal/*				
<u>Reception Area Sign</u>	21	NCAC	14I	.0202
Repeal/*				
<u>Bulletin Board</u>	21	NCAC	14I	.0203
Repeal/*				
<u>Sanitation Rules</u>	21	NCAC	14I	.0204
Repeal/*				
<u>Dressing Room</u>	21	NCAC	14I	.0205
Repeal/*				
<u>Recitation Room</u>	21	NCAC	14I	.0301
Repeal/*				
<u>Library</u>	21	NCAC	14I	.0302
Repeal/*				
<u>Classroom Bulletin Board</u>	21	NCAC	14I	.0303
Repeal/*				
<u>Classroom Work</u>	21	NCAC	14I	.0304
Repeal/*				

The rules in Subchapter 14J cover the cosmetology curriculum including the beginners' department (.0100); the advanced department (.0200); combined studies (.0300); the course of study (.0400); and credit for study outside of North Carolina (.0500).

<u>Department System</u>	21	NCAC	14J	.0101
Repeal/*				
<u>Uniform</u>	21	NCAC	14J	.0102
Repeal/*				
<u>Time Requirements According to Hours</u>	21	NCAC	14J	.0103

Repeal/*				
<u>Approved Rules</u>	21	NCAC	14J	.0107
Repeal/*				
<u>Eligibility for Advanced Department</u>	21	NCAC	14J	.0201
Repeal/*				
<u>Storing and Labeling of Cosmetics</u>	21	NCAC	14J	.0202
Repeal/*				
<u>Storing and Labeling of Cosmetics</u>	21	NCAC	14J	.0203
Repeal/*				
<u>Equipment in Advanced Department</u>	21	NCAC	14J	.0206
Repeal/*				

The rules in Subchapter 14K deal with the manicurist curriculum.

<u>Uniforms</u>	21	NCAC	14K	.0101
Repeal/*				
<u>Course of Study</u>	21	NCAC	14K	.0102
Repeal/*				
<u>Equipment and Instruments</u>	21	NCAC	14K	.0103
Repeal/*				
<u>Services Performed</u>	21	NCAC	14K	.0104
Repeal/*				
<u>Identification Pins</u>	21	NCAC	14K	.0105
Repeal/*				

The rules in Subchapter 14L deal with teacher qualifications and examinations (.0100) and teacher program and curriculum (.0200).

<u>Supervision of Cosmetic Art Teacher Trainee</u>	21	NCAC	14L	.0208
Repeal/*				
<u>Time Requirements for Teacher Trainee Program</u>	21	NCAC	14L	.0209
Repeal/*				
<u>Effect on Student-Teacher Ration</u>	21	NCAC	14L	.0210
Repeal/*				
<u>Work on Public Prohibited</u>	21	NCAC	14L	.0211
Repeal/*				
<u>Teacher's Manual and Supervision</u>	21	NCAC	14L	.0215
Repeal/*				
<u>Teacher Training Curriculum</u>	21	NCAC	14L	.0216
Repeal/*				

The rules in Subchapter 14O are esthetician curriculum rules.

<u>Uniforms</u>	21	NCAC	14O	.0101
Repeal/*				
<u>Course of Study</u>	21	NCAC	14O	.0102
Repeal/*				
<u>Equipment and Instruments</u>	21	NCAC	14O	.0103
Repeal/*				
<u>Services Performed</u>	21	NCAC	14O	.0104
Repeal/*				
<u>Identification Pins</u>	21	NCAC	14O	.0105

Repeal/\*

The rules in Subchapter 14P are civil penalty rules.

<u>Sanitary Ratings and Posting of Ratings - Applicable to E...</u>	21	NCAC	14P	.0112
Repeal/*				

The rules in Subchapter 14S concern natural hair care curriculum.

<u>Uniform</u>	21	NCAC	14S	.0101
Repeal/*				
<u>Time Requirements According to Hours</u>	21	NCAC	14S	.0102
Repeal/*				
<u>Approved Field Trips</u>	21	NCAC	14S	.0103
Repeal/*				
<u>Equipment for Beginner Department</u>	21	NCAC	14S	.0104
Repeal/*				
<u>Storing and Labeling of Cosmetics</u>	21	NCAC	14S	.0105
Repeal/*				
<u>Equipment</u>	21	NCAC	14S	.0106
Repeal/*				
<u>Performances</u>	21	NCAC	14S	.0107
Repeal/*				
<u>Students' Personal Supplies</u>	21	NCAC	14S	.0108
Repeal/*				
<u>Tests</u>	21	NCAC	14S	.0109
Repeal/*				
<u>Approval of Credit for Natural Hair Care Instruction/Anot...</u>	21	NCAC	14S	.0110
Repeal/*				
<u>Services Performed</u>	21	NCAC	14S	.0111
Repeal/*				
<u>Licensing of Natural Hair Care Specialists</u>	21	NCAC	14S	.0112
Repeal/*				

The rules in Subchapter 14T concern cosmetic art schools including the scope of the rules and school applications (.0100); physical requirements for cosmetic art schools (.0200); school equipment and supplies (.0300); student equipment (.0400); record keeping (.0500); curricula for all cosmetic art disciplines (.0600); school licensure, operations, closing and relocating schools (.0700); school inspections (.0800); and disciplinary actions (.0900).

<u>Permanent Records, Forms and Documentation</u>	21	NCAC	14T	.0502
Amend/*				

## **DENTAL EXAMINERS, BOARD OF**

The rules in Subchapter 16H concern dental assistants including classification and training (.0100); and permitted functions of dental assistant (.0200).

<u>Permitted Functions of Dental Assistant II</u>	21	NCAC	16H	.0203
Amend/*				

## **LANDSCAPE CONTRACTORS REGISTRATION BOARD**

Chapter 28 contains rules for the Registration Board of Landscape Contractors including statutory and administrative provision (.0100); practice of landscape contractor (.0200); examination and licensing procedures (.0300); rules: petitions: hearings (.0400); declaratory rulings (.0500); administrative hearings: procedures (.0600).

<u>Authority: Name and Location of Board</u>	21	NCAC	28	.0101
<u>Amend/*</u>				

### **OCCUPATIONAL THERAPY, BOARD OF**

The rules in Chapter 38 cover organization and general provisions (.0100); application for license (.0200); licensing (.0300); business conduct (.0400); provisions concerning rulemaking (.0500); administrative hearing procedures (.0600); professional corporations (.0700); continuing competence activity (.0800); supervision, supervisory roles, and clinical responsibilities of occupational therapists and occupational therapy assistants (.0900); supervision of limited permittees (.1000); and supervision of unlicensed personnel (.1100).

<u>License Number: Display of License</u>	21	NCAC	38	.0301
<u>Amend/*</u>				

<u>Continuing Competence Requirements for Licensure</u>	21	NCAC	38	.0802
<u>Amend/*</u>				

### **SOCIAL WORK CERTIFICATION AND LICENSURE BOARD**

The rules in Chapter 63 deal with Social Work Certification including general rules (.0100); certification (.0200); examinations (.0300); renewal of certification (.0400); ethical guidelines (.0500); disciplinary procedures (.0600); adoption of rules (.0700); and professional corporations and limited liability companies.

<u>Renewal Fees</u>	21	NCAC	63	.0403
<u>Amend/*</u>				

<u>Required Reporting By Licensee of Changes to Board</u>	21	NCAC	63	.0405
<u>Amend/*</u>				

<u>Petitions for Adoption of Rules</u>	21	NCAC	63	.0701
<u>Amend/*</u>				

<u>Declaratory Rulings</u>	21	NCAC	63	.0704
<u>Amend/*</u>				

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

**OFFICE OF ADMINISTRATIVE HEARINGS**

*Chief Administrative Law Judge*  
**JULIAN MANN, III**

*Senior Administrative Law Judge*  
**FRED G. MORRISON JR.**

**ADMINISTRATIVE LAW JUDGES**

Beecher R. Gray  
Selina Brooks  
Melissa Owens Lassiter  
Don Overby

Randall May  
A. B. Elkins II  
Craig Croom

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<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>DATE</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
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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
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ABC Commission v. Soledad Lopez de Avilez T/A Tienda Avilez	13 ABC 00002	06/06/13	
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Liberty Healthcare Properties of West Wake County, LLC, Liberty Commons Nursing and Rehabilitation Center of West Wake County, LLC, Liberty Healthcare Properties of Wake County LLC, and Liberty Commons Nursing and Rehabilitation Center of Wake County, LLC v. DHHS, Division of Health Service Regulation, Certificate of Need Section, and Hillcrest Convalescent Center, Inc.; E.N.W., LLC and Bellarose Nursing and Rehab Center, Inc.; Britthaven, Inc. and Spruce LTC Group, LLC; and AH North Carolina Owner LLC d/b/a The Heritage of Raleigh	12 DHR 08669	06/20/13	28:09 NCR 928

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David Keith Trayford v. Division of Medical Assistance via Administrative Hearing Office	12 DHR 11180	07/01/13	
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Benjamin Headen and Pamela Headen v. DHHS	13 DHR 10488	08/02/13
Lelia Knox v. DHHS, Division of Child Development	13 DHR 10556	08/28/13
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Scott Hollifield v. McDowell County DSS	13 DHR 10793	07/25/13
Tammi D. Nichols v. DHHS, Division of Health Service Regulation	13 DHR 10795	10/25/13
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Monalisa Victoria Freeman v. DHHS, Division of Health Service Regulation	13 DHR 12328	07/31/13
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Melissa Stephen Ingle v. DHHS, Division of Child Development	13 DHR 12700	08/30/13
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Martha Watson v. DHHS, Division of Social Services	13 DHR 13302	11/12/13
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A Angel's Touch In Home Care v. DHHS	13 DHR 14303	09/24/13
Candace Richardson v. Health Care Personnel Registry	13 DHR 15028	09/30/13
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**DEPARTMENT OF CORRECTIONS**

Myron Roderick Nunn v. Jennifer O'Neal, Accountant DOC	12 DOC 01022	07/12/12
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Tommy Keith Lymon v. Criminal Justice Education and Training Standards Commission	09 DOJ 03751	07/30/12	27:06 NCR 649
Greary Michael Chlebus v. Criminal Justice Education and Training Standards Commission	11 DOJ 4829	04/27/12	
Steven Davis Boone v. Sheriffs' Education and Training Standards Commission	11 DOJ 06781	06/18/13	28:10 NCR 1062
Dillan Nathaniel Hymes v. Criminal Justice Education and Training Standards Commission	11 DOJ 10315	07/23/12	27:06 NCR 661
Barbara Renay Whaley v. Criminal Justice Education and Training Standards Commission	11 DOJ 10316	04/25/12	
Robert Kendrick Mewborn v. Criminal Justice Education and Training Standards Commission	11 DOJ 10318	04/23/12	
Athena Lynn Prevatte v. Sheriffs' Education and Training Standards Commission	11 DOJ 13148	05/25/12	27:04 NCR 529
Shatel Nate Coates v. Sheriffs' Education and Training Standards	11 DOJ 13151	07/05/12	
James Lee Ray v. Sheriffs' Education Training Standards	11 DOJ 13152	08/27/12	
Ko Yang v. Sheriff's Education and Training Standards Commission	11 DOJ 13153	06/14/12	
Dustin Edward Wright v. Sheriffs' Education and Training Standards Commission	11 DOJ 13154	08/08/12	
Walter Scott Thomas v. Sheriff's Education and Training Standards Commission	11 DOJ 13155	05/10/12	
Darryl Howard v. Criminal Justice Education and Training Standards Commission	11 DOJ 13157	04/12/12	
John Jay O'Neal v. Criminal Justice Education and Training Standards Commission	11 DOJ 13158	07/06/12	27:07 NCR 749
Charlesene Cotton v. Criminal Justice Education and Training Standards Commission	11 DOJ 13159	06/05/12	27:04 NCR 538
William James Becker v. Criminal Justice Education and Training Standards Commission	11 DOJ 13160	08/16/12	

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Steve Michael Galloway, Jr, Private Protective Services Board	11 DOJ 14434	04/23/12	
Justin Thomas Medlin v. Alarm Systems Licensing Board	11 DOJ 14493	04/23/12	
Argentina Rojas v. Department of Justice, Campus Police Officer Commission	12 DOJ 00394	11/02/12	
Bruce Clyde Shoe v. Private Protective Services Board	12 DOJ 00556	09/26/12	
Angela Louise Giles v. Private Protective Services Board	12 DOJ 00557	04/18/12	
Marshall Todd Martin v. Sheriffs' Education	12 DOJ 00650	07/13/12	
Frances Gentry Denton v. Sheriffs' Education and Training Standards Commission	12 DOJ 00651	08/30/12	
James Philip Davenport v. Criminal Justice Education and Training Standards Commission	12 DOJ 00653	11/21/12	
Alvin Louis Daniels v. Criminal Justice Education and Training Standards Commission	12 DOJ 00654	08/17/12	
Michael Wayne McFalling v. Private Protective Services Board	12 DOJ 00814	05/21/12	
Robert John Farmer v. Alarm Systems Licensing Board	12 DOJ 00887	05/04/12	
Ricky Lee Ruhlman v. Private Protective Services Board	12 DOJ 01211	04/18/12	
Leroy Wilson Jr., Private Protective Services Board	12 DOJ 01293	04/18/12	
Clyde Eric Lovette v. Alarm Systems Licensing Board	12 DOJ 01498	05/02/12	
Vincent Tyron Griffin v. Alarm Systems Licensing Board	12 DOJ 01663	09/27/12	
Andre Carl Banks Jr., v. Alarm Systems Licensing Board	12 DOJ 01695	06/22/12	
Ryan Patrick Brooks v. Private Protective Services Board	12 DOJ 01696	06/05/12	
Dustin Lee Chavis v. Private Protective Services Board	12 DOJ 01697	06/01/12	
Jeffrey Adam Hopson v. Sheriffs' Education and Training Standards Commission	12 DOJ 01761	06/07/12	
John Henry Ceaser v. Sheriffs' Education and Training Standards Commission	12 DOJ 01762	06/18/12	
Jerome Douglas Mayfield v. Private Protective Services Board	12 DOJ 02381	06/15/12	
Elijah K. Vogel v. Private Protective Services Board	12 DOJ 02619	06/05/12	
Timmy Dean Adams v. Department of Justice, Company Police Program	12 DOJ 02778	12/21/12	
Carlito Soler v. Alarm Systems Licensing Board	12 DOJ 03457	09/26/12	
Danielle Marie Taylor v. Criminal Justice Education and Training Standards Commission	12 DOJ 03838	01/24/13	28:06 NCR 554
Rodney Lyndolph Bland v. Criminal Justice Education and Training Standards Commission	12 DOJ 03839	01/11/13	
Sherman Montrell Devon McQueen v. Criminal Justice Education and Training and Standards Commission	12 DOJ 03842	12/21/12	
Matthew Brian Hayes v. Criminal Justice Education and Training Standards Commission	12 DOJ 03843	11/27/12	27:22 NCR 2139
Antonio Cornelius Hardy v. Criminal Justice Education and Training Standards Commission	12 DOJ 03844	11/19/12	27:21 NCR 1994
Jonathan Dryden Dunn v. Sheriffs' Education and Training Standards	12 DOJ 03845	03/28/13	
Barry Louis Christopher, Jr v. Private Protective Services Board	12 DOJ 05041	08/27/12	27:15 NCR 1570
Bettina Hedwig Vredenburg v. Sheriffs' Education and Training Standards Commission	12 DOJ 05140	11/09/12	27:21 NCR 2002
Wallace Connell Ranson v. Sheriffs' Education and Training Standards Commission	12 DOJ 05141	05/07/13	28:07 NCR 676
Raymond Louis Soulet v. Sheriffs' Education and Training Standards Commission	12 DOJ 05142	08/27/12	
Graham Avon Hager v. Sheriffs' Education and Training Standards Commission	12 DOJ 05143	12/19/12	28:07 NCR 686
Dustin Wilson Grant v. Sheriffs' Education and Training Standards Commission	12 DOJ 05145	10/25/12	
Glenn Alvin Brand v. Sheriffs' Education and Training Standards Commission	12 DOJ 05146	10/08/12	
Shannon Wallace v. DHHS	12 DOJ 05355	02/26/13	
Lawrence W. Sitgraves v. Private Protective Services	12 DOJ 06059	09/13/12	
Collin Michael Berry v. Private Protective Services Board	12 DOJ 06590	10/22/12	
Tiffany Ann Misel v. Private Protective Services Board	12 DOJ 06817	10/17/12	
John Machouis v. Alarm Systems Licensing Board	12 DOJ 07161	12/19/12	
Christopher A. Field v. Private Protective Services Board	12 DOJ 07548	12/19/12	
Porschea Renee Williams v. Private Protective Services Board	12 DOJ 07549	01/09/13	
Ralph R. Hines v. Criminal Justice Education and Training Standards	12 DOJ 07812	11/07/12	
William Franklin Dietz v. Criminal Justice Education and Training Standards	12 DOJ 08010	02/19/13	
Elizabeth Crooks Goode v. Criminal Justice Education and Training Standards Commission	12 DOJ 08014	12/14/12	
Kareen Jesaad Taylor v. Sheriffs' Education and Training Standards Commission	12 DOJ 08018	04/02/13	28:08 NCR 751
Sabrina Richelle Wright v. Sheriffs' Education and Training Standards Commission	12 DOJ 08048	01/16/13	
Phillip Eugene Dendy v. Sheriffs' Education and Training Standards Commission	12 DOJ 08049	01/18/13	
Reginald E. James v. Private Protective Services Board	12 DOJ 08195	12/20/12	
Omega Young v. Private Protective Services Board	12 DOJ 08261	12/17/12	
Joseph T. Ferrara v. Private Protective Services Board	12 DOJ 08309	01/11/13	
Jovan Lamont Sears v. Private Protective Services Board	12 DOJ 08447	12/20/12	
Christopher Robell Hunter v. Sheriffs' Education and Training Standards Commission	12 DOJ 10182	05/07/13	28:08 NCR 758
Marilyn Cash Smalls v. Sheriffs' Education and Training Standards Commission	12 DOJ 10188	04/29/13	
Timothy Allen Bruton v. Criminal Justice Education and Training Standards Commission	12 DOJ 10199	05/29/13	
Bilal Abdus-Salaam v. Criminal Justice Education and Training Standards Commission	12 DOJ 10200	08/16/13	
Lee Daniel Wilkerson v. Criminal Justice Education and Training Standards Commission	12 DOJ 10201	10/10/13	
Brad Tisdale v. Criminal Justice Education Training Standards Commission	12 DOJ 10203	05/06/13	
Clinton Weatherbee Jr v. Criminal Justice Education and Training Standards Commission	12 DOJ 10206	03/25/13	
JonPaul D. Wallace v. Private Protective Services Board	13 DOJ 02422	04/26/13	

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Andrew George Anderson v. Sheriffs' Education and Training Standards Commission	13 DOJ 03417	08/29/13	
Frank John Fontana, Jr. v. NC Alarm Systems Licensing Board	13 DOJ 03740	09/12/13	
Jerome Douglas Mayfield v. Private Protective Services Board	13 DOJ 04393	04/26/13	
Cameron Imhotep Clinkscale v. Private Protective Services Board	13 DOJ 05095	04/26/13	
Ashely B. Sellers v. NC Alarm Systems Licensing Board	13 DOJ 08759	10/30/13	
Eddie Hugh Hardison v. Private Protective Services Board	13 DOJ 08765	04/02/13	
Tony Lynn Cannon v. Sheriffs' Education and Training Standards Commission	13 DOJ 09567	10/22/13	
Marcus Teer Benson v. Private Protective Services Board	13 DOJ 09974	05/15/13	28:10 NCR 1155
Steven Wesley Jones v. Sheriffs' Education and Training Standards Commission	13 DOJ 11188	10/22/13	
Logan Roy Clonts v. Sheriffs' Education and Training Standards Commission	13 DOJ 11694	10/17/13	
LaMarcus Jarrel Outing v. Criminal Justice Education and Training Standards Commission	13 DOJ 11932	08/07/13	
Jeffrey D. Angell v. NC Alarm Systems Licensing Board	13 DOJ 12333	10/09/13	
Myron Troy Davidson v. Private Protective Services Board	13 DOJ 13379	09/13/13	
Marcus L. Fuller v. Private Protective Services Board	13 DOJ 13653	09/03/13	
Martise Lamar Jones v. NC Alarm Systems Licensing Board	13 DOJ 14844	10/30/13	
Charles Robert Austin, Jr. v. NC Alarm Systems Licensing Board	13 DOJ 15507	10/30/13	
Reza M. Salami v. NC Department of Justice and Attorney General Roy Cooper	13 DOJ 17903	11/12/13	

**DEPARTMENT OF LABOR**

United Quest Care Services v. Department of Labor	13 DOL 12224	09/17/13	
Absolute Contracting Service Inc., Felicia Myers v. NCDOL, Adriana King	13 DOL 16701	10/30/13	

**DEPARTMENT OF TRANSPORTATION**

Lorie Cramer v. NC Quick Pass Customer Service Center and DOT	13 DOT 08753	07/19/13	28:06 NCR 589
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**DEPARTMENT OF STATE TREASURER**

Dwaine C. Coley v. Department of State Treasurer	10 DST 00233	04/05/13	28:02 NCR 81
Ella Joyner v. Department of State Treasurer Retirement System Division	11 DST 02437	07/12/12	27:07 NCR 758
William R. Tate v. Department of Treasurer, Retirement System Division	11 DST 04675	09/07/12	27:15 NCR 1574
Brenda C. Hemphill v. Department of Treasurer, Retirement System Division	11 DST 10252	09/26/12	
Russell E. Greene v. Department of State Treasurer Retirement Systems Division	11 DST 10875	06/14/12	27:04 NCR 543
James A Layton v. Department of State Treasurer	11 DST 12958	11/30/12	
Marsha W Lilly, Robert L Hinton v. Retirement System	12 DST 01108	05/22/12	

**STATE BOARD OF EDUCATION**

Louis A. Hrebar v. State Board of Education	11 EDC 01445	07/27/12	
Delene Huggins v. Department of Public Instruction	11 EDC 08899	06/28/12	
Myra F. Moore v. NC Board of Education	11 EDC 11927	05/01/12	
Dwayne White v. Department of Public Instruction, NC State Board of Education	11 EDC 11864	07/18/12	27:07 NCR 769
Jeffery Sloan v. NCDPI	11 EDC 14077	11/09/12	27:21 NCR 1974
Lia C Long v. DPI	12 EDC 00805	10/18/13	27:16 NCR 1716
North Carolina Learns Inc. d/b/a North Carolina Virtual Academy	12 EDC 01801	05/18/12	
Katherine Kwesell Harris v. Public Schools, Board of Education	12 EDC 06520	09/05/12	
Bonnie Aleman v. State Board of Education, Department of Public Instruction	12 EDC 07293	06/14/13	
Emma Seward v. Department of Public Instruction	12 EDC 07438	07/17/13	
Jodi Esper v. Department of Public Instruction	12 EDC 10259	06/04/13	
Wanda McLaughlin v. State Board of Education	12 EDC 12410	03/27/13	

**DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES**

Pamlico-Tar River Foundation, NC Coastal Federation, Environmental Defense Fund, and Sierra Club v. DENR, Division of Water Quality and PCS Phosphate Company, Inc	09 EHR 1839	04/26/12	27:01 NCR 87
ALCHEM Inc., v. NCDENR	10 EHR 00296	02/05/13	
Don Hillebrand v. County of Watauga County Health Dept	10 EHR 00933	05/10/12	
ALCHEM Inc., v. NCDENR	10 EHR 05463	02/05/13	
House of Raeford Farms, Inc., v. DENR	10 EHR 05508	05/31/12	27:01 NCR 99
Lacy H Caple DDS v. Division of Radiation Protection Bennifer Pate	11 EHR 11454	05/09/12	
Friends of the Green Swamp and Blue Ridge Environmental Defense League, Inc v. DENR Division of Waste Management and Waste Management of the Carolinas, Inc., d/b/a Waste Management of Wilmington	11 EHR 12185	08/08/12	27:12 NCR 1224

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Holmes Development & Realty, LLC, and H.L. Homes v. DENR – Land Quality Section (Re: LQS 11-018)	11 EHR 13208	06/29/12	27:07 NCR 774
Ik Kim IT and K Enterprise v. DENR	11 EHR 13910	11/06/12	
Edward Dale Parker v. DENR	11 EHR 14390	02/22/13	
Janezic Building Group LLC v. Orange County	12 EHR 01104	12/03/12	27:21 NCR 2008
Save Mart of Duplin LLC v. DENR	12 EHR 02328	07/25/12	
NC Coastal Federation, Cape Fear River Watch, PenderWatch, and Conservancy Sierra Club v. DENR, Division of Air Quality and Carolina Cement Company, LLC	12 EHR 02850	09/23/13	
James D. Halsey v. DENR, Division of Environmental Health	13 EHR 10216	06/05/13	
NC Coastal Federation, Cape Fear River Watch, PenderWatch, and Conservancy Sierra Club v. DENR, Division of Air Quality	13 EHR 16148	11/04/13	

**DIVISION OF EMPLOYMENT SECURITY**

Dwight Marvin Wright v. Department of Commerce, Division of Employment Security	12 ESC 05042	07/27/12	
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**DEPARTMENT OF INSURANCE**

Megan L. Hartzog v. NC State Health Plan	12 INS 00364	05/06/13	28:07 NCR 691
Jan Fjelsted v. NC State Health Plan	12 INS 04763	01/16/13	28:07 NCR 706
Susan E. Montgomery Lee v. State Health Plan; Blue Cross Blue Shield	12 INS 10145	03/25/13	
Lori Matney v. Blue Cross Blue Shield of NC, State Health Plan	12 INS 10790	08/20/13	
Jean Kirkland and John Ritchie v. State Health Plan	12 INS 11957	04/11/13	

**MISCELLANEOUS**

Richard Lee Taylor v. City of Charlotte	11 MIS 14140	05/15/12	
Lloyd M Anthony v. New Hanover County Sheriff Office	12 MIS 01803	06/07/12	
Jackie Poole, Janyan Brooks v. Orange County	12 MIS 02379	11/09/12	27:21 NCR 2016
David L. Smith v. NC Innocence Inquiry Commission	13 MIS 12404	06/19/13	28:10 NCR 1160
Thomas Franklin Cross, Jr. v. NC Innocence Inquiry Commission	13 MIS 12642	06/19/13	28:10 NCR 1160
Moses Leon Faison v. NC Parole Commission, Paul G. Butler, Jr.	13 MIS 13004	09/05/13	
Jabar Ballard v. NC Innocence Inquiry Commission	13 MIS 13005	06/19/13	28:10 NCR 1160
Paul Michael Simmons v. Luis Hernandez, Forest City Police Department	13 MIS 14274	11/13/13	

**OFFICE OF STATE PERSONNEL**

Amanda Thaxton v. State Ethics Commission	09 OSP 03754	09/20/12	
Dorothy H. Williams v. DHHS, Central Regional Hospital	10 OSP 5424	03/28/12	27:01 NCR 119
Stephen R. West v. The University of North Carolina at Chapel Hill	10 OSP 01567	11/26/12	27:21 NCR 1959
Larry F. Murphy v. Employment Security Commission of North Carolina	10 OSP 03213	06/04/12	
Walter Bruce Williams v. Dept. of Crime Control and Public Safety Butner Public Safety Division	10 OSP 03551	04/23/12	27:01 NCR 148
Teresa J. Barrett v. DENR	10 OSP 04754	10/22/12	27:16 NCR 1726
Daniel Chase Parrott v. Crime Control and Public Safety, Butner Public Safety Division	10 OSP 04792	05/30/12	
Steven M Mukumgu v. DAG	10 OSP 05199	08/07/12	
Valerie Small v. NC Agricultural and Technical State University	11 OSP 03245	05/24/13	28:11 NCR 1231
Beatrice T. Jackson v. Durham County Health Department	11 OSP 3835	06/08/12	
Brenda D. Triplett v. DOC	11 OSP 4605	03/20/12	27:06 NCR 669
Tommie J. Porter v. DOC	11 OSP 5352	06/05/12	27:06 NCR 678
Fortae McWilliams v. DOC	11 OSP 06236	05/30/12	27:06 NCR 684
Kimberly F. Loflin v. DOT, DMV	11 OSP 06762	07/10/12	
John Hardin Swain v. DOC, Hyde Correctional Inst.	11 OSP 07956	04/23/12	27:06 NCR 693
John Fargher v. DOT	11 OSP 08111	04/18/12	
Maria Isabel Prudencio-Arias v. UNC at Chapel Hill	11 OSP 09374	03/28/13	28:02 NCR 99
Gerald Price v. Department of Agriculture & Consumer Services, Standards Division	11 OSP 09588	02/27/13	28:02 NCR 139
Tammy Cagle v. Swain County, Department of Social Services	11 OSP 10307	09/26/12	27:16 NCR 1747
Doris Wearing v. Polk Correctional Inst. Mr. Solomon Superintendent	11 OSP 11023	10/19/12	
Fredericka Florentina Demmings v. County of Durham	11 OSP 11498	06/12/12	
Derick A Proctor v. Crime Control and Public Safety, State Capital Police Division	11 OSP 11499	12/06/12	
David B. Stone v. Department of Cultural Resources	11 OSP 11926	08/10/12	27:12 NCR 1245
Pattie Hollingsworth v. Fayetteville State University	11 OSP 12152	02/27/13	

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William C. Spender v. Dept. of Agriculture & Consumer Services, Veterinary Division	11 OSP 12479	04/27/12	
Terrence McDonald v. NCSU	11 OSP 12682	05/21/12	
Terrence McDonald v. DHHS, Emery Milliken	11 OSP 12683	05/18/12	
Phyllis Campbell v. DOC	11 OSP 13381	08/27/12	27:15 NCR 1579
Raeform Quick v. DOC	11 OSP 14436	05/22/12	
Tawana McLaurin v. DOC	12 OSP 00116	08/21/12	
Vera Ricks v. NC Department of Public Safety	12 OSP 00246	03/28/13	28:07 NCR 714
Marva G. Scott v. Edgecombe County Social Services Board (Larry Woodley, Fate Taylor, Ernest Taylor, Viola Harris and Evelyn Johnson), Edgecombe County Commissioners and Edgecombe county manager, Lorenzo Carmon	12 OSP 00430	12/20/12	27:22 NCR 2152
Ladeana Z. Farmer v. Department of Public Safety	12 OSP 00460	04/10/13	28:06 NCR 564
Rhonda Whitaker v. DHHS	12 OSP 00519	05/17/13	28:08 NCR 766
Thomas B. Warren v. DAG, Forest Services Division	12 OSP 00615	11/27/12	
Bon-Jerald Jacobs v. Pitt County Department of Social Services	12 OSP 00634	06/12/12	
Sherry Baker v. Department of Public Safety	12 OSP 00841	10/09/12	
Diane Farrington v. Chapel Hill-Carrboro City Schools	12 OSP 01300	07/12/12	
Cynthia Moats v. Harnett County Health Dept	12 OSP 01536	08/10/12	
Natalie Wallace-Gomes v. Winston-Salem State University	12 OSP 01627	05/15/12	
Clark D. Whitlow v. UNC-Chapel Hill	12 OSP 01740	06/12/12	
John Medina v. Department of Public Safety	12 OSP 01940	01/30/13	28:08 NCR 783
Jeffrey L Wardick, v. Employment Securities Commission of NC	12 OSP 02027	07/17/12	
Ricco Donnell Boyd v. NC A&T University	12 OSP 02219	01/31/13	
Larry C. Goldston v. UNC-Chapel Hill	12 OSP 02222	09/26/12	27:16 NCR 1754
Larry Batton v. Dept of Public Safety	12 OSP 02320	02/18/13	
Sandra Kay Tillman v. County of Moore Department of Social Services, John L. Benton, Director	12 OSP 02433	07/29/13	
Sheila Bradley v. Community College System Sandhills Community College	12 OSP 02473	06/06/12	
Brenda S. Sessoms v. Department of Public Safety	12 OSP 02507	07/25/12	
Donnette J Amaro v. Onslow County Department of Social Services	12 OSP 02578	11/21/12	
Ronald Gilliard v. N.C. Alcoholic Law Enforcement	12 OSP 02618	09/26/12	
Kimberly Hinton v. DOT	12 OSP 02848	10/05/12	
James B. Bushardt III v. DENR, Division of Water Quality	12 OSP 02872	02/19/13	
Natalie Wallace-Gomes v. Winston Salem State University	12 OSP 02950	08/01/12	
Katie F. Walker v. Rutherford County/Department of Social Services	12 OSP 03041	03/15/13	28:08 NCR 791
Norlishia Y. Pridgeon v. Department of Public Safety, Division of Adult Correction and Department of Corrections	12 OSP 03150	08/02/13	
Jaymar v. Department of Corrections, Central Prison	12 OSP 03381	07/20/12	
Ronald Wayne Crabtree Jr., v. Butner Public Safety	12 OSP 03846	10/09/12	
Natalie Wallace-Gomes v. Winston Salem State University	12 OSP 03910	10/22/12	
Natalie Wallace-Gomes v. Winston Salem State University	12 OSP 04107	10/22/12	
Michelle Houser v. Department of Public Safety, Division of Prisons	12 OSP 04826	09/26/12	
Audrey Melissa Tate v. Department of Public Safety, Division of Juvenile Justice	12 OSP 05182	08/03/12	
Jonathan Ashley Stephenson v. UNC-Chapel Hill	12 OSP 05223	01/15/13	
Charles E. Rouse v. DMV, Dist Sup Stacey Wooten	12 OSP 05315	09/05/12	
Edwards Robert Esslinger v. DPI	12 OSP 05459	09/12/12	
Barry L. Pruett v. DMV, Driver and Vehicle Services	12 OSP 05785	09/11/12	
Joseph Sandy v. UNC Chapel Hill	12 OSP 06152	09/05/12	
Natalie Wallace-Gomes v. Winston Salem State University	12 OSP 06309	10/22/12	
Paul Jeffrey Treadway v. Department of Public Safety, Division of Adult Supervision	12 OSP 06634	12/18/12	
Phillip W Smith v. Department of Commerce, Division of Employment Security	12 OSP 06821	09/20/12	
Asia T. Bush v. DOT	12 OSP 06980	04/23/13	28:03 NCR 293
Bonnie S. Rardin v. Craven Correctional Institution, Department of Public Safety	12 OSP 07443	04/19/13	
Shirley M. Parker v. Department of Public Safety Caledonia Correctional Institution	12 OSP 07617	04/04/13	
Christopher Rashad Pippins v. PCS BOE PCS Facility Services	12 OSP 07744	10/18/12	
Wanda Edwards v. UNC School of Dentistry	12 OSP 07851	01/09/13	
Gary C. Clement v. DHHS	12 OSP 08105	11/14/12	
Oswald Woode v. DHHS, Central Regional Hospital	12 OSP 08664	01/09/13	
Gary C. Clement v. DHHS	12 OSP 09581	01/04/13	
Roseth Kyremartin v. DHHS	12 OSP 10209	06/21/13	28:11 NCR 1278
Daniel J. Dugan, Jr. v. UNCW	12 OSP 10620	10/15/13	
Judy Knox v. UNC at Charlotte	12 OSP 10856	07/11/13	
Sherry Young v. DHHS, Division of Child Development and Early Education	12 OSP 11078	10/07/13	
Anesa Trevon Lucas v. NC Division of Child Development and Early Education	12 OSP 12082	11/04/13	
David Ryan Brown v. Department of Public Safety, Division of Community Corrections	12 OSP 12179	10/08/13	



David A. Tuno v. Lincoln Correctional Center	13 OSP 00031	09/10/13
Jeffrey Wayne Ellis v. North Carolina A & T University	13 OSP 09564	08/08/13
Kimberly D. Hinton v. Department of Transportation	13 OSP 09565	09/06/13
Wiley Daniel Thomas v. Department of Transportation, Division of Motor Vehicles	13 OSP 10577	10/07/13
Helen Karen Radford v. Buncombe County Department of Health	13 OSP 10629	09/27/13
Alphonsus U. Nwadike v. DHHS, Central Regional Hospital (Butner)	13 OSP 10977	07/15/13
Kevin D. Terry v. State of NC Office of State Controller	13 OSP 11088	07/15/13
Lionel James Randolph v. NC Office of State Personnel	13 OSP 11170	07/15/13
Cynthia C. Goodwin v. Department of Revenue	13 OSP 11232	08/02/13
Robert E. Hines v. Department of Transportation	12 OSP 11278	09/13/13
Natalie Wallace-Gomes v. Winston-Salem State University	13 OSP 11293	08/13/13
Joann C. Pearson v. UNC-Charlotte	13 OSP 11562	09/17/13
Rotisha Hawthorne v. Department of Safety (Polk)	13 OSP 12639	09/05/13
Stephanie K. Willis v. Montgomery County Board of Education	13 OSP 13012	08/07/13
David M. Andrews v. Department of Transportation, Technical Services-Client Support	13 OSP 15144	10/03/13
Luchana A. Woodland v. Fayetteville State University	13 OSP 15499	09/11/13
Mary E. Wilson v. Mecklenburg County, NC	13 OSP 15512	10/03/13

### **DEPARTMENT OF REVENUE**

Jerry Lamont Lindsey v. Department of Revenue	11 REV 1914	07/25/12	
Thomas E Gust v. Department of Revenue	11 REV 13557	08/15/12	
James Cooper III Sui Juris v. Department of Revenue	11 REV 13792	11/14/12	
Brian Daniel Reeves v. Department of Revenue	12 REV 01539	06/04/12	
David Roser v. Department of Revenue	12 REV 01694	09/10/12	
Ronnie Lee Nixon v. Department of Revenue	12 REV 01881	10/03/12	
James M. Slowin, REFS LLC v. Department of Revenue	12 REV 02218	02/11/13	28:06 NCR 583
William S. Hall v. Department of Revenue	12 REV 04115	08/27/12	
Noah D. Sheffield v. Department of Revenue	12 REV 07074	11/14/12	
Jenny M. Sheffield v. Department of Revenue	12 REV 07075	11/14/12	
Jesus A. Cabrera v. Department of Revenue	12 REV 08968	01/03/13	
Sybil Hyman Bunn v. Department of Revenue	12 REV 08973	05/06/13	
William Scott v. Department of Revenue	13 REV 06646	04/29/13	28:06 NCR 593
Chase Auto Finance Corporation v. Department of Revenue	13 REV 10115	06/19/13	28:10 NCR 1164
Joseph Lewis Moore v. Department of Revenue	13 REV 17720	11/13/13	

### **OFFICE OF SECRETARY OF STATE**

Michael Anthony Farrow-Bey v. Department of Secretary of State	12 SOS 07865	12/14/12	
Jennifer Lynn Pierce-Founder Share Our Shoes v. Secretary of State's Office	12 SOS 01653	07/11/12	
Bethany Thompson v. Department of the Secretary of State	12 SOS 11648	05/02/13	
Holley Shumate Knapp v. Ann Wall, General Counsel Department of the Secretary	13 SOS 09039	05/23/13	
Trvuun B. Alston v. Department of the Secretary of State	13 SOS 10113	07/08/13	
John Claude Barden v. Department of the Secretary of State	13 SOS 12528	10/03/13	

### **UNC HOSPITALS**

Onyedika C Nwaebube v. UNC Hospitals	12 UNC 01110	06/25/12	
Nephatiya Wade v. UNC Hospitals Chapel Hill NC	12 UNC 01209	07/17/12	
Fredia R Wall v. UNC Physicians & Associates	12 UNC 02256	10/04/12	
Carolyn A. Green v. UNC Hospitals	12 UNC 02259	09/19/12	
Annie E. Jarrett v. UNC Hospitals	12 UNC 03716	10/09/12	
Vikki J Goings v. UNC Hospital	12 UNC 04109	09/18/12	
Elonnie Alston v. UNC Hospitals	12 UNC 04551	09/11/12	
Diara Z Andrews v. UNC Hospitals	12 UNC 04827	08/15/12	
David Ryan Pierce v. UNC Hospitals, Patient Account Services, SODCA	12 UNC 05306	03/20/13	
Shonte Hayes v. UNC P&A	12 UNC 05746	09/10/12	
Tracy A. Spaine (Currier) v. UNC Hospitals	12 UNC 06822	11/06/12	
Candis Miller v. UNC Hospitals	13 UNC 10374	08/19/13	
Chiduzie Oriaku v. UNC Hospitals	13 UNC 11434	10/07/13	
Julie C. Rose v. UNC Hospitals	13 UNC 12019	11/05/13	
Jason Paylor v. UNC Hospitals Patient Accounts	13 UNC 12636	07/26/13	

**WILDLIFE RESOURCES COMMISSION**

People for the Ethical Treatment of Animals, Inc., v. NC Wildlife Resources Commission      12 WRC 07077    11/13/12    27:22 NCR 2165

FILED  
OFFICE OF ADMINISTRATIVE HEARINGS  
5/24/2013 8:00 AM

STATE OF NORTH CAROLINA  
COUNTY OF GUILFORD

IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS  
11OSP03245

Valerie Small Petitioner,  v.  North Carolina Agricultural and Technical State University Respondent.	<b>DECISION</b>
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The above-captioned case was heard before the Honorable J. Randall May, Administrative Law Judge, on February 12-15, 2013, in High Point, North Carolina.

**APPEARANCES**

**FOR PETITIONER:** David W. McDonald, Esq.  
Hicks McDonald Noecker LLP  
100 South Elm St., Suite 510  
Greensboro, NC 27401

**FOR RESPONDENT:** Katherine A. Murphy  
Assistant Attorney General  
N.C. Department of Justice  
P.O. Box 629  
Raleigh, NC 27602

**EXHIBITS**

**Admitted for Petitioner:**

<u>Exhibit No.</u>	<u>Date</u>	<u>Document</u>
1	08/18/06	PD-102R
2	11/01/06	Mediation and Grievance Policy and Procedures for SPA Employees
3	11/09/06	Letter from Valerie Small to Pat Chat re: position reclassification
4	various	Documents from Valerie Small's personnel file

5	12/01/06	Email from Loleta Chavis to Lacy Deberry re: reclassification and grievance
6	12/01/06	Email from Lacy Deberry to Valerie Small re: reclassification and grievance
7	12/01/06	Email from Valerie Small to Valerie Small, with copies to Lacy Deberry, et al., re: RE: FORMAL ITT/HR GRIEVANCE LETTER Re: Valerie Small ITT/HR Grievance Letter
8	12/05/06	Email from Valerie Small to Lacy Deberry, et al., re: RE: FORMAL ITT/HR GRIEVANCE LETTER Re: Valerie Small ITT/HR Grievance Letter
9	12/06/06	Email from Valerie Small to Lacy Deberry re: RE: FORMAL ITT/HR GRIEVANCE LETTER Re: Valerie Small ITT/HR Grievance Letter
10	03/29/07	Email from Vijay K. Verma to Valerie H. Small, et al., re: Valerie Small ITT/HR Grievance Letter
11	06/11/07	Letter from Kenneth H. Murray to Mary Mims re: Title III grant support, with various other documents
12	08/03/07	Employee Grievance and Appeal Filing Form
13	08/08/07	Email from Valerie Small to Lacy DeBerry re: Grievance: Type of Appointment Conflict
14	08/15/07	Email from Valerie Small to Lacy Deberry re: Grievance: Type of Appointment Conflict
15	08/17/07	Letter from Mary Mims to Valerie Small re: Time Limited Appointment ending
16	04/15/11	Personnel Form for Valerie Small
17	11/01/07	NOTE TO FILE re: Valerie Small by Sheila Benton
18	10/29/07	Letter from Dr. Sullivan A. Welborne Jr. to Valerie Small re: Pre-Disciplinary Conference for Unacceptable Personal Conduct
19	11/01/07	Letter from Dr. Sullivan A. Welborne Jr. to Valerie Small re: disciplinary action
20	11/28/07	Email from Mary Mims to Shirl B. Davis re: FW:FORMAL ITT/HR GRIEVANCE LETTER Re: Valerie Small ITT/HR Grievance Letter

21	12/13/07	Transmittal letter from Linda McAbee to Vijay Verma, with documents
22	11/29/07	Document entitled "Summary of Information on Valerie Small" submitted by Shirl B. Davis
23	11/10/06	Email from Rodney Harrigan to Valerie Small re: Valerie Small ITT/HR Grievance Letter
24	12/18/07	Email from Linda McAbee to Vijay Verma re: Valerie Small
25	01/08/08	Email from Ryan Maltese to Dr. Welborne re: Follow-Up, with handwritten notes
26	01/15/08	Email from Linda McAbee to Sullivan Welborne, et al., re: Title III
27	N/A	Typed message to Linda from LC enclosing two draft letters related to the RIF situation
28	02/13/08	Letter from Sullivan A. Welborne Jr. to William Clay re: situation involving Valerie Small
29	02/14/08	Email from Vijay K. Verma to William Clay re: information you wanted me to put together for you regarding the RMS and the R25 Systems
30	05/22/08	Email from Linda McAbee to Valerie Small re: Question on Career Banding for Technical Employees
31	05/28/08	Email from Valerie Small to Linda McAbee re: Question on Career Banding for Technical Employees, with handwritten notes
32	06/12/08	Email from Linda McAbee to Valerie Small re: Question on Career Banding for Technical Employees
33	06/12/08	Email from Linda McAbee to Valerie Small re: Question on Career Banding for Technical Employees
34	06/26/08	Email from Valerie Small to Linda McAbee, et al., re: Request copy of HR File ASAP
35	07/09/08	Letter from Linda McAbee to Leonard Jones re: Position No. 5271, with various other documents
36	07/17/08	Email from Valerie Small to Dr. Welborne re: July 16, 2008 Incident
37	07/21/08	Memorandum from Leonard Jones to Valerie Small re: Investigatory Status with Pay

38	08/28/08	SPA Employee Grievance Form
39	07/31/08	Letter from Leonard Jones to Valerie Small re: pre-disciplinary conference
40	08/01/08 to 08/15/08	Employee Time Record (Form PD-113)
41	08/05/08	Communication from Valerie Small to Leonard Jones re: Response to Pre-disciplinary Hearing certified letter received on July 31, 2008
42	08/19/08	Memorandum from Dr. Sullivan A. Welborne, Jr. to Valerie Small re: position reassigned to supervision of Ryan Maltese
43	08/20/08	Memorandum from Linda McAbee to Valerie Small re: Career-Banded Position Crosswalk and Legislative Increase
44	09/04/08, 09/05/08	Transmittal from Linda McAbee to Drake Maynard re: Request for Position Analysis, and Memorandum from Ryan Z. Maltese to Linda McAbee re: Change in Position Identification
45	03/29/10	Email from Lisa Warren to Ryan Maltese re: Security and /userids/passwords Request: Update Division of Student Affairs Departmental Websites with mission statements
46	2010	Personnel information of new hires
47	03/18/11	Exit Interview Form for Valerie Small
48	various	State Personnel Manual – various policies
49	03/14/11	SPA Layoff Selection Analysis Worksheet
50	03/15/11	Memorandum from Ryan Maltese to Valerie H. Small re: Notification of Separation Due to Layoff
51	03/15/11	Reduction in Force Plan (first page)
52	Oct. 2006	Applications / The Division of Information Technology & Telecommunications
53	03/17/11	Petition for a Contested Case Hearing
54	03/29/11	Email from Todd L. Butler to Valerie Small re: Status on Receiving Requested Information for Employee Relations and Grievance

55	03/29/11	Email from Todd L. Butler to Valerie Small re: Request for all evaluations
56	03/31/11	Reduction in Force Plan (second page)
57	N/A	Performance Evaluation for Valerie Small – September 15, 2003 to April 30, 2004
58	06/22/05	Performance Evaluation for Valerie Small – May 1, 2004 to April 30, 2005
59	05/24/06	Performance Evaluation for Valerie Small – May 1, 2005 to April 30, 2006
60	05/25/07	Performance Evaluation for Valerie Small – May 1, 2006 to April 30, 2007
61	05/27/09	Performance Evaluation for Valerie Small
62	N/A	Performance Evaluation for Valerie Small
63	01/04/12	Position Posting
64	12/21/11	Position Posting
65	06/16/11	Email from Valerie Small to Lois Norris re: Requesting use of Priority Re-employment Status at North Carolina A&T See Attachment
66	01/27/12	Letter from Rashandra Lowery to Valerie Small re: Public Records Request dated January 18, 2012, with documents
67	March 2007	Response to Internal Review and Audits
68	June 2010	Performance Audit
69	11/2	Handwritten Notes: "Valerie Small"
70	05/07/12	Email from Todd L. Butler to Larry Williams re: Personnel File
71	08/26/03	Qualification Work Sheet
72	03/14/11	Fax cover sheet from Dr. Melody C. Pierce to Linda McAbee, with various documents attached
73	07/28/09	Order entered in case of Patrice Bernard v. North Carolina A&T State University, 08 CVS 13385
74	09/03/09	Campus Police Incident/Investigation Report and other documents

**Admitted for Respondent:**

<u>Exhibit No.</u>	<u>Date</u>	<u>Document</u>
1	06/24/10	Email from Ryan Maltese to Ellis, et al., re: Going Forward Regarding R25 Concerns
2	02/22/11	R25 Support Notes
3	03/09/11	R25 Support Notes
4	03/14/11	Memorandum from Melody C. Pierce to Linda McAbee re: Valerie H. Small – Reduction in Force
5	09/24/03 to 10/20/03	Documentation of temporary appointment of Valerie Small
6	12/01/04	State of North Carolina Salary Plan (excerpt)
7	08/26/03	Position Announcement
8	01/13/04	Documentation of appointment of Valerie Small to Data Base Software Analyst position
9	02/18/04 to 09/29/06	Documentation of extensions of appointments of Valerie Small to Data Base Software Analyst/Applications Analyst Programmer I position
10	02/01/06	Documentation of Crosswalk of Valerie Small's position from Applications Analyst Programmer I to Business & Technology Applications Analyst
11	03/12/07	Letter from Vanessa Lawson to Valerie Small re: career-banding
12	10/01/07	Documentation of horizontal transfer of Valerie Small
13	06/12/08	Email from Linda McAbee to Valerie Small re: Question on Career Banding for Technical Employees
14	08/19/08	Memorandum from Dr. Sullivan A. Welborne, Jr., to Valerie Small re: reassigned position responsibilities to the supervision of Ryan Maltese
15	03/15/11	Reduction in Force Plan for Valerie Small
16	11/01/06	Mediation and Grievance Policy for SPA Employees
17	03/30/09	Reduction in Force (RIF) Policy



18	03/15/11	Memorandum from Ryan Maltese to Valerie H. Small re: Notification of Separation Due to Layoff
19	01/30/07	Email from Vijay K. Verma to Valerie Small re: Follow up to our two conversations – this afternoon and last week
20	07/31/07	Letter from Vanessa Lawson to Valerie Small re: Time-Limited Appointment ending
21	08/08/07 to 09/14/07	Email exchange among various people re: Grievance: Type of Appointment Conflict
22	08/08/08	Letter from Leonard Jones to Valerie Small re: disciplinary action
23	08/02/07	Email from Valerie Small to Lawson, et al., re: Grievance: Type of Appointment Conflict, with attached Grievance and Appeal Filing Forms
24	03/01/11	State Personnel Manual – Reduction in Force
25	09/04/08	Memorandum from Ryan Z. Maltese to Linda McAbee re: Change in Position Identification

**WITNESSES**

**Called by Petitioner:**

Valerie Small  
Patrice Bernard

**Called by Respondent:**

Barbara Jean Ellis  
Melody Pierce  
Linda McAbee

**ISSUE**

Whether the selection of Petitioner's position for elimination pursuant to a reduction in force ("RIF") was due to discrimination based on race or sex and/or retaliation.

ON THE BASIS of careful consideration of the sworn testimony of witnesses presented at the hearing, documents received and admitted into evidence, and the entire record in this proceeding, the undersigned makes the following findings of fact. In making these findings, the undersigned has weighed all the evidence, or the lack thereof, 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 interest, bias or prejudice the witness may have; the opportunity of the witness to see, hear, know and remember the facts or occurrences about

which the witness testified; whether the testimony of the witness is reasonable; and whether such testimony is consistent with all other believable evidence in the case.

**FINDINGS OF FACT**

1. Petitioner Valerie Small was a permanent State employee subject to Chapter 126 of the North Carolina General Statutes.
2. Respondent North Carolina Agricultural and Technical State University ("NCA&T") is subject to Chapter 126 and was Petitioner's employer.
3. Petitioner was hired by Respondent in a temporary appointment, effective September 2, 2003, through December 2, 2003 (later extended to December 31, 2003). The appointment letter to Petitioner reflected a job title of "Data Base Software Analyst," while the classification title entered on the associated personnel form completed by Respondent was "Applications Analyst Programmer I." **T pp. 516-18; Resp. Ex. 5**
4. Petitioner's personnel forms reflect that she was hired into position number 6070-0000-0009-566 ("Position No. 9-566"), which was classified by Respondent as "Applications Analyst Programmer I." **T pp. 516-18, 523-24; Resp. Ex. 5** The position was advertised, however, as a "Data Base Software Analyst," with salary grade 76, and salary range of \$39,338 – \$65,370. **T pp. 524-25; Resp. Ex. 7**
5. Petitioner was later offered a "Time-Limited / Grant Funds" position effective January 12, 2004. The letter to Petitioner confirming this appointment referred to the position as a "Data Base Software Analyst," with an annual salary of \$60,000. Petitioner signed the letter confirming her acceptance of the "Data Base Software Analyst Position" on January 12, 2004. The personnel form entered by Respondent to effectuate the action shows that the time-limited position had the same position number as the temporary position into which Petitioner was first hired, Position No. 9-566, with the classification title "Applications Analyst Programmer I." **T pp. 315, 528-30; Resp. Ex. 8**
6. On February 18, 2004, Petitioner was sent a communication confirming her appointment from a temporary full-time employee to a probationary time-limited full-time employee in the position of "Data Base Software Analyst" with salary grade 76. The initial period, subject to renewal, was January 1, 2004, through September 30, 2004. The communication also reflected Petitioner's current status as having the classification of "Applications Analyst Programmer I," with salary grade 76, and an annual salary of \$60,000. **T pp. 535-37; Resp. Ex. 9**
7. Petitioner received an extension of her time-limited employment in her position for the period from October 1, 2004, through September 30, 2005. The letter confirming the extension, dated November 1, 2004, referred to Petitioner's position as "Applications Analyst Programmer I." **T pp. 538-39; Resp. Ex. 9**

8. Petitioner received another extension of her time-limited employment in her position for the period from October 1, 2005, through September 30, 2006. The letter confirming the extension, dated October 27, 2005, referred to Petitioner's position as "Applications Analyst Programmer I." **T pp. 539-40; Resp. Ex. 9**
9. The State of North Carolina Salary Plan, issued by the Office of State Personnel ("OSP"), effective December 1, 2004, lists both the classification title of "Data Base Software Analyst" and the classification title of "Applications Analyst Programmer I." Both have the same salary grade of 76, and both have the same hiring salary of \$40,338 and maximum salary of \$67,004, so in terms of Petitioner's pay, they are equivalent. One of Petitioner's contentions is that she was hired as a Data Base Analyst. According to the Salary Plan, the position with classification title "Data Base Analyst" has a salary grade of 80, a hiring salary of \$48,289, and a maximum salary of \$80,568. This latter position is not equivalent to "Data Base Software Analyst." **T pp. 17, 521-22; Resp. Ex. 6**
10. Although there seems to have been some discrepancies in the way the University initially referred to Petitioner's position, the two titles "Data Base Software Administrator" and "Applications Analyst Programmer I" appear to be refer to classifications of an equivalent level. The University always referred to the position as having salary grade 76, which is a correct attribute of both positions. Furthermore, beginning with the appointment confirmation letter sent to Petitioner in 2005, the University consistently referred to Petitioner's position as an "Applications Analyst Programmer I." Therefore, the undersigned finds that Petitioner was, or should have been aware, that she was hired into a position with salary grade 76, and that she was not hired into a the position of "Data Base Analyst," a position with a salary grade of 80.
11. Respondent began the process of converting positions from the graded classification system to career banding in 2006, beginning with the job families of IT and police and public safety. As part of the conversion process, effective February 1, 2006, Petitioner's position was cross-walked from "Applications Analyst Programmer I" to "Business and Technology Applications Analyst," with no change in the position number, and no change in Petitioner's salary, or the funding duration of her position. The cross-walking of positions was done without regard for any employee in any particular position: It was a mapping, created by OSP, which translated each position in the old classification system to a position in the new classification system. **T pp. 541-50; Resp. Ex. 10**
12. Petitioner's time-limited appointment was extended again from October 1, 2006, through September 30, 2007. The personnel forms for this last extension reflect the change to career banding: Petitioner's position, Position No. 9-566, is shown as having the classification title "Business and Technology Applications Analyst." **T p. 541; Resp. Ex. 9**
13. Petitioner was informed by letter dated March 12, 2007, that her position had been cross-walked from "Applications Analyst Programmer I" to "Business & Technology Applications Analyst," with no change in salary. **Resp. Ex. 11**

14. The grant project that had provided the funding for Petitioner's position was not renewed, so the funding for Petitioner's position did not extend past September 30, 2007. By letter dated July 31, 2007, Petitioner was informed that her employment with Respondent would come to an end as a result of the termination of the funding for her position. **T p. 361; Resp. Ex. 20**
  
15. Petitioner's position had been funded through Title III funds. Petitioner introduced a letter into evidence showing that the activity which had supported her position had not been included in the most recent Title III application. The letter was written by Kenneth H. Murray, the Associate Vice Chancellor for Academic Affairs & Title III Director, to Mary Mims, Special Assistant to the Provost and Vice Chancellor for Academic Affairs. **Pet. Ex. 11** Other than this letter, there is no evidence to show who made the decision not to include the activity in the application, and Petitioner has not made any allegations that either Dr. Murray or Ms. Mims discriminated or retaliated against her. Therefore, there is insufficient evidence to prove that the end of the funding for Petitioner's position was discrimination or retaliation by Respondent against Petitioner.
  
16. By email sent on August 2, 2007, Petitioner filed a grievance related to the end of her employment. By email sent on August 8, 2007, Petitioner filed an "upgraded grievance form." **Pet. Ex. 13** Respondent introduced two grievance forms from Petitioner, both dated August 3, 2007. **Resp. Ex. 23**
  
17. Petitioner stated in one of the grievance forms dated August 3, 2007, that because she had been employed in a time-limited position for more than three years, she was a permanent employee, and she requested as a remedy that the University acknowledge policies and procedures and recognize that it was required to find funding for her position. **Resp. Ex. 23** (NCA&T 00381) Under Respondent's grievance policy, this was not a grievable issue. **Pet. Ex. 2** In the other grievance form dated August 3, 2007, Petitioner added some allegations, including that the University was not recognizing her permanent status in retaliation for her having submitted a list of IT issues to the Chancellor and some of the Trustees. Petitioner added as a requested remedy that the University should recognize that the State does not tolerate retaliation. **Resp. Ex. 23** (NCA&T 00324); **Pet. Ex. 12**
  
18. Linda McAbee, who is currently the Vice Chancellor for Human Resources for Respondent, testified that in general, an employee in a time-limited position does not have the same rights as a permanent employee (career State employee). For example, if an employee in a time-limited position is reduced in force ("RIFed"), he or she is not entitled to severance pay or priority reconsideration. **T pp. 530-31** However, if a time-limited employee is employed continuously for three years or more, then under OSP rules and regulations, that employee acquires the same rights as a career State employee. Any employee, even a career State employee, can be RIFed, however. The issue is what rights the employee is entitled to in association with the RIF. **T pp. 555-56**
  
19. At the time the funding for Petitioner's position ran out, she had been employed with the University for more than three years. Thus, Petitioner had the same rights as a career State employee (e.g., severance pay, priority reemployment), but she could still have

been RIFed. Nevertheless, the University created a new position for Petitioner in the Division of Student Affairs. **T pp. 556-59; Resp. Ex. 12**

20. Even though Respondent had the legal right to terminate Petitioner's position when the funding ended, Loleta Chavis, an employee in Respondent's Human Resources Department, sent Petitioner an email dated September 11, 2007, in response to Petitioner's inquiry regarding the status of her grievance, in which Ms. Chavis assured Petitioner that they were working on finding a solution for Petitioner's continued employment. **Resp. Ex. 21** (NCA&T 00306)
  
21. Effective October 1, 2007, a new position with position number 6070-0000-0005-271 ("Position No. 5-271) was created in the Division of Student Affairs, and Petitioner was horizontally transferred from Position No. 9-566 to the new Position No. 5-271. The newly created position had the same classification as Petitioner's former position (Business & Technology Applications Analyst), and Petitioner experienced no lost time in the transition, nor did her salary change. **T pp. 555-59, 560-62; Resp. Ex. 12**
  
22. There is nothing in the record to show that Petitioner disagreed with or complained about this response to her August 3, 2007 grievances. In particular, there is nothing to show that Petitioner made any attempt to move forward in the grievance process with respect to these grievances after she was transferred to the new position.
  
23. On November 1, 2007, Petitioner was disciplined by Dr. Sullivan A. Welborne, Jr., the Vice Chancellor for Student Affairs, for unacceptable personal conduct, and received a one-week suspension without pay. The reason for the disciplinary action was that Petitioner had accessed confidential personnel information outside of her job responsibilities. Petitioner acknowledged her conduct, but stated that she had accessed the information in order to help a co-worker. **T p. 369; Pet. Ex. 19** The unauthorized access of personnel information occurred in August, but the disciplinary action did not begin until October, after Petitioner had been transferred to Student Affairs. **Pet. Exs. 17-19**
  
24. Petitioner testified that she grieved the disciplinary suspension, but could not recall when she filed a grievance, and did not put a grievance form related to this suspension into evidence. **T p. 368** Petitioner did introduce into evidence an email dated June 26, 2008, which Petitioner sent to Linda McAbee, who was then the Vice Chancellor for Human Resources, and others, in which Petitioner requested that the "reprimand for Breach of Security" be removed from her file and she asked how she should go about doing so. **Pet. Ex. 34** Under Respondent's grievance policy, any grievance Petitioner might have filed at this point, more than seven months after the disciplinary action was taken, would have been untimely. **Pet. Ex. 2**
  
25. Following her suspension, Petitioner began reporting to Leonard Jones, who was the Director of Housing, in the Division of Student Affairs. **T p. 118**

26. Linda McAbee was hired by Respondent to be its Vice Chancellor of Human Resources, in November of 2007. At the time Ms. McAbee was hired, Petitioner was working as a Business & Technology Applications Analyst, Position No. 5-271, in the Division of Student Affairs, under Mr. Jones. **T pp. 514, 562**
  
27. In June 2008, Ms. McAbee was copied on some email correspondence between Petitioner and employees in the Human Resources Department concerning Petitioner's belief that her position had been overlooked for market value increases. When Ms. McAbee attempted to clarify for Petitioner that her position was considered for market value, but that Petitioner did not qualify, Petitioner then raised a host of issues related to events that had transpired prior to Ms. McAbee's arrival at the University. Petitioner's new supervisor, Leonard Jones, was supposed to conduct a performance evaluation of Petitioner; however, Petitioner claimed that she could not be properly evaluated by Mr. Jones because her position had been misclassified. **T pp. 562-70; Resp. Ex. 13**
  
28. The basis for Petitioner's claim that her position was misclassified was her contention that her position had been reclassified in 2006. The evidence regarding Petitioner's alleged reclassification demonstrates the following:
  - (a) A PD-102R form, which was used under the former OSP graded classification system by a supervisor to request review of a position classification, had been signed by Sam Harrison, who was the Associate Vice Chancellor for IT, on August 17, 2006, and by Rodney E. Harrigan, who was the Vice Chancellor for IT, on August 18, 2006, as well as by Petitioner. This document is not in the form of a contract; rather, the signatures attest to the signatory's belief that the information provided is accurate. **T pp. 324-26, 571; Pet. Ex. 1**
  
  - (b) Petitioner claimed that by virtue of this signed PD-102R form, she had been promoted to the position of "Data Base Administrator." **T pp. 27-28**
  
  - (c) In 2006, the paperwork from a supervisor requesting that a position be reclassified would have had to be approved by Human Resources at the University, and then sent to OSP for approval. Ms. McAbee found no evidence that either of these things had happened with respect to Petitioner's position. On the contrary, all of the University's paperwork reflected that Petitioner had been in Position No. 9-566 from September 2003 until October 1, 2007, and that this position was classified as an Applications Analyst Programmer until it was cross-walked to the career-banded equivalent of Business & Technology Applications Analyst in 2006. **T pp. 572-77; Resp. Exs. 5, 8-10**
  
  - (d) Petitioner also claimed that Vice Chancellor Harrigan promised that her position would be reclassified. A supervisor, even if that supervisor is a Vice Chancellor, does not have the authority to order a reclassification of a position. Rather, the supervisor's authority and duty is to request a reclassification, document it fully and properly, and submit the request and documentation to Human Resources for review and approval, followed by a request for approval

from OSP. Any promises Mr. Harrigan may have made to Petitioner had no binding effect on subsequent IT leadership or the University. **T pp. 579-80**

(e) Petitioner contended that when a position is reclassified, there is a legislative mandate requiring a 5% salary increase for each level of increase in salary grade, up to a maximum of 25%. **T p. 36** Ms. McAbee testified that even if a position reclassification is requested, properly documented, and approved, there is no guarantee that the employee in the reclassified position will obtain a pay raise. Ms. McAbee also testified that there is no mandate that an employee in a reclassified position receive a particular salary increase. **T p. 580**

(f) On November 9, 2006, Petitioner wrote an email to Pat Chatt, who was the Assistant Vice Chancellor for IT at the time, which Petitioner characterizes as a grievance. This and subsequent emails show that Petitioner and IT Administration differed over the amount of salary increase that Petitioner should receive as a result of the reclassification, and that there was some question about the nature of supervisory authority that Petitioner would have in the reclassified position. The email exchanges suggest that these issues held up, and ultimately prevented, the processing of the reclassification request. In particular, Petitioner introduced into evidence an email in which Vice Chancellor Harrigan stated to her that he did not know Petitioner had been promised a 25% increase by Associate Vice Chancellor Harrison and an email in which Lacy Deberry, an HR professional, wrote that Petitioner had "indicated that some vital information was left off the PD-307 by Vice Chancellor Harrigan." **T pp. 37-38, 320-24, 327-30; Pet. Exs. 3, 5-8**

(g) According to Respondent's grievance policy in effect beginning November 1, 2006, neither the failure to reclassify a position, nor the failure to agree on a particular salary increase, are grievable actions. **T pp. 605-06; Pet. Ex. 2** Nevertheless, emails entered into evidence by Petitioner show that employees of the University's Human Resources Department attempted to work with Petitioner, at least through December 6, 2006, to resolve her complaint, but no evidence was introduced to show that a resolution was ever reached. **Pet. Exs. 5-9** Petitioner testified that she was later told she had not raised a grievable issue. **T pp. 50, 66**

(h) Under Respondent's grievance policy, the parties must first mediate the grievance, and then, if the attempts at mediation fail, the employee must request review by the SPA Grievance Committee in writing within five days of the parties' agreement that the mediation did not resolve the grievance. **Pet. Ex. 2** Petitioner did not produce any evidence that her grievance was mediated, that there was an agreement that mediation did not resolve the issue, or that she requested review by the SPA Grievance Committee within five days of the mediation failing to resolve the issue. Therefore, Petitioner did not show that she complied with Respondent's grievance policy.

(i) Effective January 2, 2007, Vijay Verma became the interim Vice Chancellor for IT, replacing Rodney Harrigan in that position. Mr. Harrigan left the University amidst charges of financial improprieties. Prior to his departure, Mr. Harrigan had dismissed Mr. Harrison, who was the Associate Vice Chancellor, resulting in a turnover in the leadership of the IT Department at the beginning of 2007. **T pp. 67, 295, 337-40; Pet. Ex. 67**

(j) In an email dated January 30, 2007, Mr. Verma responded to conversations he had had with Petitioner by stating that he was not going to make any organizational changes or personnel decisions right away. Mr. Verma also informed Petitioner that he could not be bound by any promises that his predecessor may have made to Petitioner, and that he would rely on the documentation. Finally, Mr. Verma informed Petitioner that he did not expect her to work outside her job description. **T pp. 342-47; Resp. Ex. 19** In response to further emails from Petitioner, on March 29, 2007, Mr. Verma again reiterated in an email to Petitioner that she should not work outside of her job responsibilities, and that he could not be bound by promises she stated had been made by former Vice Chancellor Harrigan and former Associate Vice Chancellor Harrison. Mr. Verma also stated that the position which Petitioner claimed she had been promised did not appear to exist. **Pet. Ex. 10**

29. In June 2008, Ms. McAbee arranged a meeting for Petitioner with Ms. McAbee, Vice Chancellor Welborne, Leonard Jones, who was Petitioner's direct supervisor at the time, Loleta Chavis, who was a Compensation Analyst in Human Resources, and Sheila Benton, who had been the interim Director of Human Resources, prior to Ms. McAbee being hired. The purpose of the meeting was to address Petitioner's contention that her position was not properly classified. It was determined by the University administrators that Petitioner's title and classification were correct. **T pp. 580-84, 677-79; Resp. Ex. 13**
30. The undersigned finds as a fact that the process of reclassifying Petitioner's position, which began in August 2006, was never completed, and Petitioner remained employed for the remainder of her career with Respondent in a position with salary grade 76. The reclassification process that was begun by IT leadership late in 2006 was never completed, and Mr. Vijay Verma, who came in as the new leadership for IT in January 2007, elected not to proceed with it.
31. When the reclassification procedure failed, Petitioner could have sought a promotion by applying for a higher-level position. **T pp. 731-33** Petitioner testified, however, that she did not apply for the database administrator position that was advertised in 2010, when Gary Burns was hired. **T pp. 375-76**
32. On August 8, 2008, Petitioner was disciplined for unacceptable personal conduct, following an altercation between her supervisor, Mr. Jones, and herself over Petitioner's job responsibilities and description. Petitioner received a one-week suspension without pay. **Resp. Ex. 22**



33. Petitioner did not file a timely grievance of her disciplinary suspension. Petitioner did file a grievance related to the suspension, but not until August 28, 2008. **Pet. Ex. 38** Under Respondent's grievance policy, a grievance must be filed within 15 calendar days of date when the employee learned of the action being contested. **Pet. Ex. 2** Furthermore, Petitioner did not grieve the disciplinary action on its merits; rather, she claimed that her supervisor failed to follow policy by omitting required information from the letter placing her on investigatory leave, which is not a grievable issue under Respondent's grievance policy. **T p. 738; Pet. Ex. 2; Pet. Ex. 38**
  
34. In fact, Petitioner filed three grievances on August 28, 2008. **Pet. Ex. 66** The other two grievances which Petitioner filed on August 28, 2008, were also untimely. One identified the incident being grieved as having occurred on July 1, 2008, and stated that when she reviewed her personnel file she saw that her position title was incorrect. The other identified the incident being grieved as having occurred on July 16, 2008, and purported to allege unlawful workplace harassment by Leonard Jones; however, the allegations involved Petitioner's work plan, position title, and "ability to do job" and did not describe unlawful harassment. **T pp. 386-87, 734-38; Pet. Ex. 2; Pet. Ex. 66**
  
35. By letter dated August 19, 2008, Petitioner was informed by the Vice Chancellor for Student Affairs that she was being reassigned to work under Ryan Maltese in the University Event Center. She was informed that, other than the change in supervisor and office location, there were no changes being made to any other aspect of her employment. **T pp. 584-87; Pet. Ex. 42; Resp. Ex. 14**
  
36. Gary Burns was hired by Respondent as an Information Technology Manager on June 1, 2010. **T pp. 225-26; Pet. Ex. 46** Petitioner did not apply for the position when it was advertised. **T pp. 375-76**
  
37. In April 2010, Barbara Ellis was hired to be the interim Vice Chancellor for Information Technology ("IT") at the University. Ms. Ellis became the Vice Chancellor for IT in April 2011. **T pp. 415-16**
  
38. Dr. Melody Pierce was hired June 1, 2010, to be the Vice Chancellor for Student Affairs. **T p. 465**
  
39. One of the things the Chancellor brought to Ms. Ellis' attention when she first interviewed for the position as interim Vice Chancellor of IT was the need for the University to have an e-calendaring system. Ms. Ellis did some research and learned that the campus had an e-calendaring system, the R25 application which Petitioner was then supporting in Student Affairs. The servers supporting the R25 application were in IT, so Renee Martin, the Director of Applications in IT, had been working with Petitioner to maintain the R25 system. **T pp. 422-24**
  
40. Soon after being hired, Ms. Ellis met with Ryan Maltese, who was Petitioner's direct supervisor, to discuss the R25 system. There had been problems with the R25 systems, and there were discussions among Vice Chancellor Ellis, Vice Chancellor Pierce, and

- others, about how to proceed with supporting the R25 system including, as one possibility, outsourcing the support to an outside vendor. **T pp. 424-28, 468, 475; Resp. Ex. 1**
41. Ms. Ellis became aware that there were growing problems with R25 environment because the application was outdated, and a decision had to be made about whether to host the environment through an outside vendor, or invest in the system to bring it up to date and support it on campus. **T pp. 429-30**
  42. After discussions among employees in IT and Student Affairs, the decision was made to move support of the R25 system into the IT Division. Ms. Ellis, as the Vice Chancellor of IT, and Dr. Pierce, as the Vice Chancellor of Student Affairs, made the decision to move the system entirely to IT and agreed that IT would develop a detailed plan for transitioning the application. Such a plan was drafted by Renee Martin, an IT employee. **T pp. 430-33, 471; Resp. Ex. 2; Resp. Ex. 3**
  43. Ms. Ellis determined that the support for the R25 system could be absorbed by current employees in IT. Once the decision was made to move the support for the R25 system to IT, with existing IT personnel, there was no longer a need for the position occupied by Petitioner. Therefore, a RIF was proposed for Petitioner. **T pp. 434-35, 468-71; Resp. Ex. 4; Resp. Ex. 15**
  44. Consistent with the University's RIF policy, Dr. Pierce, as the Vice Chancellor for Student Affairs, requested approval from Human Resources for the RIF of Petitioner. Dr. Pierce's memorandum requesting approval was accompanied by a worksheet, which was prepared by Mr. Maltese, Petitioner's direct supervisor. **T pp. 469-70, 588; Resp. Ex. 4; Resp. Ex. 17**
  45. Linc Butler, who is the Assistant Vice Chancellor for Human Resources, reviewed the request and Human Resources created a Reduction in Force Plan. On March 15, 2011, Mr. Butler approved the RIF. The Chancellor does not approve the RIF, but his signature is included on the RIF Plan as an acknowledgment that he has been informed of it. **T pp. 588-90; Resp. Ex. 4; Resp. Ex. 15; Resp. Ex. 17**
  46. There were some errors in the worksheet that accompanied the request for the RIF, including an incorrect employee position number. Part of the purpose of having Human Resources review the request is to correct any errors. The correct position number is included in the RIF Plan completed by Human Resources. There was never any confusion about which employee was being RIFed. **T pp. 493, 504-05, 590-92; Pet. Ex. 70; Resp. Ex. 15**
  47. Support for the R25 system was taken over by the IT Division without the hiring of any additional employees. The transition has been successful. **T pp. 435-38, 471-72**
  48. Petitioner was the only Business and Technology Applications Analyst in the Student Affairs Division. She was notified of her upcoming reduction in force on March 15,

2011, and the RIF took effect on April 15, 2011. The particular position which had been occupied by Petitioner was abolished. **T pp. 243, 471, 496; Resp. Ex. 15; Resp. Ex. 18**

49. Petitioner filed a grievance with Respondent on March 17, 2011, the same day she filed the Petition in OAH which gave rise to this contested case hearing. **T pp. 286-87; Pet. Ex. 66** Petitioner was later informed that because she had filed a petition in OAH, the University would not proceed with her grievance. **T p. 385**
50. With respect to matters of State rules, regulations, and policies concerning position classifications, the undersigned finds the testimony of Linda McAbee, who is the Vice Chancellor of Human Resources for Respondent, credible. Petitioner's testimony in this area often contradicted that of Ms. McAbee. Petitioner did not establish that she has any background in human resources, however, and Petitioner did not corroborate her testimony with documentation.
51. The undersigned found Petitioner's testimony to be passionate and well-intentioned. However, regarding the important allegations at issue here, Petitioner did not provide corroborating evidence for her testimony, and in many cases, Petitioner's testimony was contradicted by the testimony of Respondent's witnesses, much of which was corroborated by documentation.
52. The undersigned finds as a fact that Petitioner was RIFed because Vice Chancellor Melody Pierce and Vice Chancellor Barbara Ellis determined that the University's resources would be more efficiently used by transferring Petitioner's duties to existing personnel in the IT Department, with the result that Petitioner's position in Student Affairs was no longer necessary.
53. The undersigned finds as a fact that the decision to RIF Petitioner was made by Dr. Pierce, in consultation with Ms. Ellis. Both are women. The races of these two women, as well as most of the identified individuals and the Petitioner, were not entered into evidence. However, Dr. Pierce and Ms. Ellis appeared to be of the same race as Petitioner.
54. Petitioner produced no evidence of animus by either Dr. Pierce or Ms. Ellis against Petitioner, on any grounds.
55. In particular, there was no evidence that Dr. Pierce or Ms. Ellis discriminated against Petitioner on the basis of her race or sex.
56. The undersigned finds as a fact that neither Dr. Pierce nor Ms. Ellis had any reason or motivation to retaliate against Petitioner.
57. The undersigned finds as a fact that Vice Chancellor McAbee did not make the decision to RIF Petitioner. Furthermore, Petitioner produced no evidence of animus by Ms. McAbee against Petitioner, on any grounds. In particular, there was no evidence that Ms.

McAbee discriminated against Petitioner on the basis of her race or sex or had any reason to retaliate against Petitioner.

58. The undersigned finds as a fact that Petitioner's RIF was not the result of discrimination on the basis of race or sex.
59. The undersigned finds as a fact that Petitioner's RIF did not constitute retaliation.

**CONCLUSIONS OF LAW**

1. The Office of Administrative Hearings has personal jurisdiction over the issue in this contested case pursuant to Chapter 126 and Chapter 150B of the North Carolina General Statutes.
2. Petitioner framed the issue in her Prehearing Statement as "The principal issue to be resolved is whether the RIF complies with substantive and procedural requirements, and whether it constitutes unlawful discrimination on the basis of gender, race and/or retaliation."
3. The Office of Administrative Hearings does not have subject matter jurisdiction over the issue of whether a RIF complied with substantive and procedural requirements. N.C. Gen. Stat. § 126-34.1; University of N.C. v. Feinstein, 161 N.C. App. 700, 590 S.E.2d 401 (2003). Accordingly, the undersigned has not considered this issue.
4. The Office of Administrative Hearings does have jurisdiction over the issue of whether a RIF constitutes unlawful discrimination on the basis of gender, race and/or retaliation. N.C. Gen. Stat. § 126-34.1(a)(2); Feinstein, 161 N.C. App. at 703, 590 S.E.2d at 403.
5. With regard to Petitioner's discrimination claim, the North Carolina Supreme Court has adopted the burden-shifting scheme used by federal courts, which was articulated in McDonnell Douglas Corp. v. Green, 411 U.S. 792, 93 S. Ct. 1817, 36 L. Ed. 2d 668 (1973). See North Carolina Dep't of Corr. v. Gibson, 308 N.C. 131, 301 S.E.2d 78 (1983). Federal courts use the same burden-shifting scheme for retaliation claims. E.g., Hoyle v. Freightliner, LLC, 650 F.3d 321, 337 (4th Cir. 2011).
6. Under the McDonnell Douglas burden-shifting scheme, a petitioner must first establish a prima facie case of discrimination/retaliation. If a petitioner establishes her prima facie case, the burden then shifts to the respondent to articulate a legitimate, non-discriminatory/retaliatory reason for its decision. If the respondent articulates a legitimate, non-discriminatory/retaliatory reason for the decision, then the burden shifts back to the petitioner to prove that the reason given by the respondent was a pretext for discrimination/retaliation. Hoyle, 650 F.3d at 337.
7. Even if Petitioner at this juncture had made a prima facie case of discrimination and/or retaliation, Respondent has articulated a legitimate, non-discriminatory and non-retaliatory reason for the RIF; namely, Vice Chancellors Pierce and Ellis determined that

the University's resources would be more efficiently used by transferring Petitioner's duties to existing personnel in the IT Department, with the result that Petitioner's position in Student Affairs was no longer necessary.

8. Thus, assuming *arguendo* that Petitioner has made a *prima facie* case, the Respondent has satisfied the shifting burden by explaining what it has done, manifesting a legitimate nondiscriminatory reason. Gibson, 308 N.C.131, 301 S.E.2d 78 (1983).
9. Petitioner has not met her burden of proof that Respondent's reasons for the RIF were a pretext for discrimination and/or retaliation. In particular, there is no evidence of a discriminatory animus or retaliatory motive on the part of the decision makers involved.
10. Petitioner appears to believe that there were acts of discrimination and/or retaliation which occurred in the past and resulted in her being vulnerable to the RIF in 2011. However, such acts are barred from hearing now because any such claims would be untimely. See N.C. Gen. Stat. § 126-38 ("Any employee appealing any decision or action shall file a petition for a contested case with the Office of Administrative Hearings as provided in G.S. 150B-23(a) no later than 30 days after receipt of notice of the decision or action which triggers the right of appeal.").
11. Even if Petitioner's allegations of prior discriminatory or retaliatory actions were properly before OAH, Petitioner did not produce evidence sufficient to prove an earlier act of discrimination or retaliation.
12. Petitioner claims Respondent refused to acknowledge her promotion, but as found above, the reclassification of Petitioner's position was never approved and finalized.
13. Petitioner argued that Respondent intentionally allowed the funding supporting her position to run out so that she could be RIFed. As found above, Petitioner did not sufficiently support this allegation with evidence.
14. Petitioner argued that her transfer to Student Affairs was retaliatory. Respondent's evidence showed that Petitioner could have been RIFed when the funding for her position ran out, but she was not. Petitioner claimed that because her appointment had changed after three years from "time-limited" to "permanent," the University was required to find continued funding for her position. However, as Ms. McAbee correctly testified, the difference between an employee with a permanent appointment and one with a time-limited appointment is that the permanent employee is entitled to severance pay and priority reemployment, while the time-limited employee is not. See 25 N.C.A.C. 1C.0402(c), (d). The change in status of Petitioner's position to permanent did not protect her against a RIF.
15. The University could have RIFed Petitioner when her funding ended, but it did not. Instead, the University created a position for her at the same classification level and with the same salary in Student Affairs. The transfer to Student Affairs was not retaliatory; it

allowed Petitioner to remain employed with the University, which Petitioner did for over three more years.

16. Petitioner argued that she was subject to retaliation in the form of discipline on two separate occasions for unacceptable personal conduct, once on November 1, 2007, and then again on August 8, 2008. In both cases, Petitioner received a one-week suspension without pay. Petitioner could have been dismissed on either occasion for unacceptable personal conduct, see Hilliard v. North Carolina Dep't of Corr., 173 N.C. App. 594, 597, 620 S.E.2d 14, 17 (2005) (one instance of unacceptable conduct constitutes just cause for dismissal), but she was not dismissed.
17. Petitioner claimed that Respondent ignored all of her grievances, but that claim is controverted by the findings above. In particular, there are emails in the record showing that Human Resources tried to work out a resolution of Petitioner's grievance about the reclassification in 2006, and that Human Resources worked on finding continued employment for Petitioner after the Title III funding ended in 2007.
18. Finally, Petitioner asserted that male employees were doing the same work as she was, but were being paid more for it. The only male employee Petitioner identified as doing the same work for more pay was Gary Burns, who was hired in June 2010. Petitioner did not produce sufficient evidence to show that Mr. Burns and Petitioner were doing the same work.

ON THE BASIS of the above Conclusions of Law, the undersigned issues the following:

#### **DECISION**

Based on the foregoing Findings of Fact and Conclusions of Law, the undersigned determines that Petitioner's RIF was not the result of discrimination on the basis of gender, race and/or retaliation. Respondent's action is therefore AFFIRMED.

#### **ACKNOWLEDGMENT**

It is acknowledged that whenever, in this document, reference is made to the Undersigned, the undersigned Judge, or the Court, reference is being made to the undersigned Administrative Law Judge with the Office of Administrative Hearings.

#### **ORDER**

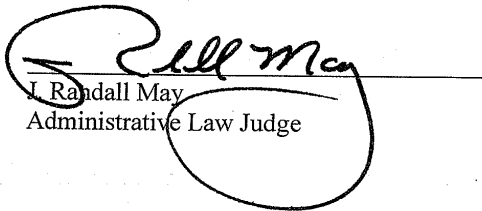
It is hereby ordered that the agency serve a copy of the final decision on the Office of Administrative Hearings, 6714 Mail Services Center, Raleigh, N.C. 27699-6714, in accordance with N.C.G.S. § 150B-36(b).

**NOTICE**

The agency making the final decision in this contested case is required to give each party an opportunity to file exceptions to Decision and to present written arguments to those in the agency who will consider this Decision. N.C.G.S. § 150B-36(a).

The agency is required by N.C.G.S. § 150B-36(b) to serve a copy of the final decision on all parties and to furnish a copy to the parties' attorney of record and to the Office of Administrative Hearings. The agency that will make the final decision in this contested case is the North Carolina State Personnel Commission.

This the 24th day of May, 2013.

  
J. Randall May  
Administrative Law Judge

On this date mailed to:

David W. McDonald, Esq.  
Hicks McDonald Noecker LLP  
100 Elm Street, Suite 510  
Greensboro, NC 27401  
Attorney for Petitioner

Katherine A. Murphy  
Assistant Attorney General  
N. C. Department of Justice  
9001 Mail Service Center  
Raleigh, NC 27699-9001  
Attorney for Respondent

This the 24th day of May, 2013.



Office of Administrative Hearings  
6714 Mail Service Center  
Raleigh NC 27699-6714  
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FILED  
OFFICE OF ADMINISTRATIVE HEARINGS  
6/4/2013 10:13 AM

STATE OF NORTH CAROLINA  
COUNTY OF MECKLENBURG

IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS  
12DHR01998

<p>Rochelle A Gaddy Petitioner,</p> <p>v.</p> <p>Department of Health and Human Services Division of Health Service Regulation Respondent.</p>	<p><b>FINAL DECISION</b></p>
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THIS MATTER coming on for hearing before the Honorable J. Randall May, Administrative Law Judge Presiding, for a determination of the merits of Petitioner's Contested Case, and, after having been heard, and upon consideration of the evidence presented herein on October 3, 2012 in Charlotte N.C. and concluded in High Point, N.C. on February 27, 2013.

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 and conclusions of law. In making the findings of fact, the undersigned has weighed all the evidence, or the lack thereof, 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 witnesses to see, hear, know or remember the facts or occurrences about which the witness testified, whether the testimony of the witnesses is reasonable, and whether the testimony is consistent with all other believable evidence in the case. From the sworn testimony of witnesses, the undersigned makes the following:

#### **FINDINGS OF FACT**

1. This is a Contested Case brought by Petitioner pursuant to Chapter 150B challenging the action taken by Respondent pursuant to N.C.G.S. § 131E-256.
2. The Petitioner was present in court and represented by counsel, Andrew J. Epstein and Monica E. Webb.
3. The Respondent was present in court and represented by counsel, Thomas E. Kelly.
4. This action arose out of accusations made against Petitioner for alleged abuse of a resident at the Parc at Sharon Amity, an assisted living facility located in Charlotte, Mecklenburg County, North Carolina.

5. The Petitioner is a Certified Nurse Assistant (CNA) who worked at the Parc at Sharon Amity (the "Parc") from 2010 until January 13, 2012, at which time Petitioner's employment was terminated.

6. By letter, dated February 28, 2012, Respondent notified Petitioner that Respondent had initiated an investigation into allegations that on or about January 2, 2012 and January 3, 2012, Petitioner allegedly abused a resident at the Parc at Sharon Amity. As a result, Petitioner was listed on the Health Care Personnel Registry pursuant to N.C.G.S. § 131-256. Respondent assigned an investigator, Lawrencette McSwain ("Investigator McSwain"), to investigate the allegations of abuse.

7. On March 23, 2012, Petitioner filed a Contested Case Petition against Respondent, denying all allegations of abuse, and challenging the listing in the Health Care Personnel Registry.

8. By letter, dated May 7, 2012, Respondent notified Petitioner that Respondent substantiated allegations of abuse and neglect against Petitioner.

9. On May 14, 2013, Petitioner filed a Prehearing Statement, which encompassed the substantiated allegations of abuse and neglect, including whether Respondent acted erroneously, arbitrarily, and/or capriciously, and failed to use proper procedure when it substantiated findings of abuse and neglect as indicated in its May 2012 letter to Respondent.

10. At the hearing of this matter, Respondent called four witnesses who alleged that on January 2, 2012, Petitioner poured water from a water bottle onto resident R.H., while in the break room of the facility. These witnesses were Sharon Halley, Robin Roach, Chanelle Wallace, and Crystal Sinclair.

11. Sharon Halley was the first and only person to report this incident to anyone at the Parc without being specifically asked about it. During Investigator McSwain's investigation, Sharon Halley signed a statement that she reported this incident to administrator Donna Stallings, in person, immediately after the incident occurred on January 2, 2012.

12. On April 11, 2012, Sharon Halley signed another statement that she reported this incident to Donna Stallings on January 2, 2012.

13. During the investigation at the Parc, Donna Stallings signed a statement that she had taken time off for the New Year's Holiday and was not at the Parc on January 2, 2012.

14. At the hearing of this matter, Sharon Halley testified that she reported the incident on January 3, 2012 and that she changed her story since she had learned that Donna Stallings was not at the Parc on January 2, 2012.

15. Portions of Sharon Halley's testimony about how, when, and why she reported the incident was not credible.

16. Sharon Halley testified that she was not in the room where the incident allegedly occurred on January 2, 2012; was not in a position to see the incident; and testified that she did not see the Petitioner pour any water on any resident. Sharon Halley also testified that she did not speak with anyone else who was in a position to see the incident before reporting it to Donna Stallings.

17. None of the other witnesses relied upon by the Respondent to substantiate the allegations of this incident on January 2, 2012 (Robin Roach, Chanelle Wallace, and Crystal Sinclair) reported anything about this incident to anyone, until specifically asked about it by their supervisors, Donna Stallings and Angela Parks, on January 5, 2012. Robin Roach, Chanelle Wallace, and Crystal Sinclair were aware of the requirement that they immediately report abuse or neglect of a resident, yet none did.

18. The Petitioner testified that on January 2, 2012, she was in the break room and started drinking out of her bottle of water, that the other CNAs in the room, Robin Roach, Chanelle Wallace, and Crystal Sinclair, started laughing and one of them told Petitioner that a resident, R.H., had just drank out of that bottle of water, and that Petitioner reflexively spit the water out of her mouth. Petitioner testified that some of the water fell onto Petitioner's hands and some of the water inadvertently landed on the back of R.H.'s shirt.

19. Although Petitioner was an interested witness, her testimony was credible.

20. Robin Roach testified that she, along with Chanelle Wallace and Crystal Sinclair, were laughing during this incident. Crystal Sinclair testified that she saw R.H. holding the Petitioner's water before Petitioner came into the break room where the incident occurred. This testimony corroborated Petitioner's testimony.

21. Respondent's Investigation Conclusion Report indicates that Petitioner's account of the January 2, 2012 incident changed from what she told the facility during their investigation to what she reported to Respondent's investigator. However, the written statement from the Parc was written by Donna Stallings and the evidence showed that the Petitioner was not given an opportunity to write a statement. Further, there was no credible evidence that Petitioner signed, adopted, accepted, or even saw the statement written by Donna Stallings.

22. It was erroneous for Investigator McSwain to conclude that the Petitioner's account of the January 2, 2012 incident changed.

23. Despite the inconsistencies between Investigator McSwain's interviews of Donna Stallings and Sharon Halley and the fact that the only person to have voluntarily reported this incident at any point before being questioned about it on January 5, 2012 did not actually see the incident or hear anything about it, Investigator McSwain did not attempt to investigate whether there was any retaliation or other motives for these allegations.

24. Investigator McSwain testified that if there was evidence of retaliation against the Petitioner, then that would be important and something that she would need to investigate.

Investigator McSwain also testified that she did not investigate any possible retaliation against the Petitioner in her investigation in this matter.

25. Investigator McSwain testified that during her investigation in this matter and substantiation of the findings against the Petitioner, she did not consider that the allegations could have stemmed from retaliation because she did not think that Sharon Halley would have a reason to retaliate against the Petitioner.

26. The evidence showed that there were occasions on which Sharon Halley had heated words with the Petitioner because the Petitioner criticized Sharon Halley for not taking proper care of the residents at the Parc. Additionally, the evidence showed that in late December, 2011, days before Sharon Halley reported the Petitioner to Donna Stallings, the Petitioner and Sharon Halley had an argument.

27. It was erroneous for Investigator McSwain to assume that Sharon Halley had no reason to retaliate against the Petitioner.

28. Investigator McSwain testified that Petitioner told her during the investigation that she had complained about another staff member sexually harassing her, yet Investigator McSwain did not ask any follow up questions about this to the Petitioner or any other witness.

29. Investigator McSwain testified that she received and reviewed the Petitioner's personnel file, but that there were no documents relating to the Petitioner's sexual harassment complaint in that file. Investigator McSwain further testified that she did not seek any of the documents relating to the sexual harassment complaint from the Parc.

30. The evidence presented at the hearing of this matter showed that on October 7, 2007, the Petitioner reported being sexually harassed and assaulted by another employee of the Parc, Marian Irdela, and that Angela Parks, the Residential Care Coordinator, conducted the investigation about the sexual harassment complaint.

31. A formal corrective action form was issued to Mirian Irdela as a result of this investigation (not signed by Angela Parks) on October 26, 2007.

32. The next day, on October 27, 2007, Kendra Johnson and Angela Parks, both of whom were close with Mirian Irdela, issued a corrective action form to the Petitioner, which is some evidence of potential retaliation.

33. It was arbitrary and erroneous for Investigator McSwain not to have sought the documentation of the sexual harassment complaint omitted from Petitioner's personnel file or investigated potential retaliation.

34. Had Investigator McSwain sought and reviewed the documents relating to the Petitioner's sexual harassment complaint, she would then have been able to recognize the potential retaliation and investigate additional facts and circumstances surrounding the allegations that had been made about the Petitioner.

35. The evidence showed that the Petitioner had reported issues about inadequate patient care at the Parc to the Department of Social Services (DSS) on multiple occasions to try to get better care for the residents at the Parc.

36. The evidence showed that DSS came to the Parc on multiple occasions as a result of the Petitioner's calls to investigate and resolve the issues.

37. DSS investigators came to the Parc to investigate in late November, 2011, just over a month before the allegations against the Petitioner arose. During this visit, DSS investigators interviewed the Petitioner, who told the investigators about numerous issues with resident care, inadequate equipment and supplies, and residents that needed a higher level of care than the Parc could provide.

38. Two of Petitioner's supervisors, Angela Parks (Residential Care Coordinator at the Parc) and Kendra Johnson (Medical Technician) saw Petitioner speaking with the DSS investigators.

39. The evidence also showed that after the Petitioner spoke with the DSS investigators in late November, 2011, Chanelle Wallace, Crystal Sinclair, and Robin Roach asked the Petitioner what she told the investigators and the Petitioner told them exactly what she told the DSS investigators.

40. The evidence showed that as a result of the DSS investigation, DSS moved some residents out of the Parc and into different facilities during the month of December, 2011.

41. There was some evidence that as a result of DSS moving residents out of the Parc, the CNAs hours were getting reduced; Crystal Sinclair, Robin Roach, and Chanelle Wallace stated in late December 2011 and early January 2012 that they were worried about their hours being reduced.

42. At a staff meeting that Donna Stallings held in late December 2011, the CNAs asked about raises. There was evidence that at that staff meeting, Donna Stallings responded that the CNAs would never get raises as long as someone keeps calling DSS.

43. Donna Stallings testified that after Petitioner was fired, some of the CNAs got raises in March 2012.

44. Investigator McSwain did not consider the full ramifications of the pending DSS investigations.

45. Only one witness, Robin Roach, alleged at the hearing of this matter that Petitioner poured hot sauce into cereal and gave it to resident R.H. to eat on January 3, 2012.

46. The evidence showed that Robin Roach did not report this incident at the time that it occurred, but instead reported it only after being questioned by the facility administrators on January 5, 2012 about the water incident. Robin Roach was aware of the requirement that she

immediately report abuse or neglect of a resident, but she testified that she did not do anything to stop it at the time or report it afterwards.

47. Robin Roach testified that there were numerous other CNAs that Investigator McSwain did not interview who were in a position to see this incident on January 3, 2012.

48. There was no other evidence supporting the allegations relating to the January 3, 2012 incident.

49. The Petitioner told Investigator McSwain during an interview that she had no knowledge of any incident with R.H. on January 3, 2012, cereal, or hot sauce, and that the allegation was untrue. Petitioner's testimony at the hearing was consistent with this, and credible.

50. Investigator McSwain testified that she only interviewed witnesses specifically identified to her by Donna Stallings and Angela Parks at the Parc and that she did not interview any other witnesses.

51. Julia Cowan Sanders, a CNA at the Parc, testified that Investigator McSwain did interview her during her investigation in this matter and that she told Investigator McSwain that the Petitioner was a good nurse, and that she does not believe that the Petitioner would even attempt to abuse a resident.

52. Investigator McSwain did not include any information from her interview of Julia Cowan Sanders in her report or notes.

53. Investigator McSwain's investigation file and report only included documents and interviews that supported the allegations against the Petitioner, instead of all documents and information received in the investigation.

54. By omitting the interview with Julia Cowan Sanders, Investigator McSwain specifically excluded information that tended to show that the Petitioner was not the type of person to abuse or neglect a resident.

55. No evidence was presented that tended to show that R.H. was neglected by anyone on January 2 or January 3, 2012.

56. Respondent interviewed Petitioner on April 12, 2012, without addressing any allegations of neglect. Investigator McSwain made no effort to inform Petitioner of the full extent of the investigation, nor did Investigator McSwain make any effort to elicit relevant and material information from Petitioner regarding the issue of neglect.

57. Respondent's investigation uncovered no evidence to substantiate the allegations of neglect.

58. Investigator McSwain defined "neglect" in her Investigation Conclusion Report to mean "the failure to provide goods or services necessary to avoid physical harm, mental anguish or mental illness." However, Investigator McSwain testified that she substantiated the finding of neglect against the Petitioner for the January 2, 2012 incident because, "if [pouring the water] was her attempt to get the resident out of the room there was a better, more approved way and a more appropriate way to get that resident to leave that break room." Investigator McSwain testified similarly that she substantiated the finding of neglect against the Petitioner for the January 3, 2012 incident because, "if Ms. Gaddy was going to try to get RH out of the staff break room, it was not proper for her to do that by giving her hot sauce in cereal. There was a more appropriate way to get RH to leave the break room."

59. The evidence showed that the Respondent arbitrarily substantiated both findings of neglect based on an unknown and unidentified definition of neglect that was different from the Respondent's own stated definition of neglect.

BASED UPON the foregoing FINDINGS OF FACT, the undersigned hereby makes the following:

**CONCLUSIONS OF LAW**

1. This matter is properly before the undersigned for determination on the merits with due and proper notice to all parties.
2. It was erroneous for Investigator McSwain to conclude that the Petitioner's account of the January 2, 2012 incident changed.
3. It was erroneous, arbitrary, capricious, and improper procedure for Investigator McSwain not to investigate the motives, biases, and credibility of the employees making the allegations and their strained relationships with the Petitioner.
4. It was erroneous for Investigator McSwain to assume that Sharon Halley had no reason to retaliate against the Petitioner.
5. It was erroneous, arbitrary, and improper procedure for Investigator McSwain not to have sought and reviewed the documents relating to the sexual harassment complaint that the Petitioner specifically informed her about.
6. It was erroneous, arbitrary, capricious, and improper procedure for Investigator McSwain not to have investigated potential retaliation based on the DSS investigation within a month before the allegations were made.
7. In light of the differing accounts provided by witnesses and the known sexual harassment complaint, it was erroneous, arbitrary, and improper procedure for Investigator McSwain not to investigate possible retaliation against the Petitioner.

8. There was insufficient evidence to substantiate a finding of abuse or neglect relating to the alleged incident on January 3, 2012.

9. It was erroneous, arbitrary, and improper procedure for Investigator McSwain to exclude from her report and notes information that she received from a witness (Julia Cowan Sanders) supporting the Petitioner's account, and not consider it when determining whether to substantiate the findings of abuse and neglect.

10. The Respondent's evidence does not support either finding of neglect (January 2, 2012 and January 3, 2012) and it was erroneous to substantiate them based on a definition other than the definition specified in Investigator McSwain's report.

11. Respondent erred in its findings that Petitioner abused and neglected a resident of the Parc at Sharon Amity.

12. The Respondent has substantially prejudiced the Petitioner's rights by substantiating the findings of abuse and neglect and by listing Petitioner's name on the Health Care Personnel Registry.

#### **FINAL DECISION**

Based upon the foregoing FINDINGS OF FACT and CONCLUSIONS OF LAW, the undersigned ORDERS that the findings made by Respondent, as reported in its letter of March 23, 2012 to Petitioner, be dismissed and that Petitioner's name shall be removed from the Health Care Personnel Registry.


#### **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 3rd day of June, 2013.


  
J. Randall May  
Administrative Law Judge

On this date mailed to:

ANDREW J. EPSTEIN, ESQ.  
MCGUIRE WOODS LLP  
PO BOX 27507  
RALEIGH, NC 27611  
ATTORNEY FOR PETITIONER

THOMAS E. KELLY  
ASSISTANT ATTORNEY GENERAL  
NC DEPARTMENT OF JUSTICE  
9001 MAIL SERVICE CENTER  
RALEIGH, NC 27699  
ATTORNEY FOR RESPONDENT

This the 3rd day of June, 2013.

  
Office of Administrative Hearings  
6714 Mail Service Center  
Raleigh NC 27699-6714  
Telephone: 919/431-3000  
Fax: 919/431-3100

STATE OF NORTH CAROLINA  
COUNTY OF CUMBERLAND

IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS  
12DHR12088

Filed

2013 MAY 23 PM 12:04

Office of  
Administrative Hearings

CUMBERLAND COUNTY HOSPITAL  
SYSTEM, INC. d/b/a CAPE FEAR VALLEY  
HEALTH SYSTEM,  
Petitioner,

v.

NC DEPARTMENT OF HEALTH AND  
HUMAN SERVICES, DIVISION OF  
HEALTH SERVICE REGULATION,  
CERTIFICATE OF NEED SECTION,  
Respondent,

and

FIRSTHEALTH OF THE CAROLINAS, INC.  
d/b/a FIRSTHEALTH MOORE REGIONAL  
HOSPITAL,  
Respondent-Intervenor

**FINAL DECISION**

THIS MATTER came before the undersigned Administrative Law Judge for hearing on FirstHealth's<sup>1</sup> Motion to Dismiss this contested case pursuant to N.C. Gen. Stat. § 1A-1, Rule 12(b)(1) and 12(b)(6). FirstHealth's Motion, in which the Agency joined, asserts that Cape Fear's petition initiating this contested case failed to state facts tending to establish an essential element of its claim, and therefore that the petition fails to state a claim upon which relief can be granted and fails to invoke the subject matter jurisdiction of OAH. Having considered FirstHealth's motion, the Agency's response joining in FirstHealth's motion, Cape Fear's response in

<sup>1</sup> In this Final Decision, the following abbreviations are used:

- "FirstHealth" means Respondent-Intervenor FirstHealth of the Carolinas d/b/a FirstHealth Moore Regional Hospital.
- "Cape Fear" means petitioner Cumberland County Hospital System, Inc. d/b/a Cape Fear Valley Medical Center.
- The "Department" means the North Carolina Department of Health and Human Services.
- The "Agency" means the Department's Division of Health Service Regulation, Certificate of Need Section.
- The "Renovation Project" means the project proposed in FirstHealth's application for a CON identified as Project I.D. No. H-8839-12.
- "CON" means certificate of need.
- "OAH" means the North Carolina Office of Administrative Hearings.
- The "28 Bed Project" means the project proposed in FirstHealth's application for a CON identified as Project I.D. No. N-8838-12.

opposition to that motion and the various deposition transcripts, affidavits and other exhibits submitted by the parties, and having heard arguments of counsel for all parties, the undersigned Administrative Law Judge has determined that this motion should be treated as a motion for summary judgment under N.C. Gen. Stat. § 1A-1 Rule 56. See Kessing v. National Mtg. Corp., 278 N.C. 523, 180 S.E.2d 823 (1971).

**SUMMARY OF UNDISPUTED FACTS**

1. On July 15, 2012, FirstHealth filed an application for a CON to develop its Renovation Project. Cape Fear was permitted to and did file comments in opposition to the FirstHealth Application during the time it was under review by the Agency.
2. By its decision dated November 27, 2012 and findings dated December 4, 2012, the Agency approved the FirstHealth Application and determined that a CON should be issued for FirstHealth to develop its Renovation Project.
3. On December 21, 2012, Cape Fear filed a petition for a contested case to review the Agency's decision approving the Renovation Project. As a result of that petition, no CON has yet been issued to FirstHealth for its Renovation Project, and the development of that project has been prevented through the present date. See N.C. Gen. Stat. § 131E-187(c).
4. As described in the FirstHealth Application, the Renovation Project proposed the renovation of two floors of FirstHealth Moore Regional Hospital in existing buildings which were constructed in 1990 and 1977, respectively, and which have not been renovated significantly since their construction. The FirstHealth Application describes the factors necessitating its proposal and the benefits to be achieved by the renovations as follows:
  - Current room configuration is not compliant with the current NC Accessibility Code (ADA)
  - Patient restrooms are not appropriate for the standard of care today and do not provide adequate access and safety for bathing
  - The renovation will allow more square footage in the room for patient family and visitors
  - Rooms will increase in size to allow for in-room rehabilitation and bed side therapy
  - Renovation will ensure adequate electrical service to ICU rooms to support the power demand of today's equipment (ventilators, dialysis etc.)
  - Renovation will allow all affected rooms to be fully plumbed and accommodate in-room dialysis treatments
  - Renovation will incorporate EMR through the use of in-room computing/electronic documentation stations
  - Nurse stations will be redesigned as part of project to improve visibility into ICU rooms

- Rooms will be upgraded with enhanced nurse call system, patient monitoring and integrated patient bed technology to give clinical staff better awareness of patient condition
- Clinical storage will be increased
- Medications Rooms will be incorporated into the design along with automated medication dispensing systems for enhanced medication accountability and distribution
- Renovation includes orthopedics unit which will be outfitted with a comprehensive "Joint Class" to provide family and patient with better awareness of conditions and robust training of discharge and rehab instructions
- Hand washing stations will be included in the design for infection control between patient rooms

The renovations are expected to be completed in October 2015 and total project costs are estimated at \$18.5 million.

See Exhibit 5 to FirstHealth's Motion to Dismiss.

5. FirstHealth Moore Regional Hospital, in which the Renovation Project is proposed to be developed, is located at 155 Memorial Drive, Pinehurst, North Carolina, which is approximately forty-seven miles or one hour two minutes driving time from Cape Fear's hospital facility in Fayetteville, North Carolina. See Exhibit 2 to FirstHealth's Motion to Dismiss.
  
6. During discovery in this case, FirstHealth took the depositions of Cape Fear's Chief Executive Officer, Michael Nagowski; its Chief Financial Officer, Sandra Williams; its Chief Planning Officer, Sandra Godwin; and its Consultant Nancy Bres Martin. Ms. Bres Martin has been identified by Cape Fear as an expert witness and designated by Cape Fear to testify on issues related to whether the Agency's decision approving the FirstHealth Application substantially prejudiced any right of Cape Fear, pursuant to N.C. Gen. Stat. § 1A-1 Rule 30(b)(6). None of these witnesses was able to identify any way in which any of the renovations purposed in FirstHealth's Renovation Project would substantially prejudice any right of Cape Fear. See Exhibit 1, pp. 20-23; Exhibit 2, p. 24; Exhibit 3, pp. 47-53; and Exhibit 4, pp. 30-22, attached to FirstHealth's April 16, 2013 Notice of Filing.
  
7. Cape Fear asserts that the Agency's decision approving the Renovation Project is based upon information contained in the FirstHealth Application which is inconsistent with information contained in a separate application for a CON submitted by FirstHealth for its 28 Bed Project. The FirstHealth 28 Bed Project is proposed to be developed at FirstHealth Hoke Community Hospital in Raeford, North Carolina, and was approved by the Agency in a separate decision. Specifically, Cape Fear contends that FirstHealth "double-counted" patients by relying upon the same projected days of care to support both projects. Cape Fear further contends that the Agency's erroneous approval of the FirstHealth 28 Bed Project resulted in the disapproval of a competing application by Cape Fear.

8. FirstHealth and the Agency contend that the two separate FirstHealth applications for the Renovation Project and the 28 Bed Project did not rely upon inconsistent information, and that there was no double-counting of patients. FirstHealth and the Agency further contend that the approval of the FirstHealth 28 Bed Project did not result in the disapproval of Cape Fear's competing application, because the Cape Fear application was non-conforming with statutory review criteria and therefore unapprovable standing alone.
9. The FirstHealth 28 Bed Project and the competing application of Cape Fear are the subject of a separate contested case currently pending in OAH in which the undersigned Administrative Law Judge presides, 12 DHR 12090. FirstHealth and the Agency contend and have stipulated that Cape Fear can elicit in discovery and introduce at the hearing of that separate contested case any evidence which may exist to support its allegation that the two FirstHealth applications relied on inconsistent information or double counted patients.
10. FirstHealth's motion came before the undersigned for hearing on April 19, 2013. At that hearing, Cape Fear requested that the ruling on this motion be deferred until discovery in this case was completed and Cape Fear had the opportunity to make transcripts of any further depositions part of the record. In accordance with the undersigned's scheduling order, discovery in this case ended on April 29, 2013, and Cape Fear was given until May 3, 2013, to file any deposition transcripts which it wished to make part of the record.

**CONCLUSIONS OF LAW**

1. Administrative Law Judges may rule on all prehearing motions authorized under the North Carolina Rules of Civil Procedure, including motions for summary judgment. See N.C. Gen. Stat. § 150B-33(b)(3a); 26 N.C.A.C. 3.0105(1) and (6).
2. Under N.C. Gen. Stat. § 1A-1, Rule 56(c), summary judgment appropriately is awarded "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show there is no genuine issue as to any material fact and that any party is entitled to judgment as a matter of law."
3. The burden of proof which a petitioner must meet in order to prevail in a contested case is set forth in N.C. Gen. Stat. § 150B-23(a).
4. Applying N.C. Gen. Stat. § 150B-23(a) the Court of Appeals has explained the petitioner's burden of proof in a CON case as follows:

The subject matter of a contested case hearing by the ALJ is an agency decision. Under N.C. Gen. Stat. § 150B-23(a), the ALJ is to determine whether the petitioner has met its burden in showing that the agency substantially prejudiced petitioner's rights, and that the agency also acted outside its authority, acted erroneously, acted arbitrarily and capriciously, used an improper procedure, or failed to act as required by law or rule.

Britthaven, Inc. v. N.C. Dept. of Human Resources, 118 N.C. App. 379, 382, 455 S.E.2d 455, 459 (1995) (emphasis omitted).

5. In the eighteen years since the Court of Appeals' decision in Britthaven, its subsequent decisions have consistently recognized that both substantial prejudice to a petitioner's rights and agency error must be pled in a petition, and ultimately proven at the hearing, for a petitioner to obtain relief in a CON case. See Novant Health, Inc. v. N.C. Dept. of Health and Human Services, \_\_\_ N.C. App. \_\_\_, 734 S.E.2d 138 (2012) (unpublished); Wake Radiology Services, LLC v. N.C. Dept. of Health and Human Services, \_\_\_ N.C. App. \_\_\_, 716 S.E.2d 87 (2011) (unpublished); Ridge Care, Inc. v. N.C. Dept. of Health and Human Services, \_\_\_ N.C. App. \_\_\_, 716 S.E.2d 390 (2011); Parkway Urology, P.A. v. N.C. Dept. of Health and Human Services, 205 N.C. App. 529, 536, 696 S.E.2d 187, 193 (2010); and Presbyterian Hospital v. N.C. Dept. of Health and Human Services, 177 N.C. App. 780, 785, 630 S.E.2d 213, 216 (2006).
6. Cape Fear did not in its petition state facts tending to establish, and after completion of discovery cannot forecast evidence to show, that the Agency's decision approving the development of the Renovation Project has substantially prejudiced any right of Cape Fear.
7. Because Cape Fear cannot establish an essential element of its claim in this contested case, that the Agency's approval of the FirstHealth Renovation Project has substantially prejudiced its rights, any issue of fact as to whether the Agency's decision approving the Renovation Project was erroneous is immaterial. See, e.g., Presbyterian Hospital, 177 N.C. App. at 785, 630 S.E.2d at 216.
8. If Cape Fear is able to elicit any evidence to show that the information contained in the FirstHealth Application for its Renovation Project is inconsistent with information contained in its application for its 28 Bed Project, that evidence may be presented in Case Number 12 DHR 12090.
9. When viewed in its entirety, the CON Law "reveals the legislature's intent that an applicant's fundamental right to engage in its otherwise lawful business be regulated, but not be encumbered with unnecessary bureaucratic delay." HCA Crossroads Residential Ctrs., Inc. v. North Carolina Dep't of Human Resources, 327 N.C. 573, 579, 398 S.E.2d 466, 470 (1990). In accordance with this legislative purpose, FirstHealth's Renovation Project should not be delayed while issues involved in its 28 Bed Project are litigated.
10. There is no genuine issue of material fact in this case, and FirstHealth and the Agency are entitled to judgment as a matter of law.

#### **FINAL DECISION**


Based on the undisputed facts recited above and the foregoing conclusions of law, FirstHealth's Motion to Dismiss, treated as a Motion for Summary Judgment under G.S. 1A-1,

Rule 56 because of consideration of materials outside of the pleadings, should be, and hereby is as a matter of law, ALLOWED.

**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 23 day of May, 2013.

  
Beecher R. Gray  
Administrative Law Judge

On this date mailed to:

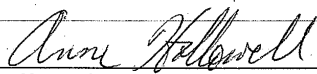
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This the 23 day of May, 2013.



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STATE OF NORTH CAROLINA

COUNTY OF UNION

AGAPE SERVICES, INC.,

Petitioner,

v.

PROGRAM INTEGRITY SECTION OF DMA,

Respondent.

FILED

IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS  
12 DHR 12405

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OFFICE OF  
ADMINISTRATIVE HEARINGS

FINAL DECISION

THIS CAUSE came on for hearing before the undersigned Administrative Law Judge Selina M. Brooks on April 3, 2013 in Greenville, North Carolina.

**APPEARANCES**

For Petitioner: Regina M. Taylor  
Law Offices of Regina M. Taylor, P.C.  
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Gastonia, NC 28053-0944

For Respondent: Thomas J. Campbell  
Assistant Attorney General  
N.C. Dept. of Justice  
9001 Mail Service Center  
Raleigh, North Carolina 27699-9001

**ISSUE**

Whether the November 28, 2012 decision of the DHHS Hearing Officer to modify a DMA recoupment to \$44,619.00 was correct?

**APPLICABLE STATUTES AND RULES**

42 U.S.C. §§ 1396a - 1396v  
42 C.F.R. Parts 455 and 456  
N.C. Gen. Stat. § 150B-22 *et seq.*  
10A N.C.A.C. 22F *et seq.*  
21 N.C.A.C. 64 .0101 *et seq.*  
N.C. State Plan for Medical Assistance

**EXHIBITS**

Respondent's Exhibits 1 – 16 were admitted into evidence.  
Petitioner's Exhibit 1 was admitted into evidence

**WITNESSES**

Victoria Ector, DMA Program Integrity  
William J. Massey, CEO Agape Services, Inc.

**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 sworn testimony of witnesses, the undersigned makes the following:

**FINDINGS OF FACT**

1. At all times material to this matter, Petitioner, Agape Services, Inc., was an enrolled provider of Community Intervention Services in the North Carolina Medicaid Program and entered into a North Carolina Medicaid Participation Agreement with the Division of Medical Assistance ("DMA") to participate in this program. *See*, Medicaid Participation Agreement (Respondent's Ex. 1).
2. By entering into the Medicaid Participation Agreement, Petitioner agreed to comply with "... federal and state laws, regulations, state reimbursement plans and policies governing the services authorized under the Medicaid Program and this agreement (including, but not limited to, Medicaid provider manuals and Medicaid bulletins published by the Division of Medical Assistance and/or its fiscal agent." (Respondent's Ex. 1).
3. By entering into the Medicaid Participation Agreement, Petitioner agreed to "[m]aintain for a period of five (5) years from the date of service; . . . (b) other records as necessary to disclose and document fully the nature and extent of services provided and billed to the Medicaid Program." (Respondent's Ex. 1).
4. This matter involves an audit of Petitioner conducted on behalf of DMA on November 7, 2011. (Respondent's Ex. 5).
5. The audit revealed non-compliance with Clinical Coverage Policy 8A Enhanced Mental Health and Substance Abuse Services. (Respondent's Ex. 2). The audit

initially identified an overpayment of \$110,425.20, which was identified as Program Integrity Case No. 20110868. (Respondent's Ex. 5 and 6).

6. On November 7, 2011, DMA notified Petitioner of the audit results via certified mail and requested that Petitioner send in a check for the overpayment within thirty (30) days or file a Request for Reconsideration within fifteen (15) days. (Respondent's Ex. 6).
7. Following Petitioner's timely Request for Reconsideration, the audit was re-reviewed by Victoria Ector, a Hearing Specialist with DMA, who found that the overpayment should be modified to \$44,619.00. (Respondent's Ex. 8).
8. On November 28, 2012, the DHHS Hearing Officer issued a decision modifying the overpayment amount to \$44,619.00, from which decision the Petitioner filed a timely appeal to this Honorable Court. (Respondent's Ex. 9).
9. DMA Clinical Coverage Policy No. 8A, Revised January 1, 2009, Enhanced Mental Health and Substance Abuse Services, a properly promulgated medical coverage policy, was in effect at the time that the services examined by the audit were rendered. (Respondent's Ex. 2).
10. It is undisputed that Petitioner provided Enhanced Mental Health Services to Medicaid recipients.
11. Ms. Ector testified on behalf of Respondent that she conducted the subsequent audit of Petitioner's records.
12. Ms. Ector testified that she had reviewed the Petitioner's records prior to the hearing and that she had changed certain findings such that the overpayment should be modified to \$37,752.50 and that her findings were summarized in a memo to her supervisor, Patrick Piggott, Chief of the Behavioral Health Review Section of DMA. (Respondent's Exhibit 10).
13. As part of the audit review, an adverse findings chart was completed by Ms. Ector documenting the audit findings. (Respondent's Ex. 11).
14. Prior to the beginning of the hearing in the within matter, Respondent advised Petitioner and the court that there was a typographical error in Ms. Ector's chart and the actual/correct amount of the identified overpayment was \$37,738.50. (The error being that the total amount of the alleged overpayment for patient B.M. was \$9,382.50, not the \$9,396.50 set forth in the adverse findings chart).
15. The audit identified problems with Petitioner's documentation for Medicaid recipients for dates of service May 1, 2009 through July 14, 2009, specifically: there was no doctor's signature on the plan of care; there was no order for day treatment, although it was billed; and there was no credential after the qualified professional's

signature on a note. This documentation is required by DMA Clinical Coverage Policy No. 8A (Respondent's Ex. 11).

16. Medicaid Clinical Coverage Policy 8A contains documentation requirements for providing Enhanced Mental Health and Substance Abuse Services. (Respondent's Ex. 2).
17. Policy 8A states that "[s]ervice orders are a mechanism to demonstrate medical necessity for a service and are based upon an assessment of each individual's needs." DMA Clinical Coverage Policy No. 8A, 5.2. (Respondent's Ex. 2).
18. Policy 8A states that "each service order must be signed and dated by the authorizing profession and must indicate the *date* on which the service was ordered. A service order must be in place *prior to* or on the day that the service is initially provided in order to bill Medicaid for the service." DMA Clinical Coverage Policy No. 8A, 5.2. (emphasis in original). (Respondent's Ex. 2).
19. Policy 8A states that "[s]ervices covered by this policy require a Person-Centered Plan." DMA Clinical Coverage Policy No. 8A, 5.6f. (Respondent's Ex. 2).
20. Policy 8A states that providers should refer to "the service definitions in **Attachment F**, the DMH/DD/SAS *Person-Centered Planning Instruction Manual*, and the DMH/DD/SAS *Records Management and Documentation Manual* for specific information." DMA Clinical Coverage Policy No. 8A. (Respondent's Ex. 2). (emphasis in original).
21. The DMH/DD/SAS Records Management and Documentation Manual specifically requires the signature of the appropriate professional on the service order section of the Person-Centered Plan. DMH/DD/SAS Records Management and Documentation Manual, chapters 5-2, 8-1, 8-2. (Respondent's Ex. 3).
22. The DMH/DD/SAS Records Management and Documentation Manual specifically requires that the "credentials, degree or licensure" of the professional providing the service be included with that person's signature. DMH/DD/SAS Records Management and Documentation Manual, chapters 8-5.
23. The DMH/DD/SAS Person-Centered Planning Instruction Manual provides that if new services are added to the Person-Centered Plan during an update/revision to the PCP, a new service order is needed. (Respondent's Ex. 4).
24. As to Medicaid recipient D.P. for DOS 5/1/09 through 7/14/09, those dates of service (as specifically set forth in the adverse findings chart) were not in compliance with Policy 8A because there was no doctor's signature on the service order section of the PCP which was prepared in May of 2009. (Respondent's Ex. 11, 12).

25. As to Medicaid recipient B.M. for DOS 5/1/09 through 7/14/09, those dates of service (as specifically set forth in the adverse findings chart) were not in compliance with Policy 8A because there was no doctor's signature on the service order section of the PCP which was prepared in March of 2009. (Respondent's Ex. 11, 13).
26. As to Medicaid recipient C.K. for DOS 5/15/09 through 7/14/09, those dates of service (as specifically set forth in the adverse findings chart) were not in compliance with Policy 8A because there was no doctor's signature on the service order section of the PCP which was prepared in May of 2009. (Respondent's Ex. 11, 14).
27. As to Medicaid recipient G.C. for DOS 6/11/09, the date of service was not in compliance with Policy 8A because the person providing the service to G.C. on that date did not include their professional designation with their signature on the treatment note. (Respondent's Ex. 11, 16).
28. The Undersigned finds that Ms. Ector's testimony as to the deficiencies in Petitioner's records for patients D.P., B.M., C.K. and G.C. was credible in view of Clinical Coverage Policy 8A. This decision has considered both Ms. Ector's testimony and knowledge and accorded appropriate weight to her opinions.
29. The payments made to Petitioner for services delivered to the Medicaid recipients D.P., B.M., C.K. and G.C. were improper payments. (Respondent's Ex. 11).
30. The total overpayment for services rendered to D.P., B.M., C.K. and G.C. was \$26,896.50.
31. William J. Massey, CEO of Agape Services, testified on behalf of Petitioner.
32. Mr. Massey testified that the Petitioner's records complied with Policy 8A with regard to signatures, as the update/revision forms actually didn't call for new services and were more in line with meeting notes.
33. With regard to patient I.R., Mr. Massey had provided additional records to the hearing officer which show that "day treatment" had been set forth in an updated PCP which was signed by I.R.'s doctor. (Petitioner's Exhibit 1.)
34. The court finds that Mr. Massey's testimony as to the records for patient I.R. was credible in view of Clinical Coverage Policy 8A, and that the PCP for patient I.R. properly called for "day treatment." This decision has considered both Mr. Massey's testimony and knowledge and accorded appropriate weight to his opinions.
35. The payments made to Petitioner for services delivered to the Medicaid recipient I.R. were proper payments. (Respondent's Ex. 11).
36. The total overpayment for services rendered to patient I.R. was calculated to be \$10,842.00.

37. DMA is seeking recoupment for overpayment of the non-compliant Medicaid claims paid to Petitioner for services rendered to the aforementioned patients during the audit period, which was calculated to be \$37,738.50.

**CONCLUSIONS OF LAW**

1. All parties properly are before the Office of Administrative Hearings, and this tribunal has jurisdiction of the parties and of the subject matter at issue.
2. Respondent bears the burden of proof in this matter pursuant to N.C. Gen. Stat. §108C-12.
3. Under 10A NCAC 22F .0103(b)(5), DMA “shall institute methods and procedures to recoup improperly paid claims.”
4. Under 10A NCAC 22F .0601(a), DMA “will seek full restitution of any and all improper payments made to providers by the Medicaid Program.”
5. By entering into the Medicaid Participation Agreement, Petitioner agreed to comply with “. . . federal and state laws, regulations, state reimbursement plans and policies governing the services authorized under the Medicaid Program and this agreement (including, but not limited to, Medicaid provider manuals and Medicaid bulletins published by the Division of Medical Assistance and/or its fiscal agent.”
6. By entering into the Medicaid Participation Agreement, Petitioner agreed to “[m]aintain for a period of five (5) years from the date of service; . . . (b) other records as necessary to disclose and document fully the nature and extent of services provided and billed to the Medicaid Program.”
7. Clinical Coverage Policy 8A was adopted according to the procedures set forth in N.C.G.S. § 108A-54.2 (2009).
8. Medicaid Clinical Coverage Policy 8A contains documentation requirements for providing Enhanced Mental Health and Substance Abuse Services.
9. Policy 8A states that “[s]ervice orders are a mechanism to demonstrate medical necessity for a service and are based upon an assessment of each individual’s needs.” DMA Clinical Coverage Policy No. 8A, 5.2.
10. Policy 8A states that “each service order must be signed and dated by the authorizing profession and must indicate the *date* on which the service was ordered. A service order must be in place *prior to* or on the day that the service is initially provided in order to bill Medicaid for the service.” DMA Clinical Coverage Policy No. 8A, 5.2. (emphasis in original).

11. Policy 8A states that “[s]ervices covered by this policy require a Person-Centered Plan.” DMA Clinical Coverage Policy No. 8A, 5.6f.
12. Policy 8A states that providers should refer to “the service definitions in **Attachment F**, the DMH/DD/SAS *Person-Centered Planning Instruction Manual*, and the DMH/DD/SAS *Records Management and Documentation Manual* for specific information.” DMA Clinical Coverage Policy No. 8A. (emphasis in original).
13. The DMH/DD/SAS Records Management and Documentation Manual specifically requires the signature of the appropriate professional on the service order section of the Person-Centered Plan. DMH/DD/SAS Records Management and Documentation Manual, chapters 5-2, 8-1, 8-2.
14. The DMH/DD/SAS Records Management and Documentation Manual specifically requires that the “credentials, degree or licensure” of the professional providing the service be included with that person’s signature. DMH/DD/SAS Records Management and Documentation Manual, chapter 8-5.
15. The DMH/DD/SAS Person-Centered Planning Instruction Manual provides that if new services are added to the Person-Centered Plan during an update/revision to the PCP, a new service order is needed.
16. Respondent has met its burden of proof in establishing that an overpayment existed with regard to the services rendered to D.P., B.M., C.K. and G.C., which totaled \$26,896.50, and any subsequent action to recoup such overpayment, was proper.
17. Respondent has failed to meet its burden of proof in establishing that an overpayment existed with regard to the services rendered to I.R., which totaled \$10,842.00.
18. Under N.C. Gen. Stat. § 150B-34, based upon the preponderance of the evidence and “giving due regard to the demonstrated knowledge and expertise of the agency with respect to facts and inferences within the specialized knowledge of the agency,” Respondent properly identified an improper overpayment in the amount of \$26,896.50 which shall be repaid to the North Carolina Medicaid program.

Based upon the foregoing Findings of Fact and Conclusions of Law, the Undersigned makes the following:

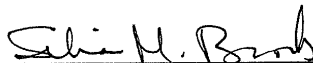
**DECISION**

The Petitioner received an overpayment totaling **\$26,896.50** for services rendered to patients D.P., B.M., C.K. and G.C., which Respondent is entitled to recoup from Petitioner.

**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 23rd day of May, 2013.



Selina M. Brooks  
Administrative Law Judge



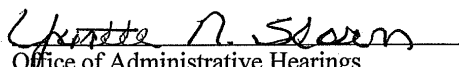
**CERTIFICATE OF SERVICE**

The foregoing

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Thomas J. Campbell  
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ATTORNEY FOR RESPONDENT

This the 23 day of May, 2013.

  
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STATE OF NORTH CAROLINA  
COUNTY OF WAKE

Filed  
2013 JUL 21 01:17:06

IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS  
12 OSP 10209

Office of		
ROSETH KYREMARTIN,	)	
	)	
Petitioner,	)	
v.	)	
	)	<b>DECISION</b>
NORTH CAROLINA DEPARTMENT OF	)	
HEALTH AND HUMAN SERVICES,	)	
	)	
Respondent.	)	

This matter came before Fred G. Morrison Jr., Senior Administrative Law Judge, on March 27, 2013, at the Office of Administrative Hearings in Raleigh, North Carolina.

APPEARANCES

For Petitioner: Michael C. Byrne  
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ISSUE

Whether Respondent had just cause to suspend Petitioner for five days without pay from her position as a Registered Nurse at Central Regional Hospital ("CRH") for unacceptable personal conduct.

WITNESSES

For Petitioner: Roseth Kyremartin

For Respondent: Geraldine Faulkner  
Pamela Finney  
Karen Couch  
Kassandra Morris

EXHIBITS

For Petitioner:

1. Respondent's Discovery Responses (partial)
2. Pre-Disciplinary Letter dated June 27, 2012
3. Suspension Letter dated June 29, 2012
4. Employee Warning Report/Notice
5. Statement of Pamela Finney
6. Statement of Geraldine Faulkner
7. Statement of Nkwachioma Nwosu
8. Statement of Rosie Hargrove
9. Statement of Philomena Essel-Wilson
10. Statement of Francisca Onwumere
11. Statement of Grace Korir
12. Statement of Mary Davis
13. Statement of Fidelia Ibeziako
14. Statement of Edgar Kitchin
15. Statement of Roseth Kyremartin
16. Intake Checklist

For Respondent:

1. Video footage of incident
- 2A-2L. Stills captured from video footage of incident
3. CRH Abuse, Neglect, and Exploitation Policy
4. CRH Staff Code of Personal Conduct
5. Internal Investigation Report
6. Investigatory Placement Letter dated June 11, 2012
7. Pre-disciplinary Letter dated June 27, 2012
8. Suspension Letter dated June 29, 2012
9. CRH Nonviolent Crisis Intervention Training Policy
10. Letter to Petitioner from Angie Boss dated July 13, 2012
11. Letter to Petitioner from J. Michael Hennike dated August 2, 2012
12. Letter to Petitioner from Albert A. Delia dated November 1, 2012
13. Statement of Roseth Kyremartin
14. Progress Note
- 15A-15B. CRH Employee Attestation Statements

**FINDINGS OF FACT**

After careful consideration of the sworn testimony by witnesses at the hearing, giving due regard to credibility of witnesses, based upon the documents and exhibits received and admitted into evidence, and the entire record in this proceeding, the undersigned Administrative Law Judge ("ALJ") finds the following facts.

1. At all relevant times, the North Carolina Department of Health and Human Services employed Petitioner as a registered nurse at Central Regional Hospital ("CRH"), a state operated psychiatric hospital. As of June 2012, Petitioner had been a registered nurse in North Carolina for about twelve years, and had worked as a registered nurse at state psychiatric facilities for approximately nine and a half years.
2. Petitioner had never incurred any disciplinary action or formal coaching, such as a documented counseling, in her employment with the Respondent, before June 2012.
3. The primary evidence in this case comes from a video that shows part of the incident for which Respondent took the disciplinary action. The incident occurred during the evening of June 9, 2012, in Respondent's Unit E-2.
4. Unit E-2 treats female patients in an acute care setting who have a variety of psychiatric diagnoses such as schizophrenia, bipolar disorder, depression, and various personality disorders.
5. On June 9, 2012, Petitioner was working as the backup nurse on unit E-2. Her duties included working with the charge nurse to run the unit, monitoring patients and assuring their safety, and making sure staffing was adequate. A third nurse, known as a "med nurse," was also working on Unit E-2 that evening.
6. Besides the nurses, multiple Therapeutic Support Specialists ("health techs") work on unit E-2. Health techs care for patients, make beds, serve trays, and offer therapeutic support. Unit nurses supervise health techs.
7. An individual known as E.H. was a patient on unit E-2 on June 9, 2012. She had a diagnosis of bipolar disorder type II with psychotic features as well as borderline personality disorder. Petitioner knew E.H. and was aware of her diagnoses. She was also aware that patients on unit E-2 could sometimes act violently.
8. During the evening meal on June 9, 2012, E.H. became upset about either the variety or amount of food available to her. E.H. approached health tech Geraldine Faulkner ("Faulkner") with her concerns. Faulkner referred her to Petitioner who was helping to distribute the evening meal to the patients.
9. Petitioner rose from her seat, approached E.H., and refused her demand for more food. E.H. swore and yelled at Petitioner. E.H. had exhibited similar behavior before. E.H.

then slapped Petitioner's face once.

10. After the slap, Faulkner immediately stepped between Petitioner and E.H. Faulkner, who was facing E.H., began telling E.H. not to hit staff and to return to her room. E.H. did not continue to act aggressively.

11. A few seconds later, Petitioner came around Faulkner's left side toward E.H. She closed the distance between herself and E.H. and placed one or both hands either on or immediately in front of the patient's shirt so to appear to be pushing her backward. As the Petitioner moved forward, the patient stepped backwards. E.H. was not trying to strike or attack Petitioner at this time.

12. Faulkner tried to intervene and hold Petitioner back. E.H. was crying. Four staff members from unit E-2 besides Faulkner responded by trying to intervene.

13. Staff members, including Faulkner, separated Petitioner and E.H. Two staff members escorted E.H. down the hall to her room. She was still visibly upset. Faulkner remained in front of Petitioner and another staff member stood behind Petitioner as E.H. walked to her room. Petitioner went around Faulkner in E.H.'s direction. Pamela Finney ("Finney"), a health tech standing behind Petitioner, tried to grab her right arm, but Petitioner continued to move toward E.H.

14. That evening Finney was assigned as a "one on one" monitor of another patient. As such, Finney was required to keep her eyes on the patient in question at all times. Before trying to grab the Petitioner's arm, the video generally shows Finney looking away from the incident---not observing everything that went on.

15. Faulkner and two other staff members then restrained Petitioner, but she broke free and started down the hall. Just before disappearing from the camera's vantage point, Petitioner removed the cord hung around her neck to which her ID badge was attached. The video does not show the badge leaving Petitioner's hand via a toss to the floor or any other manner.

16. Petitioner went to E.H.'s room, where other staff were present, and spoke with her to resolve the incident.

17. Faulkner reported Petitioner's conduct towards E.H. to the House Coordinator at CRH. She initially asked that she not be identified. That evening the House Coordinator began obtaining witness statements from staff members who were on unit E-2 during the incident. The House Coordinator also notified the CRH Advocacy Department.

18. On Monday, June 11, 2012, Karen Couch ("Couch"), the acting Unit Nurse Manager for unit E-2, placed Petitioner on investigatory leave. Couch learned about the incident shortly after it occurred on June 9, 2012, but did not take any action involving Petitioner because Petitioner left work shortly thereafter.

19. The CRH Advocacy Department, along with Couch and Angie Boss ("Boss"), Couch's supervisor, conducted the investigation. It included interviews with Petitioner, E.H., Faulkner, and nine other staff members who were potential witnesses. Video footage of the incident was also reviewed.
20. The initial written statements of staff witnesses following the incident do not necessarily describe in detail what the video footage shows, nor fully support the testimony of the two staff witnesses—Faulkner and Finney—that Respondent called.
21. Faulkner and Finney's own initial written statements do not mention that Petitioner grabbed E.H.'s clothes. During their June 12, 2012, interviews with the Advocacy Department both individuals noted this detail. At the hearing, Faulkner and Finney also testified that Petitioner grabbed E.H.
22. Likewise, both Faulkner and Finney testified at the hearing about Petitioner's supposed conduct and supposed motivation that neither mentioned in their initial written statements submitted on the same day as the incident. While the ALJ will not strike the testimony of these witnesses, the ALJ does not find them credible as to Petitioner's motivations or intent, or as to any conduct that the video does not corroborate.
23. In a written statement on June 11, 2012, Petitioner contended that after she was slapped she "went back to the nurse's station [sic] sat down for a few minutes [sic] saw staff taking [patient] to her room." When the Advocacy Department interviewed Petitioner on June 11, 2012, she again stated that she went to the nurse's station after the slap and before going to E.H.'s room.
24. Based on the video evidence, the ALJ finds that at no time after the slap but before going down the hall after E.H. did Petitioner return to the nurse's station.
25. The CRH Advocacy Department prepared a report of its findings. It concluded that Petitioner's conduct towards E.H. on June 9, 2012 amounted to emotional abuse.
26. CRH has a written policy on abuse, neglect, and exploitation (the "Abuse Policy"). It provides, in pertinent part, that "[e]ach patient of Central Regional Hospital is treated with dignity and respect and shall not be subjected to abuse, neglect, or exploitation."
27. The Abuse Policy defines "emotional abuse" as "abusive verbal or nonverbal interactions with or in the presence of patients that may result in distress, fear, or a negative reaction."
28. Petitioner was familiar with the Abuse Policy on June 9, 2012.
29. CRH also has a Staff Code of Conduct (the "Code of Conduct"). The Code of Conduct provides, in relevant part, that "[s]taff members are expected to treat patients with dignity, respect, and assure patient rights are preserved."

30. CRH provides its clinical staff with Nonviolent Crisis Intervention Training ("NVC"). NVC is mandatory for all nursing staff unless given a medical exemption. NVC teaches "effective therapeutic and safe control measures in dealing with aggressive patient behavior."

31. Petitioner's certification in NVC was current on June 9, 2012. According to the Petitioner, "when a patient hits or attack[s] a staff member," the common practice has "other staff, not the target of the attack, attempt[ing] to separate the patient from the staff member [hit or attacked by the patient]."

32. Based on the findings of the Advocacy investigation, and Couch's own review of the video footage, she recommended dismissing Petitioner. CRH management ultimately decided that a suspension without pay was more appropriate.

33. On June 26, 2012, Couch told Petitioner that a pre-disciplinary conference would occur the following day to discuss possible suspension. Petitioner was instructed to bring with her to the pre-disciplinary conference any information or material that would weigh against the suspension being considered by CRH management.

34. Petitioner attended a pre-disciplinary conference on June 27, 2012. At that conference, Petitioner, Couch, and Boss viewed footage of the incident. While watching the footage, Boss asked Petitioner "...do you understand? Do you see what we're...talking about here?" Petitioner responded that she did. Petitioner received an opportunity to respond to the allegations against her; she maintained that she did nothing wrong.

35. Following the pre-disciplinary conference, Couch and Boss again discussed the proposed suspension. Boss then delivered a final recommendation to management, and obtained approval for a five day, unpaid suspension.

36. On June 29, 2012, Petitioner was hand-delivered a letter notifying her that she was suspended for five days without pay based on the June 9, 2012, incident. The letter stated that Petitioner's suspension was for unacceptable personal conduct, specifically:

- a. conduct for which no reasonable person should expect to receive prior warning;
- b. conduct unbecoming a State employee that is detrimental to State service;
- c. the abuse of client(s), patient(s), student(s), or person(s) over whom the employee has responsibility; and
- d. the willful violation of known or written work rules, namely the Abuse Policy, and the Code of Conduct.

37. The letter informed Petitioner that the specific actions that were cause for her suspension was Petitioner's behavior on June 9, 2012, that included Petitioner becoming out of control, "charging" or going after E.H., and attacking her after being slapped, such that Petitioner had to be restrained. The video shows that Petitioner acted in this manner.

38. The letter contained Petitioner's appeal rights.

**CONCLUSIONS OF LAW**

1. The North Carolina Office of Administrative Hearings has jurisdiction over the parties and the subject matter of this contested case under N.C. Gen. Stat. chapters 126 and 150B. The parties received proper notice of this hearing. To the extent that Findings of Fact contain Conclusions of Law, or that Conclusions of Law are Findings of Fact, they should be so considered without regard to the given labels.
2. Petitioner is a career State employee subject to the State Personnel Act, N.C. Gen. Stat. section 126-1, *et seq.*
3. N.C. Gen. Stat. § 126-35(a) provides, in pertinent part, that "[n]o career State employee subject to the State Personnel Act shall be discharged, suspended, or demoted for disciplinary reasons, except for just cause." That statute also requires that, before disciplinary action is taken, the employee be given a written statement enumerating the "specific acts or omissions" that are the basis for the disciplinary action as well as the employee's appeal rights.
4. As interpreted, § 126-35(a) requires "sufficient particularity" so that a disciplined employee will know "precisely what acts or omissions" form the basis of the discipline. *Employment Sec. Comm'n v. Wells*, 50 N.C. App. 389, 393, 274 S.E.2d 256, 259 (1981).
5. The letter to Petitioner met the requirements of both § 126-35(a) and *Wells*. It described the incident with sufficient particularity to inform Petitioner what acts or omissions had constituted grounds for the suspension, cited the reasons why Petitioner's behavior amounted to unacceptable personal conduct, and discussed her appeal rights.
6. An employer may discipline an employee for just cause based upon unacceptable personal conduct or unsatisfactory job performance. 25 N.C.A.C. 1J.0604(b). An employer may suspend an employee for unacceptable personal conduct without any warning or record of prior discipline. 25 N.C.A.C. 1J.0611
9. Section 126-35 does not define "just cause," however the words are to be accorded their ordinary meaning. *Amanini v. Dep't. of Human Resources*, 114 N.C. App. 668, 678, 443 S.E.2d 114, 120 (1994) (defining "just cause" as, among other things, good and adequate reason).
10. Just cause is a "flexible concept embodying notions of equity and fairness that can only be determined upon an examination of the facts and circumstances of each individual case," *NC Dep't. of Env't & Natural Res. v. Carroll*, 358 N.C. 649, 669, 599 S.E.2d 888, 900 (2004). In other words, a determination of whether disciplinary action taken was "just" requires "an irreducible act of judgment that cannot always be satisfied by the mechanical



application of rules and regulations.” *Id.*

11. Under N.C. Gen. Stat. § 126-35(d) and 150B-29(a), Respondent has the burden of proof to show by a preponderance of the evidence that it had just cause to suspend Petitioner for unacceptable personal conduct.

12. The North Carolina Court of Appeals articulated a three-part “analytical approach” for determining whether there is just cause for discipline under § 126-35. Under this approach, a court must answer the following inquiries to establish the existence of just cause for disciplinary action:

- a. did the employee engage in the conduct the employer alleges;
- b. does the employee’s conduct fall within one of the categories of unacceptable personal conduct provided in the Administrative Code; and
- c. if the employee’s actions amount to unacceptable personal conduct, did the misconduct amount to just cause for the disciplinary action taken?

*Warren v. N.C. Dep’t of Crime Control & Pub. Safety*, \_\_ N.C. App. \_\_, 726 S.E.2d 920, 925 (2012).

13. Here, the preponderance of the evidence shows that Petitioner engaged in the conduct alleged by Respondent. Upon being slapped by E.H., Petitioner charged at E.H, which required Faulkner and other staff on unit E-2 to intervene and restrain Petitioner. Petitioner then broke away from the restraint and pursued E.H. down the hall. Petitioner’s charging E.H. can be viewed as an “attack,” and the totality of her conduct indicates that she was “out of control” or at least, not acting according to her training.

14. The next step looks at whether the behavior falls into one of the categories of unacceptable personal conduct defined by 25 N.C.A.C. 1J.0614(1):

- a. conduct for which no reasonable person should expect to receive prior warning;...
- b. the willful violation of known or written work rules;
- c. conduct unbecoming a state employee that is detrimental to state service;
- d. the abuse of client(s), patient(s), student(s), or person(s) over whom the employee has charge or to whom the employee has a responsibility....

15. Any one of the four types of unacceptable personal conduct identified above is sufficient to constitute just cause for Petitioner’s suspension.

16. Charging a patient such that other staff had to restrain Petitioner, and pursuing that patient down the hall despite staff’s efforts to stop Petitioner, constituted conduct for which no person should expect to receive prior warning.

17. Willful violation of a known or written work rule turns on whether the employee acted willfully, not whether the employee intended to break a rule. *See, Hilliard v. N.C. Dep't of Corr.*, 173 N.C. App. 594, 597, 620 S.E.2d 14, 17 (2005) (citation omitted).
18. The Abuse Policy and the Code of Conduct are known, written work rules.
19. Petitioner's actions during the June 9, 2012, interaction with E.H. were willful.
20. Petitioner's conduct during her interaction with E.H. on the evening of June 9, 2012, as described above, also amounted to a willful violation of the Code of Conduct because Petitioner did not treat E.H. with dignity and respect, and of the Abuse Policy only to the extent that the Abuse Policy also affirmatively requires treating patients such as E. H. with dignity and respect.
21. Having decided that unacceptable personal conduct occurred, when deciding whether that misconduct constituted just cause for the discipline taken, a court must base its decision on the facts and circumstances of the particular case. *Warren*, 726 S.E.2d 920.
22. The facts and circumstances of this case support a finding that Respondent had just cause to suspend Petitioner for five days without pay for unacceptable personal conduct. Petitioner was a registered nurse responsible for the care and safety of the patients on acute care unit E-2, including E.H. She was aware of the potential for patients to become aggressive. She was trained in how to deal with aggressive patients, and was aware of the CRH Abuse Policy. Nevertheless, after being slapped once by E.H., Petitioner charged E.H., such that other staff members had to intervene to separate Petitioner from E.H. Petitioner then broke free of the staff members who were restraining her and pursued E.H. down the hall of unit E-2. Besides exacerbating distress for E.H., who had already been upset over the food issue, Petitioner's conduct disrupted unit E-2. Petitioner's behavior definitively fell short of the conduct expected of a registered nurse charged with the care and safety of patients at a state psychiatric hospital.
23. North Carolina law presumes that an agency has properly performed its duties, and only a showing that the agency made its decision arbitrarily and capriciously rebuts this presumption. *Adams v. N.C. State Bd. of Reg. for Prof. Eng. and Land Surveyors*, 129 N.C. App. 292, 297, 501 S.E.2d 660, 663 (1998).
24. Administrative agency decisions may be reversed as arbitrary and capricious only if they are "patently in bad faith," or "whimsical" in that "they indicate a lack of fair and careful consideration," or "fail to indicate any course of reasoning and the exercise of judgment." *ACT-UP Triangle v. Comm'n for Health Services for the State of North Carolina*, 345 N.C. 699, 707, 483, S.E.2d 388, 393 (1997).
25. That Respondent initially considered dismissal but instead chose a suspension, among other factors, indicates the exercise of judgment.

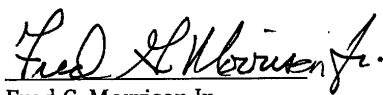
26. Respondent met its burden of proof that it had just cause to suspend Petitioner for unacceptable personal conduct.

BASED UPON THE FOREGOING Findings of Fact and Conclusions of Law, the undersigned Administrative Law Judge finds that Respondent's suspension of Petitioner for five days without pay should be upheld.

NOTICE

Under the provisions of N.C. Gen. Stat. § 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 North Carolina Rules of Civil Procedure, N.C. Gen. Stat. 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. section 150B-46 describes the contents of the Petition and requires service of the Petition on all parties. Under section 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 21<sup>st</sup> day of June, 2013

  
Fred G. Morrison Jr.  
Senior Administrative Law Judge

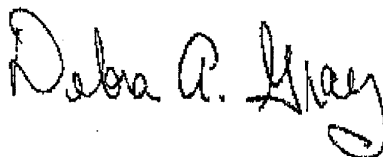
A copy of the foregoing was mailed to:

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This the 21st day of June, 2013.



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