

NORTH CAROLINA REGISTER

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January 15, 2014

I. IN ADDITION

DENR – Public Notice	1613
NC Rate Bureau – Public Notice	1614

II. PROPOSED RULES

Administrative Hearings, Office of

Administrative Hearings, Office of	1637 – 1639
Rules Review Commission	1638 – 1639

Environment and Natural Resources, Department of

Coastal Resources Commission	1615 – 1622
------------------------------------	-------------

Transportation, Department of

Department	1622 – 1623
------------------	-------------

Occupational Licensing Boards and Commissions

Examiners for Engineers and Surveyors, Board of	1623 – 1637
---	-------------

III. RULES REVIEW COMMISSION

1640 – 1655

IV. CONTESTED CASE DECISIONS

Index to ALJ Decisions	1656 – 1668
Text of ALJ Decisions	
12 OSP 10339	1669 – 1676
13 DHR 12129	1677 – 1683
13 DOJ 08953	1684 – 1688
13 DOJ 09038	1689 – 1694
13 DOJ 13859	1695 – 1698

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Contact List for Rulemaking Questions or Concerns

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

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

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545 Legislative Office Building

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NORTH CAROLINA REGISTER
Publication Schedule for January 2014 – December 2014

FILING DEADLINES			NOTICE OF TEXT		PERMANENT RULE			TEMPORARY RULES
Volume & issue number	Issue date	Last day for filing	Earliest date for public hearing	End of required comment Period	Deadline to submit to RRC for review at next meeting	Earliest Eff. Date of Permanent Rule	Delayed Eff. Date of Permanent Rule 31st legislative day of the session beginning:	270 th day from publication in the Register
28:13	01/02/14	12/06/13	01/17/14	03/03/14	03/20/14	05/01/14	05/2014	09/29/14
28:14	01/15/14	12/19/13	01/30/14	03/17/14	03/20/14	05/01/14	05/2014	10/12/14
28:15	02/03/14	01/10/14	02/18/14	04/04/14	04/21/14	06/01/14	01/2015	10/31/14
28:16	02/17/14	01/27/14	03/04/14	04/21/14	05/20/14	07/01/14	01/2015	11/14/14
28:17	03/03/14	02/10/14	03/18/14	05/02/14	05/20/14	07/01/14	01/2015	11/28/14
28:18	03/17/14	02/24/14	04/01/14	05/16/14	05/20/14	07/01/14	01/2015	12/12/14
28:19	04/01/14	03/11/14	04/16/14	06/02/14	06/20/14	08/01/14	01/2015	12/27/14
28:20	04/15/14	03/25/14	04/30/14	06/16/14	06/20/14	08/01/14	01/2015	01/10/15
28:21	05/01/14	04/09/14	05/16/14	06/30/14	07/21/14	09/01/14	01/2015	01/26/15
28:22	05/15/14	04/24/14	05/30/14	07/14/14	07/21/14	09/01/14	01/2015	02/09/15
28:23	06/02/14	05/09/14	06/17/14	08/01/14	08/20/14	10/01/14	01/2015	02/27/15
28:24	06/16/14	05/23/14	07/01/14	08/15/14	08/20/14	10/01/14	01/2015	03/13/15
29:01	07/01/14	06/10/14	07/16/14	09/02/14	09/22/14	11/01/14	01/2015	03/28/15
29:02	07/15/14	06/23/14	07/30/14	09/15/14	09/22/14	11/01/14	01/2015	04/11/15
29:03	08/01/14	07/11/14	08/16/14	09/30/14	10/20/14	12/01/14	01/2015	04/28/15
29:04	08/15/14	07/25/14	08/30/14	10/14/14	10/20/14	12/01/14	01/2015	05/12/15
29:05	09/02/14	08/11/14	09/17/14	11/03/14	11/20/14	01/01/15	01/2015	05/30/15
29:06	09/15/14	08/22/14	09/30/14	11/14/14	11/20/14	01/01/15	01/2015	06/12/15
29:07	10/01/14	09/10/14	10/16/14	12/01/14	12/22/14	02/01/15	05/2016	06/28/15
29:08	10/15/14	09/24/14	10/30/14	12/15/14	12/22/14	02/01/15	05/2016	07/12/15
29:09	11/03/14	10/13/14	11/18/14	01/02/15	01/20/15	03/01/15	05/2016	07/31/15
29:10	11/17/14	10/24/14	12/02/14	01/16/15	01/20/15	03/01/15	05/2016	08/14/15
29:11	12/01/14	11/05/14	12/16/14	01/30/15	02/20/15	04/01/15	05/2016	08/28/15
29:12	12/15/14	11/20/14	12/30/14	02/13/15	02/20/15	04/01/15	05/2016	09/11/15

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.

Public Notice
North Carolina Department of Environment and Natural Resources (NCDENR)

Division of Water Resources
Modeling and Assessment Branch
1611 Mail Service Center
Raleigh, NC 27699-1611

Notice of Recommendation that the Environmental Management Commission
Approve the Tar River Basin Hydrologic Models

The NC Division of Water Resources (DWR), within NCDENR, recommends that the Environmental Management Commission approve the Tar River Basin Hydrologic Models. Information and details about the Tar River Basin Hydrologic Models are available on the Division's website at http://ncwater.org/Data_and_Modeling/Tar.

Written comments regarding the proposed Tar River Basin Hydrologic Models will be accepted for 60 days after the publication date of this notice and must be received by DWR before close of business March 17, 2014. The Division will provide training in the use of the model during the comment period if there is sufficient interest. You can email comments and training requests to dwr-tar-pam-staff@lists.ncmail.net, or mail comments to DWR at the address above.

You can contact Kathy Stecker at kathy.stecker@ncdenr.gov, or (919) 807-6422 for more information.

NORTH CAROLINA RATE BUREAU**PUBLIC NOTICE**

Notice is hereby given pursuant to North Carolina General Statute 58-36-120 that on or about January 3, 2014, the North Carolina Rate Bureau filed for an increase in rates and for territory definition changes as to Homeowners insurance policies under its jurisdiction. Public notice of the Filing will be given in two newspapers with statewide distribution, and information is being posted on the websites of the North Carolina Rate Bureau and the North Carolina Department of Insurance. The Commissioner of Insurance may or may not schedule and conduct a hearing with respect to the Filing.

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 15A – DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

Notice is hereby given in accordance with G.S. 150B-21.2 that the Coastal Resources Commission intends to amend the rules cited as 15A NCAC 07H .0312, .1204-.1205, .1305.

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

- ☒ **OSBM certified on:** 07H .0312-November 7, 2013, 07H .1305-September 10, 2013, 07H .1204-.1205-December 16, 2013
- ☐ **RRC certified on:**
- ☐ **Not Required**

Link to agency website pursuant to G.S. 150B-19.1(c):
www.portal.ncdenr.org/web/cm/proposed-rules

Proposed Effective Date: June 1, 2014

Public Hearing:

Date: February 26, 2014

Time: 5:00 p.m.

Location: Jennette's Pier, 7223 S. Virginia Dare Trail, Nags Head, NC 27959

Reason for Proposed Action:

15A NCAC 07H .0312 - This action is being proposed to provide financial relief to applicants for permits for certain beach fill projects. The CRC has identified a limited set of conditions under which applicants can avoid some permit-related costs without violating the intent of the current rule or compromising environmental protection.

15A NCAC 07H .1204-.1205 - This action is being proposed in order to alter how boat slips are counted so that boats stored on platforms (fixed or floating) shall not count as docking spaces. The change will provide greater flexibility in the use of the General Permit for the construction of piers and docking facilities.

15A NCAC 07H .1305 - This action is being proposed to streamline, simplify and reduce costs to the public for permitting of non-commercial boat ramps under the Coastal Resources Commission's general permit. The Division of Coastal Management has observed that it has become common practice to construct a launch access dock and protective groins in conjunction with a new boat ramp, and the CRC has determined that it is unnecessary to require three separate General Permit applications and three application fees for what is essentially a single project.

Comments may be submitted to: Braxton Davis, 400 Commerce Avenue, Morehead City, NC 28557, Phone (252)808-2808, Fax (252)247-3330

Comment period ends: March 17, 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** (15A NCAC 07H .0312, .1204-.1205, .1305)
- ☐ **Environmental permitting of DOT affected**
- ☒ **Analysis submitted to Board of Transportation**
- ☒ **Local funds affected** (15A NCAC 07H .0312)
- ☐ **Substantial economic impact (≥\$1,000,000)**
- ☐ **No fiscal note required by G.S. 150B-21.4**

CHAPTER 07 - COASTAL MANAGEMENT

SUBCHAPTER 07H - STATE GUIDELINES FOR AREAS OF ENVIRONMENTAL CONCERN

SECTION .0300 - OCEAN HAZARD AREAS

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

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

- (1) The applicant shall characterize the recipient beach according to the following methodology:
 - (a) Characterization of the recipient beach is not required for the placement of sediment directly from and completely confined to a maintained navigation channel or associated sediment basins within the active nearshore, beach or inlet shoal system;
 - (b) Sediment sampling and analysis shall be used to capture the three-dimensional spatial variability of the sediment characteristics including grain size, sorting and mineralogy within the natural system;
 - (c) Shore-perpendicular topographic and bathymetric surveying of the recipient beach shall be conducted to determine the beach profile. Topographic and bathymetric surveying shall occur along a minimum of five shore-perpendicular transects evenly spaced throughout the entire project area. Each transect shall extend from the frontal dune crest seaward to a depth of 20 feet (6.1 meters) or to the shore-perpendicular distance 2,400 feet (732 meters) seaward of mean low water, whichever is in a more landward position. Transect spacing shall not exceed 5,000 feet (1,524 meters) in the shore-parallel direction. Elevation data for all transects shall be referenced to the North American Vertical Datum of 1988 (NAVD 88) and the North American Datum of 1983 (NAD 83);
 - (d) No fewer than 13 sediment samples shall be taken along each beach profile transect. At least one sample shall be taken from each of the following morphodynamic zones where present: frontal dune, frontal dune toe, mid berm, mean high water (MHW), mid tide (MT), mean low water (MLW), trough, bar crest and at even depth increments from 6 feet (1.8 meters) to 20 feet (6.1 meters) or to a shore-perpendicular distance 2,400 feet (732 meters) seaward of mean low water, whichever is in a more landward position. The total number of samples taken landward of MLW shall equal the total number of samples taken seaward of MLW;
 - (e) For the purpose of this Rule, "sediment grain size categories" are defined as "fine" (less than 0.0625 millimeters), "sand" (greater than or equal to 0.0625 millimeters and less than 2 millimeters), "granular" (greater than or equal to 2 millimeters and less than 4.76 millimeters) and "gravel" (greater than or equal to 4.76 millimeters and less than 76 millimeters). Each sediment sample shall report percentage by weight of each of these four grain size categories;
 - (f) A composite of the simple arithmetic mean for each of the four grain size categories defined in Sub-Item (1)(e) of this Rule shall be calculated for each transect. A grand mean shall be established for each of the four grain size categories by summing the mean for each transect and dividing by the total number of transects. The value that characterizes grain size values for the recipient beach is the grand mean of percentage by weight for each grain size category defined in Sub-Item (1)(e) of this Rule;
 - (g) Percentage by weight calcium carbonate shall be calculated from a composite of all sediment samples along each transect defined in Sub-Item (1)(d) of this Rule. The value that characterizes the carbonate content of the recipient beach is a grand mean calculated by summing the average percentage by weight calcium carbonate for each transect and dividing by the total number of transects. For beaches on which fill activities have taken place prior to the effective date of this Rule, the Division of Coastal Management shall consider visual estimates of shell content as a proxy for carbonate weight percent;
 - (h) The total number of sediments and shell material greater than or equal to three inches (76 millimeters) in diameter, observable on the surface of the beach between mean low water (MLW) and the frontal dune toe, shall be calculated for an area of 50,000 square feet (4,645 square meters) within the beach fill project boundaries. This area is considered a representative sample of the entire project area and referred to as the "background" value;
 - (i) Beaches that received sediment prior to the effective date of this Rule shall

- be characterized in a way that is consistent with Sub-Items (1)(a) through (1)(h) of this Rule and shall use data collected from the recipient beach prior to the addition of beach fill. If such data were not collected or are unavailable, a dataset best reflecting the sediment characteristics of the recipient beach prior to beach fill shall be developed in coordination with the Division of Coastal Management; and
- (j) All data used to characterize the recipient beach shall be provided in digital and hardcopy format to the Division of Coastal Management upon request.
- (2) The applicant shall characterize the sediment to be placed on the recipient beach according to the following methodology:
- (a) The characterization of borrow areas including submarine sites, upland sites, and dredged material disposal areas shall be designed to capture the three-dimensional spatial variability of the sediment characteristics including grain size, sorting and mineralogy within the natural system or dredged material disposal area;
 - (b) The characterization of borrow sites shall include sediment characterization data provided by the Division of Coastal Management where available;
 - (c) Seafloor surveys shall measure elevation and capture acoustic imagery of the seafloor. Measurement of seafloor elevation shall cover 100 percent of each submarine borrow site and use survey-grade swath sonar (e.g. multibeam or similar technologies) in accordance with current US Army Corps of Engineers standards for navigation and dredging. Seafloor imaging without an elevation component (e.g. sidescan sonar or similar technologies) shall also cover 100 percent of each borrow site and be performed in accordance with US Army Corps of Engineers standards for navigation and dredging. Because shallow submarine areas can provide technical challenges and physical limitations for acoustic measurements, seafloor imaging without an elevation component may not be required for water depths less than 10 feet (3 meters). Alternative
 - (d) Geophysical imaging of the seafloor subsurface shall be used to characterize each borrow site and shall use survey grids with a line spacing not to exceed 1,000 feet (305 meters). Offshore dredged material disposal sites shall use a survey grid not to exceed 2,000 feet (610 meters) and only one set of geophysical imaging of the seafloor subsurface is required. Survey grids shall incorporate at least one tie point per survey line. Because shallow submarine areas can pose technical challenges and physical limitations for geophysical techniques, subsurface data may not be required in water depths less than 10 feet (3 meters). Subsurface geophysical imaging is not required for borrow sites completely confined to maintained navigation channels, sediment deposition basins within the active nearshore, beach or inlet shoal system, or upland sites. All final subsurface geophysical data shall use accurate sediment velocity models for time-depth conversions and be referenced to NAD 83;
 - (e) Sediment sampling of all borrow sites shall use a vertical sampling device
- elevation surveying methods for water depths less than 10 feet (3 meters) may be evaluated on a case-by-case basis by the Division of Coastal Management. Elevation data shall be tide- and motion-corrected and referenced to NAVD 88 and NAD 83. Seafloor imaging data without an elevation component shall be referenced to the NAD 83. All final seafloor survey data shall conform to standards for accuracy, quality control and quality assurance as set forth either by the US Army Corps of Engineers, the National Oceanic and Atmospheric Administration, or the International Hydrographic Organization. For offshore dredged material disposal sites, only one set of imagery without elevation is required. Sonar imaging of the seafloor without elevation is not required for borrow sites completely confined to maintained navigation channels, sediment deposition basins within the active nearshore, beach or inlet shoal system;

- no less than 3 inches (76 millimeters) in diameter. Characterization of each borrow site shall use no fewer than ~~40~~ five evenly spaced cores or one core per 23 acres (grid spacing of 1,000 feet or 305 meters), whichever is greater. Characterization of borrow sites completely confined to maintained navigation channels or sediment deposition basins within the active nearshore, beach or inlet shoal system shall use no fewer than five evenly spaced vertical samples per channel or sediment basin, or sample spacing of no more than 5,000 linear feet (1,524 meters), whichever is greater. Two sets of sampling data (with at least one dredging event in between) from maintained navigation channels or sediment deposition basins within the active nearshore, beach or inlet shoal system may be used to characterize material for subsequent nourishment events from those areas if the sampling results are found to be compatible with Sub-Item (3)(a) of this Rule. In submarine borrow sites other than maintained navigation channels or associated sediment deposition basins within the active nearshore, beach or inlet shoal system where water depths are no greater than 10 feet (3 meters), geophysical data of and below the seafloor are not required, and sediment sample spacing shall be no less than one core per six acres (grid spacing of 500 feet or 152 meters). Vertical sampling shall penetrate to a depth equal to or greater than permitted dredge or excavation depth or expected dredge or excavation depths for pending permit applications. All sediment samples shall be integrated with geophysical data to constrain the surficial, horizontal and vertical extent of lithologic units and determine excavation volumes of compatible sediment as defined in Item (3) of this Rule;
- (f) For offshore dredged material disposal sites, the grid spacing shall not exceed 2,000 feet (610 meters). Characterization of material deposited at offshore dredged material disposal sites after the initial characterization are not required if all of the material deposited complies with Sub-Item (3)(a) of this Rule as demonstrated by at least two sets of sampling data with at least one dredging event in between;
- (g) Grain size distributions shall be reported for all sub-samples taken within each vertical sample for each of the four grain size categories defined in Sub-Item (1)(e) of this Rule. Weighted averages for each core shall be calculated based on the total number of samples and the thickness of each sampled interval. A simple arithmetic mean of the weighted averages for each grain size category shall be calculated to represent the average grain size values for each borrow site. Vertical samples shall be geo-referenced and digitally imaged using scaled, color-calibrated photography;
- (h) Percentage by weight of calcium carbonate shall be calculated from a composite sample of each core. A weighted average of calcium carbonate percentage by weight shall be calculated for each borrow site based on the composite sample thickness of each core. Carbonate analysis is not required for sediment confined to maintained navigation channels or associated sediment deposition basins within the active nearshore, beach or inlet shoal system; and
- (i) All data used to characterize the borrow site shall be provided in digital and hardcopy format to the Division of Coastal Management upon request.
- (3) The Division of Coastal Management shall determine sediment compatibility according to the following criteria:
- (a) Sediment completely confined to the permitted dredge depth of a maintained navigation channel or associated sediment deposition basins within the active nearshore, beach or inlet shoal system is considered compatible if the average percentage by weight of fine-grained (less than 0.0625 millimeters) sediment is less than 10 percent;
- (b) The average percentage by weight of fine-grained sediment (less than 0.0625 millimeters) in each borrow site shall not exceed the average percentage by weight of fine-grained

- sediment of the recipient beach characterization plus five percent;
 - (c) The average percentage by weight of granular sediment (greater than or equal to 2 millimeters and less than 4.76 millimeters) in a borrow site shall not exceed the average percentage by weight of coarse-sand sediment of the recipient beach characterization plus ~~five~~ 10 percent;
 - (d) The average percentage by weight of gravel (greater than or equal to 4.76 millimeters and less than 76 millimeters) in a borrow site shall not exceed the average percentage by weight of gravel-sized sediment for the recipient beach characterization plus five percent;
 - (e) The average percentage by weight of calcium carbonate in a borrow site shall not exceed the average percentage by weight of calcium carbonate of the recipient beach characterization plus 15 percent; and
 - (f) Techniques that take incompatible sediment within a borrow site or combination of sites and make it compatible with that of the recipient beach characterization shall be evaluated on a case-by-case basis by the Division of Coastal Management.
- (4) Excavation and placement of sediment shall conform to the following criteria:
- ~~(a)~~ (a) ~~Sediment excavation depth from a maintained navigation channel shall not exceed the permitted dredge depth of the channel;~~
 - ~~(b)~~ (a) Sediment excavation depths for all borrow sites shall not exceed the maximum depth of recovered core at each coring location;
 - ~~(c)~~ (b) In order to protect threatened and endangered species, and to minimize impacts to fish, shellfish and wildlife resources, no excavation or placement of sediment shall occur within the project area during times designated by the Division of Coastal Management in consultation with other State and Federal agencies; and
 - ~~(d)~~ (c) Sediment and shell material with a diameter greater than or equal to three inches (76 millimeters) is considered incompatible if it has been placed on the beach during the beach fill project, is observed between MLW and the frontal dune toe, and is in excess of twice the background value of material of the same size along any

50,000-square-foot (4,645 square meter) section of beach.

Authority G.S. 113-229; 113A-102(b)(1); 113A-103(5)(a); 113A-107(a); 113A-113(b)(5) and (6); 113A-118; 113A-124.

SECTION .1200 - GENERAL PERMIT FOR CONSTRUCTION OF PIERS AND DOCKING FACILITIES: IN ESTUARINE AND PUBLIC TRUST WATERS AND OCEAN HAZARD AREAS

15A NCAC 07H .1204 GENERAL CONDITIONS

(a) Piers and docking facilities authorized by this general permit shall be for the exclusive use of the land owner, or occupant and shall not be leased or rented or used for any commercial purpose. ~~Except in the cases of shared piers as described in 7H .1205, piers and~~ Piers and docking facilities designed to shall provide docking space for no more than two boats shall, boats. Docking facilities providing docking space for more than two boats because of their greater potential for adverse impacts, shall be reviewed through the major permitting process and, therefore, are not authorized by this general ~~permit~~ permit, excluding the exceptions described in Rule .1205 of this Section.

(b) Individuals shall allow authorized representatives of the Department of Environment and Natural Resources to make periodic inspections at any time deemed necessary in order to be sure that the activity being performed under the authority of this general permit is in accordance with the terms and conditions prescribed herein.

(c) There shall be no interference with navigation or use of the waters by the public by the existence of piers and docking facilities.

(d) This permit shall not be applicable to proposed construction where the Department determines that the proposed activity will endanger adjoining properties or significantly affect historic, cultural, scenic, conservation or recreation values, identified in G.S. 113A-102 and G.S. 113A-113(b)(4).

(e) This permit does not eliminate the need to obtain any other required state, local, or federal authorization.

(f) Development carried out under this permit shall be consistent with all local requirements, AEC Guidelines, and local land use plans current at the time of authorization.

Authority G.S. 113A-107(a); 113A-107(b); 113A-113(b); 113A-118.1; 113A-124.

15A NCAC 07H .1205 SPECIFIC CONDITIONS

(a) Piers and docking facilities may extend or be located up to a maximum of 400 feet waterward from the normal high water line or the normal water level, whichever is applicable.

(b) Piers and docking facilities shall not extend beyond the established pier length along the same shoreline for similar use. This restriction shall not apply to piers and docking facilities 100 feet or less in length unless necessary to avoid interference with navigation or other uses of the waters by the public such as blocking established navigation routes or interfering with access to adjoining properties. The length of piers and docking facilities shall be measured from the waterward edge of any wetlands that border the water body.

(c) Piers and docking facilities longer than 200 feet shall be permitted only if the proposed length gives access to deeper water at a rate of at least one foot at each 100 foot increment of pier length longer than 200 feet, or if the additional length is necessary to span some obstruction to navigation. Measurements to determine pier and docking facility lengths shall be made from the waterward edge of any coastal wetland vegetation, which borders the water body.

(d) Piers shall be no wider than six feet and shall be elevated at least three feet above any coastal wetland substrate as measured from the bottom of the decking.

(e) The total square footage of shaded impact for docks and mooring facilities (excluding the pier) allowed shall be 8 square feet per linear foot of shoreline with a maximum of 800 square feet. In calculating the shaded impact, uncovered open water slips shall not be counted in the total.

(f) The maximum size of any individual component of the docking facility authorized by this General Permit shall not exceed 400 square feet.

(g) Docking facilities shall not be constructed in a designated Primary Nursery Area with less than two feet of water at normal low water level or normal water level (whichever is applicable) under this permit without prior approval from the Division of Marine Fisheries or the Wildlife Resources Commission (whichever is applicable).

(h) Piers and docking facilities located over shellfish beds or submerged aquatic vegetation (as defined by the Marine Fisheries Commission) may be constructed without prior consultation from the Division of Marine Fisheries or the Wildlife Resources Commission (whichever is applicable) if the following two conditions are met:

- (1) Water depth at the docking facility location is equal to or greater than two feet of water at normal low water level or normal water level (whichever is applicable).
- (2) The pier and docking facility is located to minimize the area of submerged aquatic vegetation or shellfish beds under the structure.

(i) Floating piers and floating docking facilities located in PNAs, over shellfish beds, or over submerged aquatic vegetation shall be allowed if the water depth between the bottom of the proposed structure and the substrate is at least 18 inches at normal low water level or normal water level, whichever is applicable.

(j) Docking facilities shall have no more than six feet of any dimension extending over coastal wetlands and shall be elevated at least three feet above any coastal wetland substrate as measured from the bottom of the decking.

(k) The width requirements established in ~~Paragraphs (d), (e), (f), (g), (h), (i), and (j).~~ Paragraph (d) of this Rule shall not apply to pier structures in existence on or before July 1, 2001 when structural modifications are needed to prevent or minimize storm damage. In these cases, pilings and cross bracing may be used to provide structural support as long as they do not extend more than of two feet on either side of the principal structure. These modifications shall not be used to expand the floor decking of platforms and piers.

(l) Boathouses shall not exceed a combined total of 400 square feet and shall have sides extending no further than one-half the height of the walls as measured in a downward direction from the top wall plate or header and only covering the top half of the walls. Measurements of square footage shall be taken of the greatest exterior dimensions. Boathouses shall not be allowed on lots with less than 75 linear feet of shoreline.

(m) The area enclosed by a boat lift shall not exceed 400 square feet.

(n) Piers and docking facilities shall be single story. They may be roofed but shall not allow second story use.

(o) Pier and docking facility alignments along federally maintained channels shall also meet Corps of Engineers regulations for construction pursuant to Section 10 of the Rivers and Harbors Act.

(p) Piers and docking facilities shall in no case extend more than 1/4 the width of a natural water body, human-made canal or basin. Measurements to determine widths of the water body, human-made canals or basins shall be made from the waterward edge of any coastal wetland vegetation which borders the water body. The 1/4 length limitation shall not apply when the proposed pier and docking facility is located between longer structures within 200 feet of the applicant's property. However, the proposed pier and docking facility shall not be longer than the pier head line established by the adjacent piers and docking facilities nor longer than 1/3 the width of the water body.

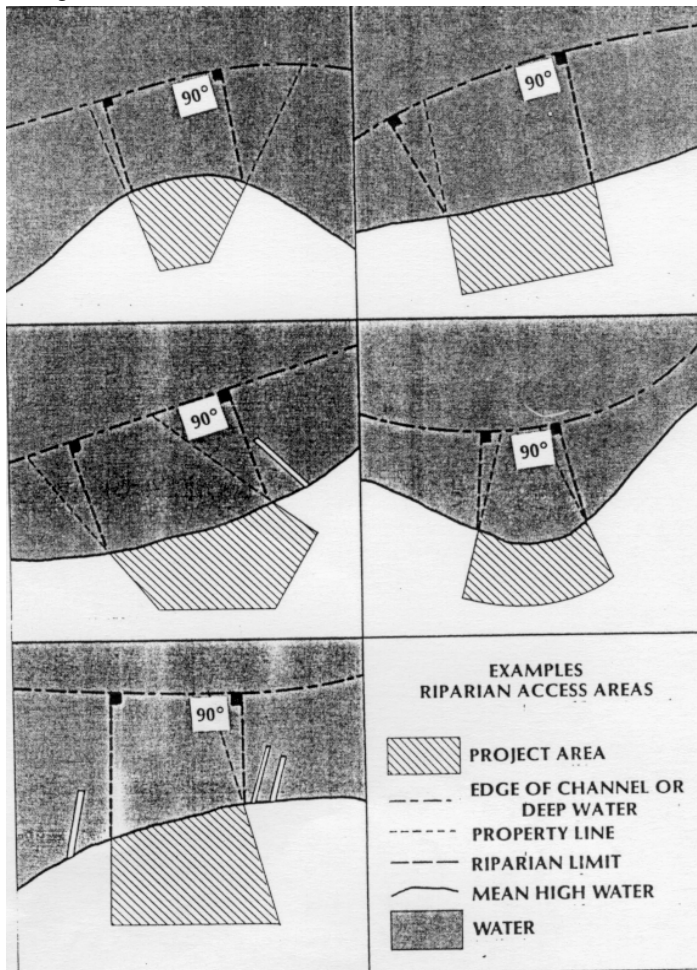
(q) Piers and docking facilities shall not interfere with the access to any riparian property, and shall have a minimum setback of 15 feet between any part of the pier and docking facility and the adjacent property lines extended into the water at the points that they intersect the shoreline. The minimum setbacks provided in the rule may be waived by the written agreement of the adjacent riparian owner(s), or when two adjoining riparian owners are co-applicants. Should the adjacent property be sold before construction of the pier commences, the applicant shall obtain a written agreement with the new owner waiving the minimum setback and submit it to the Division of Coastal Management prior to initiating any development of the pier or docking facility. The line of division of areas of riparian access shall be established by drawing a line along the channel or deep water in front of the property, then drawing a line perpendicular to the line of the channel so that it intersects with the shore at the point the upland property line meets the water's edge. Application of this Rule may be aided by reference to the approved diagram in Paragraph (t) of this Rule illustrating the rule as applied to various shoreline configurations. Copies of the diagram may be obtained from the Division of Coastal Management. When shoreline configuration is such that a perpendicular alignment cannot be achieved, the pier or docking facility shall be aligned to meet the intent of this Rule to the maximum extent practicable.

(r) Piers and docking facilities shall ~~be designed to provide docking space for no more than two boats.~~ boats (a boat is defined in 15A NCAC 07M .0602(a) as a vessel or watercraft of any size or type specifically designed to be self-propelled, whether by engine, sail, oar, paddle or other means, which is used to travel from place to place by water) except when stored on a platform that has already been accounted for within the

shading impacts condition of this general permit. Boats stored on floating or fixed platforms shall not count as docking spaces.

(s) Applicants for authorization to construct a pier or docking facility shall provide notice of the permit application to the owner of any part of a shellfish franchise or lease over which the proposed pier or docking facility would extend. The applicant shall allow the lease holder the opportunity to mark a navigation route from the pier to the edge of the lease.

(t) The diagram shown below illustrates various shoreline configurations:



(u) Shared piers or docking facilities shall be allowed and encouraged provided that in addition to complying with (a) through (t) of this Rule the following shall also apply:

- (1) The shared pier or docking facility shall be confined to two adjacent riparian property owners and the landward point of origination of the structure shall overlap the shared property line.
- (2) Shared piers and docking facilities shall be designed to provide docking space for no more than four boats.
- (3) The total square footage of shaded impact for docks and mooring facilities shall be calculated using (e) of this rule and in addition shall allow for combined shoreline of both properties.

(4) The property owners of the shared pier shall not be required to obtain a 15-foot waiver from each other as described in subparagraph (q) of this rule as is applies to the shared riparian line for any work associated with the shared pier, provided that the title owners of both properties have executed a shared pier agreement that has become a part of the permit file.

(5) The construction of a second access pier or docking facility not associated with the shared pier shall require authorization through the CAMA Major full review permit process.

Authority G.S. 113A-107(a); 113A-107(b); 113A-113(b); 113A-118.1; 113A-124.

SECTION .1300 – GENERAL PERMIT TO CONSTRUCT BOAT RAMPS ALONG ESTUARINE AND PUBLIC TRUST SHORELINES AND INTO ESTUARINE AND PUBLIC TRUST WATERS

15A NCAC 07H .1305 SPECIFIC CONDITIONS

(a) Boat ramps shall be no wider than 15 feet and ~~must not extend farther than 20 feet below the mean high water level contour in tidal areas, or the normal water level contour in nontidal areas.~~ shall not extend more than 20 feet waterward of the normal high water level or normal water level.

(b) Excavation and ground disturbing activities above and below the ~~mean-normal~~ high water level or normal water level will be limited to that absolutely necessary to establish adequate ramp slope and provide a ramp no greater in size than specified by this general permit.

(c) Placement of fill materials below the ~~mean-normal~~ high water level, or normal water level contour, will be limited to the ramp structure ~~itself.~~ and any associated riprap groins. Boat ramps may be constructed of concrete, wood, steel, clean riprap, marl, or any other acceptable materials as approved by department personnel. No coastal wetland vegetation shall be excavated or filled at any time during ~~construction and subsequent use of the proposed ramp.~~ construction.

(d) This permit allows for up to a six-foot wide launch access dock (fixed or floating) immediately adjacent to a new or existing boat ramp. The length shall be limited to the length of the permitted boat ramp (with a maximum length of 20 feet waterward of the normal high water level or normal water level). No permanent slips are authorized by this permit.

(e) Groins shall be allowed as a structural component on one or both sides of a new or existing boat ramp to reduce scouring. The groins shall be limited to the length of the permitted boat ramp (with a maximum length of 20 feet waterward of the normal high water level or normal water level).

(f) The height of sheetpile groins shall not exceed one foot above normal high water level or normal water level and the height of riprap groins shall not exceed two feet above normal high water level or normal water level.

(g) Riprap groins shall not exceed a base width of five feet.

(h) Material used for groin construction shall be free from loose dirt or any other pollutant. Riprap material must be of sufficient

size to prevent its movement from the approved alignment by wave action or currents.

(i) "L" and "T" sections shall not be allowed at the end of groins.

(j) Groins shall be constructed of granite, marl, concrete without exposed rebar, timber, vinyl sheet pile, steel sheet pile or other suitable equivalent materials approved by the Division of Coastal Management.

(k) Boat ramps and their associated structures authorized under this permit shall not interfere with the access to any riparian property and shall have a minimum setback of 15 feet between any part of the boat ramp or associated structures and the adjacent property owners' areas of riparian access. The minimum setbacks provided in the rule may be waived by the written agreement of the adjacent riparian owner(s), or when two adjoining riparian owners are co-applicants. Should the adjacent property be sold before construction of the boat ramp or associated structures commences, the applicant shall obtain a written agreement with the new owner waiving the minimum setback and submit it to the Division of Coastal Management prior to initiating any development of the boat ramp or associated structures authorized under this permit.

Authority G.S. 113A-107(a); 113A-107(b); 113A-113(b); 113A-118.1; 113A-124.

TITLE 19A – DEPARTMENT OF TRANSPORTATION

Notice is hereby given in accordance with G.S. 150B-21.2 that the Department of Transportation intends to amend the rule cited as 19A NCAC 03B .0201.

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

- ☒ OSBM certified on: December 6, 2013
- ☐ RRC certified on:
- ☐ Not Required

Link to agency website pursuant to G.S. 150B-19.1(c):
www.ncdot.gov/about/regulations/rules/

Proposed Effective Date: May 1, 2014

Public Hearing:

Date: February 27, 2014

Time: 5:00 p.m. – 7:00 p.m.

Location: Chavis Park Community Center located at 505 Martin Luther King Jr. Boulevard, Raleigh, NC

Reason for Proposed Action: G.S. 20-7 requires that applicants for a driver's license must complete certain tests to be established by the Division of Motor Vehicles. These tests are set out in 19A NCAC 02E .0201. The proposed amendments to this rule will make minor changes to the content of the required tests, and will clarify which tests are applicable to which applicants. The proposed amendments removed the written test requirement for an applicant in possession of a valid, unexpired driver's license issued by another state. Additionally, the proposed amendments extend from one year to two years the

period of time an applicant's license can be expired before the applicant must take full examination.

Comments may be submitted to: Brian P. LiVecchi, 1501 Mail Service Center, Raleigh, NC 27699-1501.

Comment period ends: March 17, 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 03 – DIVISION OF MOTOR VEHICLES

SUBCHAPTER 03B - DRIVER LICENSE SECTION

SECTION .0200 - DRIVER'S LICENSE ISSUANCE

19A NCAC 03B .0201 DRIVER'S LICENSE EXAMINATION

(a) The Division shall issue a driver's license to any person who passes the driver license examination and is otherwise eligible to hold a license. Applicants for a driver's license are subject to the following tests:

- (1) ~~Written Test.~~ Knowledge Examination. This is ~~an automated computer test on knowledge of rules of the road. A pictorial or oral test is used for applicants who cannot read, upon request.~~ An audio component allows customers with reading comprehension difficulties to listen to the test questions by use of earphones. ~~Seventy~~ Eighty percent of the questions must be answered correctly.
- (2) Road Signs. This is a test on knowledge of highway signs and their meanings. Applicants for a regular Class "C" license must correctly identify nine of twelve road signs. Applicants

for "A" or "B" licenses must correctly identify all road signs.

- (3) Visual Acuity. Applicant's visual acuity must be 20/40 or better in ~~each eye~~ either or both eyes to receive an unrestricted license. License is restricted accordingly if acuity is less than 20/40.
- (4) Road Test. The road test measures the applicant's ability to operate a motor vehicle safely in actual traffic situations. The required maneuvers are: ~~down shift~~, quick stop, turnabout, ~~stop on grade, start on grade~~, backing, approach corner, right turns, left turns, traffic lights, use of controls, starts, ~~clutch~~, use of lanes, use of brakes, following and attention. Approval or disapproval is determined by the driver license examiner. ~~Applicants with expired out-of-state licenses and applicants with North Carolina licenses expired more than one year will be required to take the complete examination.~~

(b) The tests contained in Paragraph (a) of this Rule will be administered as follows:

- (1) First time applicants. Applicants applying for a driver's license for the first time must complete the full examination, to include the knowledge examination, road signs test, visual acuity test, and road test.
- (2) Renewals and licenses expired less than two years. Applicants seeking to renew a valid, unexpired North Carolina driver's license must complete the road signs test and visual acuity test. Applicants possessing a previously issued North Carolina driver's license, expired less than two years, must complete the road signs test and visual acuity test.
- (3) Applicants possessing a previously issued North Carolina driver's license, expired greater than two years. Applicants must complete the full examination.
- (4) Applicants with a valid and current driver's license issued by another State. Applicants seeking to transfer their current driver's license from another state must complete the road signs test and visual acuity test.
- (5) Applicants with a driver's license issued by another state, expired less than two years. Applicants possessing a driver's license issued by another state which is expired less than two years must complete the road signs test and visual acuity test.
- (6) Applicants with a driver's license issued by another state, expired more than two years. Applicants must complete the full examination.

Authority G.S. 20-1; 20-7(a) through (e); 20-39.

TITLE 21 – OCCUPATIONAL LICENSING BOARDS AND COMMISSIONS

CHAPTER 56 – BOARD OF EXAMINERS FOR ENGINEERS AND SURVEYORS

Notice is hereby given in accordance with G.S. 150B-21.2 that NC Board of Examiners for Engineers and Surveyors intends to amend the rules cited as 21 NCAC 56 .0501-.0503, .0601-.0603, .0901, .1402, .1602-.1604, .1606, .1608 and .1703-.1705.

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.ncbels.org

Proposed Effective Date: May 1, 2014

Public Hearing:

Date: February 13, 2014

Time: 9:00 a.m.

Location: 4601 Six Forks road, Suite 310, Raleigh, NC 27609

Reason for Proposed Action:

21 NCAC 56 .0501 – Clarifies that if the applicant has passed the fundamentals of engineering examination prior to June 30, 2016, the individual may continue the process to take the principles and practices exam based upon the associate degree.

21 NCAC 56 .0502, .0503, .0602, .0603 – Reflects changes to G.S. 89C-3 [S.L. 2013-98 s. 1] from "Engineering Intern" to "Engineer Intern." Reflects changes to G.S. 89C-13 and 15(b) [S.L. 2013-98] for computer-based testing. Applicants no longer apply to the Board to take the Fundamentals Exam, but can apply to be certified as an Intern after passing the exam.

21 NCAC 56 .0502, .0602 – Changes, for the principles and practices exam, from two to three references who must be licensed.

21 NCAC 56 .0601 – Deletes requirement for plat submittal before taking the fundamentals of surveying exam, since applicants no longer apply to the Board to take the Fundamentals Exam.

21 NCAC 56 .0901 – Clarifies that the resident professional requirement only applies to office locations in North Carolina.

21 NCAC 56 .1402 – Reflects changes to G.S. 89C-21 [S.L. 2011-304, s. 5] adding three available disciplinary actions.

21 NCAC 56 .1602 – Reflects agency relocation of Geodetic Survey office.

21 NCAC 56 .1603 – Add "report" to method of showing a boundary line.

21 NCAC 56 .1604 – Adds "Realization date of adjustment of coordinate system" to north arrow reporting and clarifies use of certificate.

21 NCAC 56 .1606 – Establishes specific classifications for horizontal accuracy and vertical accuracy for topographic or planimetric maps, orthophotos, and related electronic data.

21 NCAC 56 .1608 – Establishes classifications for vertical accuracy for GIS surveys.

21 NCAC 56 .1703, .1704, .1705 – Adds continuing education credit for active participation on boards, commissions, committees or councils of private, local, state or federal government entities.

Comments may be submitted to: David S. Tuttle, 4601 Six Forks Road, Ste. 310, Raleigh, NC 27609; phone (919) 791-2000 ext. 111; fax (919) 791-2012; email dstuttle@ncbels.org

Comment period ends: March 17, 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 .0500 – PROFESSIONAL ENGINEER

21 NCAC 56 .0501 REQUIREMENTS FOR LICENSING

(a) Education. The education of an applicant shall be considered in determining eligibility for licensing as a Professional Engineer. The following terms used by the Board for the specific educational requirements to be eligible to be licensed as a Professional Engineer are defined by the Board as follows:

- (1) Engineering Curriculum of Four or More Years Approved by the Board is defined as a program that has been accredited by the Engineering Accreditation Commission (EAC) of the Accreditation Board for Engineering and Technology (ABET). This program is incorporated by reference including subsequent amendments and editions. This material is available for inspection at the office of the North Carolina Board of Examiners for Engineers and Surveyors. Copies may be

obtained at the Board office at a cost of five dollars (\$5.00) per copy.

- (2) Engineering or Related Science Curriculum of Four or More Years Other than Ones Approved by the Board is defined as a curriculum, although not accredited by ABET, of technical courses which contains engineering or scientific principles.
- (3) Equivalent Education Satisfactory to the Board:
 - (A) A graduate degree in Engineering from an institution in which the same discipline undergraduate engineering program has been accredited by ABET (EAC) is considered equivalent to an engineering curriculum of four or more years approved by the Board.
 - (B) A bachelor's degree in Engineering Technology, whether or not accredited by the Technology Accreditation Commission (TAC) of ABET, is considered equivalent to an engineering or related science curriculum of four or more years other than one approved by the Board.
 - (C) Until June 30, 2016, an associate degree in an engineering related curriculum with an additional two years of progressive engineering experience is considered equivalent to an engineering or related science curriculum of four or more years other than one approved by the Board and may be used until that date as a basis for admission to the principles and practice of engineering examination. Once admitted to the examination an applicant may continue to re-take the examination until required to submit a new application as set out in Rule .0503. After June 30, 2016 an associate degree shall no longer be used as a basis for admission to that ~~examination.~~ examination, unless the individual has passed the fundamentals of engineering examination prior to June 30, 2016, in which case the individual may continue the process to take the principles and practices exam based upon the associate degree and it will not be necessary to have qualified for admission to the principles and practice of engineering examination prior to June 30, 2016.

(D) Foreign degrees are considered equivalent only after receipt of an evaluation report that the degree is substantially equivalent to an EAC/ABET accredited engineering curriculum from the Center for Professional Engineering Education Services, an affiliate of the National Council of Examiners for Engineering and Surveying (NCEES), or from the American Association of Collegiate Registrars and Admissions Officers (AACRAO). The Board shall equate the degree to an EAC/ABET accredited engineering curriculum of four or more years approved by the Board in Subparagraph (a)(1) of this Rule if it receives a substantially equivalent evaluation.

(b) Experience:

- (1) General. The experience of an applicant shall be considered in determining whether an applicant is eligible to be licensed as a Professional Engineer.
- (2) Required Experience. In evaluating the work experience required, the Board shall consider the total experience record and the progressive nature of the record. Not less than half of required engineering experience shall be of a professional grade and character, and shall be performed under the responsible charge of a licensed Professional Engineer, or if not, a written explanation shall be submitted showing why the experience should be considered acceptable and the Board shall approve if satisfied of the grade and character of the progressive experience. Experience gained under the technical supervision of an unlicensed individual shall be considered if the appropriate credentials of the unlicensed supervisor are submitted to the Board. Experience gained in the armed services, usually while serving in an engineering or engineering related group, shall be considered if of a character equivalent to that which would have been gained in the civilian sector doing similar work.
- (3) Definition. The terms "progressive engineering experience" or "progressive experience on engineering projects" mean that during the period of time in which an applicant has made a practical utilization of acquired knowledge, continuous improvement, growth and development have been shown in the utilization of that knowledge as revealed in the complexity and technical detail of the work product or work record. The applicant must show continuous assumption of greater

individual responsibility for the work product over that period of time. The progressive experience on engineering projects shall be of a grade and a character which indicates to the Board that the applicant is competent to practice engineering.

(4) Specific Credit for Experience. In evaluating progressive engineering experience, the Board shall give credit for experience in the following areas of work:

- (A) Graduate schooling or research in an engineering program resulting in award of a master's degree from an institution that offers EAC/ABET-accredited programs – one year;
- (B) Graduate schooling or research in an engineering program resulting in award of an earned doctoral degree in engineering from an institution that offers EAC/ABET-accredited programs – two years, with or without a master's degree, but includes the one year for the master's degree, if obtained;
- (C) Progressive land surveying - maximum two years; and
- (D) Teaching of engineering subjects at the university level in an engineering program offering a four year or more degree approved by the Board.

The Board, however, shall not accept combinations, in the categories in this Subparagraph, as fulfilling all the necessary statutory experience requirements. Every applicant for licensure as a Professional Engineer, as part of the total experience requirement, shall show a minimum of one year experience of a progressive engineering nature in industry, or government, or under a licensed Professional Engineer offering service to the public.

Full-time engineering faculty members who teach in an engineering program offering a four year or more degree approved by the Board, may request and shall be granted waiver of the minimum one year experience in industry, government, or private practice if they demonstrate consulting or research work of at least one year's duration, which was pursued to fruition, and which is of a progressive engineering nature. The faculty applicant shall document the work and demonstrate that the work meets the Board's requirement.

- (5) Other Experience is Considered if it is:
 - (A) Experience obtained prior to graduation as part of an ABET accredited engineering program which must be shown on the transcript, with a maximum credit of one year; or
 - (B) Experience obtained in a foreign country that is performed under direct

supervision of a Professional Engineer licensed with a member Board of the National Council of Examiners for Engineering and Surveying (NCEES).

Authority G.S. 89C-10; 89C-13.

**21 NCAC 56 .0502 APPLICATION PROCEDURE:
INDIVIDUAL**

(a) General. A person desiring to become licensed as a Professional Engineer must make application to the Board on a form prescribed and furnished by the Board.

(b) Request. A request for an appropriate application form may be made to the Board office or obtained from the website.

(c) Applicable Forms:

(1) Engineering Engineer Intern Certification Form. After passing the fundamentals of engineering examination an applicant may make application to the Board to become certified as an "Engineer Intern." This form requires the applicant to set forth personal history, educational background, engineering experience, provide and character references, references. A passport-type photographic quality portrait that is adequate and furnish a photograph for current identification purposes. purposes is required. The form is for use by those graduating, or those having graduated, from an engineering curriculum approved by the Board as follows:

(A) ~~Students graduating within two semesters, or the equivalent, of the semester in which the fundamentals of engineering examination is administered.~~

(B) ~~Graduates with less than two years since graduation.~~

(2) Professional Engineer Form:

(A) All persons, including comity applicants and ~~graduates of an engineering curriculum approved by the Board with more than two years progressive engineering experience,~~ certified Engineer Interns, shall apply for licensure by using the Professional Engineer form. The submission of this form shall signify that the applicant seeks licensure, and shall result in seating for ~~each examination required,~~ the principles and practice of engineering examination, when the applicant is so qualified. This form requires the applicant to set forth personal and educational background, engineering experience and character references. A passport-type photographic quality

portrait that is adequate for current identification purposes is required.

(B) Persons who have previously completed the fundamentals examination by use of the Engineering Intern Application Form shall submit the Professional Engineer Application Form to request licensure when qualified to take the ~~final eight hour~~ examination.

(3) Supplemental Form. Persons who initially applied for the fundamentals of engineering exam using the Professional Engineer form must supplement the initial application upon applying for the principles and practice examination. The supplemental form requires that engineering experience from the date of the initial application until the date of the supplemental application be listed. Five references shall be submitted which are current to within one year of the examination date.

(4) Reference Forms:

(A) ~~Persons applying to take the examination for fundamentals of engineering for certification as an Engineer Intern~~ must submit to the Board names of three individuals who are familiar with the applicant's work, character and ~~reputation.~~ reputation, one of whom is a professional engineer. Persons applying to take the examination for principles and practice of engineering must submit to the Board names of five individuals who are familiar with the applicant's work, character and reputation. ~~Two~~ Three of these individuals must be Professional Engineers.

(B) In addition to the applicant submitting names to the Board of individuals familiar with the applicant's work, character and reputation, those individuals listed shall submit to the Board their evaluations of the applicant on forms supplied them by the applicant.

(C) The reference form requires the individual evaluating the applicant to state the evaluating individual's profession, knowledge of the applicant and information concerning the applicant's engineering experience, character and reputation.

(D) The Board shall provide the reference forms to the applicant with the application. The reference forms shall then be distributed by the applicant to the persons listed on the application

as references. The applicant shall see that the individuals listed as references return the reference forms to the Board prior to the filing deadline for the examination.

(d) Fees:

- (1) ~~Engineering Engineer Intern Certification Form. The examination fee for applicants applying for examination on the fundamentals of engineering using the engineering intern form is payable with the filing of the application. Once the applicant passes the examination on the fundamentals of engineering, engineering and makes application to the Board to become certified as an "Engineer Intern" the application fee of one hundred dollars (\$100.00) and the examination fee for the principles and practice of engineering examination are payable is payable with the applicant's subsequent application for licensure as a Professional Engineer using the Professional Engineer form.~~
- (2) Professional Engineer Form. The application fee of one hundred dollars (\$100.00) and examination fee for applicants applying for the examination on the fundamentals of engineering or the principles and practice of engineering using the Professional Engineer form are payable with the filing of the application.
- (3) Comity. The licensure fee of one hundred dollars (\$100.00) is payable with the filing of the application.
- (4) Examination. The examination fee for any applicant is payable with the filing of the application in accordance with G.S. 89C-14.

(e) The Board shall accept the records maintained by the National Council of Examiners for Engineering and Surveying (NCEES) as evidence of licensure in another state. For comity licensure the NCEES record shall be accepted in lieu of completing the experience, education and references sections of the application. A comity application, with or without a NCEES record, shall be administratively approved by the Executive Director based upon evidence of current licensure in another jurisdiction based on comparable qualifications, required references and no record of disciplinary action, without waiting for the next regular meeting of the Board at which time the action shall be reported to the Board for final approval.

(f) Model Law Engineer. The term "Model Law Engineer" refers to a person who meets the requirements of section .0500 by meeting the requirements of NCEES and has a current NCEES record on file and is designated as a "Model Law Engineer." A "Model Law Engineer" application shall be administratively approved by the Executive Director based upon the designation, without waiting for the next regular meeting of the Board at which time the action shall be reported to the Board for final approval.

(g) Personal interview. During the application process, the applicant may be interviewed by the Board members.

Authority G.S. 89C-10; 89C-13; 89C-14.

21 NCAC 56 .0503 EXAMINATIONS

- (a) Fundamentals of Engineering. This ~~eight hour written~~ examination is designed primarily to test the applicant's proficiency and knowledge of the fundamentals of engineering.
- (b) Principles and Practice of Engineering. This ~~eight hour written~~ examination is designed to test the applicant's proficiency and knowledge of engineering principles and practices.
- (c) Examination Aids. Examinees may utilize examination aids as specified by the exam preparer.
- (d) Preparation of Examination. The examinations in the fundamentals of engineering and in the principles and practice of engineering are national examinations provided by the National Council of Examiners for Engineering and Surveying (NCEES) of which the Board is a member.
- (e) Examination Sequence. Before the applicant is permitted to be examined on the principles and practice of engineering, the applicant must pass the examination on the fundamentals of engineering, unless the applicant can evidence 20 years of progressive engineering experience to be exempt from taking the fundamentals of engineering exam. ~~In no event is an applicant allowed to take both examinations at the same time or at the same scheduled examination date. NCEES administers the fundamentals of engineering examination as a computer-based exam. Application is made directly to NCEES to take the exam.~~
- (f) Examination Filing Deadline. The applicant who wishes to take ~~an~~ the principles and practice of engineering examination must have the completed application (which includes all necessary references, transcripts, and verifications) in the Board office prior to August 1 for Fall examinations and January 2 for Spring examinations.
- (g) Seating Notice. After approval of an application ~~to take either the examination on the fundamentals of engineering or principles and practice~~, the applicant shall be sent a seating notice. This notice shall inform the applicant of the date, time and location of the examination and the seat number assigned.
- (h) Unexcused Absences. After a seating notice has been issued for a scheduled examination by the Board, and the applicant fails to appear, that applicant's record shall reflect "unexcused absence" unless the absence was for official jury duty or the applicant was not physically able to be present, as indicated by a doctor's certificate. The examination fee is forfeited.
- (i) Re-Examination. A person who has failed an examination may apply to take the examination again at the next regularly scheduled examination period by making written request and submitting the required exam fee. A person having a combined record of three failures or unexcused absences is only eligible after submitting a new application with appropriate application fee, and shall be considered by the Board for reexamination at the end of 12 months. After the end of the 12-month period, the applicant may take the examination no more than once every calendar year. The applicant must demonstrate to the Board that actions have been taken to improve the applicant's chances for passing the exam.

(j) Special Accommodation. An applicant may make a written request, before the application deadline, for special accommodation for the exam. Reasonable accommodation shall be granted based upon meeting the Guidelines for Requesting Religious and ADA Accommodations published by the National Council of Examiners for Engineering and Surveying (NCEES), which are hereby incorporated by reference, including subsequent amendments and editions. Copies are available at no cost at www.ncees.org.

(k) Exam Results. Exam results shall be supplied in writing as pass or fail. No results will be given in any other manner.

(l) Review of Failed Exams. An applicant who fails to make a passing score on an exam shall receive an exam analysis.

Authority G.S. 89C-10; 89C-13; 89C-14; 89C-15.

SECTION .0600 – PROFESSIONAL LAND SURVEYOR

21 NCAC 56 .0601 REQUIREMENTS FOR LICENSING

(a) Education. The following terms used by the Board for the specific education requirements to be eligible to be licensed as a Professional Land Surveyor are defined by the Board as follows:

- (1) B.S. in Surveying or Other Equivalent Curriculum. These degrees must contain a minimum of 45 semester hours, or their quarter-hour equivalents, of subjects directly related to the practice of surveying. Of the 45 semester hours, a minimum of 12 semester hours of surveying fundamentals, 12 semester hours of applied surveying practice and 12 semester hours of advanced or theoretical surveying courses are required. The remainder of the required surveying courses may be elective-type courses directly related to surveying; and
- (2) Associate Degree in Surveying Technology. This degree must contain a minimum of 20 semester hours, or quarter-hour equivalents, of subjects directly related to the practice of surveying. Courses in surveying practices, subdivision design and planning, surface drainage and photogrammetry must be successfully completed.

(b) Experience:

- (1) Definition. As used in the North Carolina Engineering and Land Surveying Act, the term "progressive practical surveying experience" means that during the period of time in which an applicant has made a practical utilization of the knowledge of the principles of geometry and trigonometry in determining the shape, boundaries, position and extent of the earth's surface, continuous improvement, growth and development in the utilization of that knowledge have been shown. In addition, the applicant must show the continuous assumption of greater individual responsibility for the work product over that period of time.

- (2) Experience Accepted. In evaluating the work experience required, the Board may consider the total experience record and the progressive nature of the record. (Not less than half of required land surveying experience shall be of a professional grade and character, and shall be performed under the responsible charge of a Professional Land Surveyor, or if not, a written explanation shall be submitted showing why the experience should be considered acceptable and the Board may approve if satisfied of the grade and character of the progressive experience.)

(3) Other Experience. Work done in the following areas requires evidence to the Board of its equivalency to land surveying:

- (A) construction layout;
- (B) engineering surveying; or
- (C) part-time surveying work.

(c) Exhibits, Drawings, Plats:

~~(1) Required Exhibit Before Fundamentals of Surveying Examination. The applicant must submit, along with the application, an actual plat or an example plat prepared by, or under the direct supervision of, the applicant which discloses that the applicant is knowledgeable in the elements of good mapping practices.~~

~~(2)~~ (1) Required Exhibit Before Principles and Practice of Surveying Examination:

- (A) General. The applicant must submit, along with the application, an actual plat of a boundary survey of an actual project prepared by, or under the direct supervision of, the applicant which discloses that the applicant is knowledgeable of the contents of the Standards of Practice for Land Surveying in North Carolina (Section .1600) and also is able to apply this knowledge by preparing a plat in accordance with the various legal and professional requirements of land surveying.
- (B) Physical Requirement. The map submitted must be a clean, clear, legible print of an original map in the file of a Professional Land Surveyor.

~~(3)~~ (2) Specific Requirements. The specific details that shall be evaluated are those applicable to the particular project as described in the Standards of Practice for Land Surveying in North Carolina (Section .1600) and as described in G.S. 47-30. In addition, the exhibit shall contain a statement that the field work, calculation and mapping were performed by the applicant under the supervision of a Professional Land Surveyor, attested to by the Professional Land Surveyor.

- (4)(3) Requirements for Comity Applicant. The map submitted by an applicant under comity may be a sample plat of a project or work performed in the state of licensure which shall be evaluated in accordance with legal requirements of North Carolina.

Authority G.S. 47-30; 89C-10; 89C-13.

21 NCAC 56 .0602 APPLICATION PROCEDURE: INDIVIDUAL

(a) General. A person desiring to become a Professional Land Surveyor must make application to the Board on a form prescribed and furnished by the Board.

(b) Request. A request for the application form may be made to the Board office or obtained from the website.

(c) ~~Application Form. Forms: All persons applying to be licensed as a Professional Land Surveyor shall apply using the standard application form. This form requires the applicant to set forth personal background, plus educational background, land surveying experience, and references. A passport-type photographic quality portrait that shall be adequate for current clear identification purposes shall be required also.~~

- (1) Surveyor Intern Certification Form. After passing the fundamentals of surveying examination an applicant may make application to the Board to become certified as a "Land Surveyor Intern." This form requires the applicant to set forth personal history, educational background, surveying experience, character references and exhibit. A passport-type photographic quality portrait that is adequate for current identification purposes is required.

- (2) Professional Land Surveyor Form:

(A) All persons, including comity applicants and certified Land Surveyor Interns, shall apply for licensure by using the Professional Land Surveyor form. The submission of this form shall signify that the applicant seeks licensure, and shall result in seating for the principles and practice of surveying examination, when the applicant is so qualified. This form requires the applicant to set forth personal and educational background, surveying experience, character references and exhibit. A passport-type photographic quality portrait that is adequate for current identification purposes is required.

(B) Persons who have previously completed the fundamentals examination by use of the Land Surveying Intern Application Form shall submit the Professional Land Surveyor Application Form to request

licensure when qualified to take the examination.

(d) Supplemental Form. Persons who initially applied for licensure as a land surveyor, but were not eligible initially to be admitted to the examination for principles and practice of surveying, must supplement their initial applications upon ultimately applying for the ~~second~~ examination. The applicant must supplement the initial application by using the supplemental form, which requires the listing of land surveying experience from the date of the initial application to the date of the supplemental application. Five references shall be submitted which are current to within one year of the examination date.

(e) Reference Forms:

- (1) Persons applying to be certified as a Surveyor Intern or to take the examination for the fundamentals of surveying or the examination for principles and practice must submit to the Board names of individuals who are familiar with the applicant's work, character and reputation. The names are submitted by the applicant on the application form.

- (2) Persons applying for the fundamentals of surveying examination certification as a Surveyor Intern must submit three references, one of which must be a Professional Land Surveyor. Persons applying for the principles and practice examination must submit five references, two of which must be Professional Land Surveyors.

- (3) In addition to the applicant submitting names to the Board of such individuals, those individuals shall submit to the Board their evaluations of the applicant on reference forms supplied them by the applicant.

- (4) The reference form requires the individual evaluating the applicant to state the evaluating individual's profession, knowledge of the applicant and information concerning the applicant's land surveying experience, character and reputation.

- (5) The Board shall provide the reference forms to the applicant along with the application for licensure. The reference forms shall then be distributed by the applicant to the persons listed on the application as references. The applicant shall see that the individuals listed as references return the forms to the Board prior to the filing deadline for the examination applied for by the applicant.

(f) Fees:

- (1) Land Surveyor Intern Certification Form. Once the applicant passes the examination on the fundamentals of surveying and makes application to the Board to become certified as a "Land Surveyor Intern" the application fee of one hundred dollars (\$100.00) is payable.

- (4)(2) ~~Regular.~~ Professional Land Surveyor Form. The application fee of one hundred dollars (\$100.00) and appropriate examination fee for

those applying for licensure based upon examination, experience, character and exhibit are payable with the filing of the application.

(2)(3) Comity. The licensure fee of one hundred dollars (\$100.00) and appropriate examination fee for those applying for licensure based upon comity are payable with the filing of the application.

(3)(4) Examination. The examination fee for any applicant shall be payable with the filing of the application in accordance with G.S. 89C-14.

(g) The Board shall accept the records maintained by the National Council of Examiners for Engineering and Surveying (NCEES) as evidence of licensure in another state. For comity licensure the NCEES record shall be accepted in lieu of completing the experience, education and references sections of the application. A comity application, with or without a NCEES record, shall be administratively approved by the Executive Director based upon evidence of current licensure in another jurisdiction based on comparable qualifications, required references, and having passed the two-hour North Carolina portion of the exam and no record of disciplinary action, without waiting for the next regular meeting of the Board at which time the action shall be reported to the Board for final approval.

(h) Personal Interview. During the application process, the applicant may be interviewed by Board members.

Authority G.S. 89C-10; 89C-13; 89C-14.

21 NCAC 56 .0603 EXAMINATIONS

(a) Fundamentals of Surveying. This ~~eight hour written~~ examination is designed primarily to test the applicant's proficiency and knowledge of the fundamentals of surveying. Reference to Fundamentals of Surveying is the revised name of the national exam that is the Fundamentals of Land Surveying in G.S. 89C.

(b) Principles and Practice of Surveying. This ~~eight hour written~~ examination is designed to test the applicant's proficiency and knowledge of land surveying practices and procedures generally and specifically within North Carolina.

(c) Examination Aids. Examinees may utilize examination aids as specified by the national exam preparer.

(d) Preparation of Examination. The examination in the fundamentals of surveying and ~~six hours of~~ the examination in the principles and practice of surveying are national examinations provided by the National Council of Examiners for Engineering and Surveying (NCEES) of which the Board is a member or other examinations as adopted by the Board. The ~~two hour~~ North Carolina portion of the principles and practice of surveying examination is provided by the Board. NCEES administers the fundamentals of surveying examination as a computer-based exam. Application is made directly to NCEES to take the exam.

(e) Examination Filing Deadline. The applicant who wishes to take ~~an~~ the principles and practice of surveying examination must have the completed application (which includes all necessary references, transcripts, and verifications) in the Board office prior to August 1 for Fall examinations and January 2 for Spring examinations.

(f) Seating Notice. After approval of an application the applicant shall be sent a seating notice. This notice shall inform the applicant of the date, time and location of the examination and the seat number assigned.

(g) Unexcused Absences. After a seating notice for a scheduled examination has been issued, and the applicant fails to appear, the applicant's record shall reflect "unexcused absence" unless the absence was for official jury duty or the applicant was not physically able to be present, as indicated by a doctor's certificate. The examination fee is forfeited.

(h) Re-Examination. A person who has failed an examination may apply to take the examination again at the next regularly scheduled examination ~~period.~~ period by making written request and submitting the required exam fee. A person having a combined record of three failures or unexcused absences is only eligible after submitting a new application with appropriate application fee, and shall be considered by the Board for re-examination at the end of 12 months. After the end of the 12-month period, the applicant may take the examination no more than once every calendar year. The applicant must demonstrate to the Board that actions have been taken to improve the applicant's chances for passing the exam.

(i) Special Accommodation. An applicant may make a written request, before the application deadline, for special accommodation for the exam. Reasonable accommodation shall be granted based upon meeting the Guidelines for Requesting Religious and ADA Accommodations published by the National Council of Examiners for Engineering and Surveying (NCEES).

(j) Exam Results. Exam results shall be supplied in writing as pass or fail. No results shall be given in any other manner.

(k) Review of Failed Exams. An applicant who fails to make a passing score on the two-hour North Carolina portion of the exam may request in writing within thirty days of receiving the result to have an opportunity to review that portion of the exam. The review shall be done in the Board Office under supervision of staff and is limited to one hour.

Authority G.S. 89C-10; 89C-15.

SECTION .0900 – BUSINESS ENTITIES: GENERAL

21 NCAC 56 .0901 OFFICES

(a) Professional Engineering Services. Every firm, partnership, corporation or limited liability company which performs or offers to perform engineering services in the State of North Carolina shall have a resident Professional Engineer in responsible charge in each separate office located in North Carolina in which professional engineering services are performed or offered to be performed. Out-of-state office locations in which engineering services are performed or offered to be performed for North Carolina projects are only required to have Professional Engineers in responsible charge of the specific projects in compliance with Rule .0701(c)(3) of this Chapter.

(b) Land Surveying Services. Every firm, partnership, corporation or limited liability company which performs or offers to perform land surveying services in the State of North Carolina shall have a resident Professional Land Surveyor in responsible charge in each separate office located in North Carolina in which land surveying services are performed or

offered to be performed. Out-of-state office locations in which surveying services are performed or offered to be performed for North Carolina projects are only required to have Professional Land Surveyors in responsible charge of the specific projects in compliance with Rule .0701(c)(3) of this Chapter.

(c) Resident. A resident Professional Engineer or Professional Land Surveyor as used in this Rule, means a licensee who spends a majority of the licensee's normal working time in said place of business. Such time shall not be less than a majority of the operating hours of the business. A Professional Engineer or Professional Land Surveyor shall be the resident licensee at only one place of business at one time unless each business is at least one-third owned by the resident professional and is specifically approved by the Board after a determination that the businesses are integrated in operation, ownership, office location and that the licensee will be in responsible charge of the professional services.

(d) No firm, partnership, corporation or limited liability company shall practice, or offer to practice, or market either land surveying or engineering unless there is a licensed resident for that service in responsible charge at that said place of business. Advertisements, signs, letterheads, business cards, directories, or any other form of representation shall avoid any reference to any service that cannot be provided under the responsible charge of a properly qualified resident professional. The licensed entity shall give notice to the Board of a change of resident professional within 30 days after the change and shall not practice, or offer to practice, or market the professional service during any period of time without a resident professional.

Authority G.S. 57C-2-01; 89C-10; 89C-24.

SECTION .1400 – CONTESTED CASES

21 NCAC 56 .1402 OPPORTUNITY FOR LICENSEE OR APPLICANT TO HAVE HEARING

Every licensee or applicant for a license shall be afforded notice and an opportunity to be heard on any action, the effect of which would be:

- (1) to deny permission to take an examination for licensing for which application has been duly made,
- (2) to deny a license based on comity,
- (3) to deny a license after an applicant has taken and passed an examination,
- (4) to require re-examination for licensing,
- (5) to withhold the renewal of a license for any cause other than failure to pay a statutory renewal fee,
- (6) to suspend a license,
- (7) to revoke a license,
- (8) to impose a civil penalty, or
- (9) to issue a ~~reprimand-reprimand~~;
- (10) to refuse to renew,
- (11) to refuse to reinstate,
- (12) require additional education.

Authority G.S. 89C-10; 89C-21; 89C-22; 150B-38.

SECTION .1600 – STANDARDS OF PRACTICE FOR LAND SURVEYING IN NORTH CAROLINA

21 NCAC 56 .1602 SURVEYING PROCEDURES

(a) A Professional Land Surveyor shall spend the necessary time and effort to make investigation to determine if there are encroachments, gaps, lappages, or other irregularities along each line surveyed. Points may be placed on the line from closed or verified traverses and the necessary investigations made from these points. If these investigations are not made, then the surveyor shall not certify to an actual survey of that line and the plat must contain the appropriate qualifications in accordance with the rules in this Section.

(b) Any and all visible or determined encroachments or easements on the property being surveyed shall be accurately located and indicated.

(c) With respect to investigation of property boundaries and recorded easements, the surveyor shall examine the most recent deeds and recorded plats adjacent to the subject property as well as all deeds and plats recorded after the date of the deed or plat upon which the survey is being based (the survey reference deed or plat).

(d) Except as provided in Paragraph (e) of the Rule, metal stakes or materials of comparable permanence shall be placed at all corners.

(e) Where a corner falls in a right-of-way, in a tree, in a stream, or on a fence post, boulder, stone, or similar object, one or more monuments or metal stakes shall be placed in the boundary so that the inaccessible point may be located accurately on the ground and the map.

(f) The results of a survey shall be reported to the user of that survey as a map or report of survey and, whether in written or graphic form, shall be prepared in a clear and factual manner. All reference sources shall be identified. Artificial monuments called for in such reports shall be described as found or set. When no monument is found or set for points described in Paragraph (e) of this Rule, that fact shall be noted.

(g) Where the results of a survey are reported in the form of a plat or a written description, one or more corners shall, by a system of azimuths or courses and distances, be accurately tied to and coordinated with a horizontal control monument of some United States or State Agency survey system, such as the North Carolina Geodetic Survey, where such monument is within 2000 feet of the subject property, right-of-way, easement or other surveyed entity. Where the North Carolina grid system coordinates of said monument are on file in the ~~Division of Energy, Mineral, and Land Resources of the Department of Environment and Natural Resources, Department of Public Safety/Emergency Management, Geodetic Survey office,~~ the coordinates of both the referenced corner or point and the monument(s) shall be shown in X (easting) and Y (northing) coordinates on the plat or in the written description or document. The coordinates shall be identified as based on 'NAD 83', indicating North American Datum of 1983 or as 'NAD 27' indicating North American Datum of 1927. The tie lines to the monuments must be sufficient to establish true north or grid north bearings for the plat or description if the monuments exist in pairs. Control monuments within a previously recorded subdivision may be used in lieu of grid control. In the interest of

bearing consistency with previously recorded plats, existing bearing control may be used where practical. In the absence of Grid Control, other natural or artificial monuments or landmarks shall be used. In all cases, the tie lines shall be sufficient to accurately reproduce the subject lands from the control or reference points used.

(h) Area is to be computed by double meridian distance or equally accurate method and shown on the face of the plat, written description or other document. Area computations by estimation, by planimeter, by scale, or by copying from another source are not acceptable methods, except in the case of tracts containing inaccessible areas and in these areas the method of computation shall be stated.

Authority G.S. 89C-10; 89C-20.

21 NCAC 56 .1603 CLASSIFICATION OF BOUNDARY SURVEYS

General. Boundary surveys are defined as surveys made to establish or to retrace a boundary line on the ground, or to obtain data for constructing a ~~map, map, or plat~~ plat, or report showing a boundary line. For the purpose of this Rule, the term refers to all surveys, including "loan" or "physical" surveys, which involve the determination or depiction of property lines. For the purpose of specifying minimum allowable surveying standards for boundary surveys, the following four general classifications of lands in North Carolina are established from the standpoint of their real value, tax value, or location. Each map shall contain a statement of the calculated ratio of precision before adjustments or a statement of positional accuracy.

- (1) Local Control Network Surveys (Class AA). Local control network surveys are traverse networks utilizing permanent points for the purpose of establishing local horizontal control networks for future use of local surveyors. For Class AA boundary surveys in North Carolina, the angular error of closure shall not exceed ten seconds times the square root of the number of angles turned. The ratio of precision shall not exceed an error of closure of one foot per 20,000 feet of perimeter of the parcel of land (1:20,000). When using positional accuracy standards for Class AA control and boundary surveys, neither axis of the 95 percent confidence level error ellipse for any control point or property corner shall exceed 0.05 feet or 0.015 meters measured relative to the position(s) of the horizontal control points used and referenced on the survey.
- (2) Urban Land Surveys (Class A). Urban surveys include lands which normally lie within a town or city. For Class A boundary surveys in North Carolina, the angular error of closure shall not exceed 20 seconds times the square root of the number of angles turned. The ratio of precision shall not exceed an error of closure of one foot per 10,000 feet of perimeter of the parcel of land (1:10,000). When using

positional accuracy standards for Class A control and boundary surveys, neither axis of the 95 percent confidence level error ellipse for any control point or property corner shall exceed 0.10 feet or 0.030 meters measured relative to the position(s) of the horizontal control points used and referenced on the survey.

- (3) Suburban Land Surveys (Class B). Suburban surveys include lands in or surrounding the urban properties of a town or city. For Class B boundary surveys in North Carolina, the angular error of closure shall not exceed 25 seconds times the square root of the number of angles turned. The ratio of precision shall not exceed an error of closure of one foot per 7,500 feet of perimeter of the parcel of land (1:7,500). When using positional accuracy standards for Class B control and boundary surveys, neither axis of the 95 percent confidence level error ellipse for any control point or property corner shall exceed 0.12 feet or 0.037 meters measured relative to the position(s) of the horizontal control points used and referenced on the survey.
- (4) Rural and Farmland Surveys (Class C). Rural and farmland surveys include lands located in rural areas of North Carolina and generally outside the suburban properties. For Class C boundary surveys in North Carolina, the angular error of closure shall not exceed 30 seconds times the square root of the number of angles turned. The ratio of precision shall not exceed an error of closure of one foot per 5,000 feet of perimeter of the parcel of land (1:5,000). When using positional accuracy standards for Class C control and boundary surveys, neither axis of the 95 percent confidence level error ellipse for any control point or property corner shall exceed 0.15 feet or 0.046 meters measured relative to the position(s) of the horizontal control points used and referenced on the survey.

Authority G.S. 89C-10; 89C-20.

21 NCAC 56 .1604 MAPPING REQUIREMENTS FOR BOUNDARY SURVEYS

- (a) The size of a map shall be such that all details are legible on a copy.
- (b) Any lines that are not actually surveyed must be indicated on the map and a statement included revealing the source of information from which the line is derived.
- (c) All surveys based on the North Carolina grid system shall contain a statement identifying the coordinate system referenced datum used.
- (d) All plats (maps), unless marked as "Preliminary Plat - Not for recordation, conveyances, or sales" shall be sealed, signed

and dated by the Professional Land Surveyor and shall contain the following:

- (1) An accurately positioned north arrow coordinated with any bearings shown on the plat. Indication shall be made as to whether the north index is true, magnetic, North Carolina grid ('NAD 83' and realization (date of adjustment of coordinate system) or 'NAD27'), or is referenced to old deed or plat bearings. If the north index is magnetic or referenced to old deed or plat bearings, the date and the source (if determined) shall be indicated.
- (2) The azimuth or courses and distances of every property line surveyed shall be shown. Distances shall be in feet or meters and decimals thereof. The number of decimal places shall be appropriate to the class of survey required.
- (3) All plat lines shall be horizontal or grid measurements. All lines shown on the plat shall be correctly plotted to the scale shown. Enlargements of portions of a plat are acceptable in the interest of clarity, where shown as inserts. Where the North Carolina grid system is used, the combined grid factor shall be shown on the face of the plat. If grid distances are used, it must be shown on the plat.
- (4) Where a boundary is formed by a curved line, the following data must be given: actual survey data, or as a series of subchords with bearings and distances around the curve. If standard curve data is used, the bearing and distance of the long chord (from point of curvature to point of tangency) must be shown on the face of the plat.
- (5) Where a subdivision of land is set out on the plat, all streets and lots shall be accurately plotted with dimension lines indicating widths and all other information pertinent to retracing all lines in the field. This shall include bearings and distances sufficient to form a continuous closure of the entire perimeter.
- (6) Where control corners have been established in compliance with G.S. 39-32.1, 39-32.2, 39-32.3, and 39-32.4, as amended, the location and information as required in the referenced statute shall be shown on the plat. All other corners that are marked by monument or natural object shall be so identified on all plats, and where practical all corners of adjacent owners along the boundary lines of the subject tract that are marked by monument or natural object shall be shown.
- (7) The surveyor shall show one of the following where they could be determined:
 - (A) The names of adjacent land owners; or

- (B) The lot, block, parcel and subdivision designations; or
- (C) Other legal reference where applicable.
- (8) All visible and apparent rights-of-way, easements, watercourses, utilities, roadways, and other such improvements shall be accurately located where crossing or forming any boundary line of the property shown.
- (9) Tie lines as required and defined in Rule .1602(g) of this Section shall be accurately shown on the face of the plat, whether or not the plat is to be recorded.
- (10) A vicinity map (location map) shall appear on the face of the plat.
- (11) Each map shall contain the property designation, name of owner or prospective owner, location (including township, county, and state), and the date or dates the survey was conducted. In addition each map shall contain a scale of the drawing listed in words or figures; a bargraph; the title source; and a legend depicting nomenclature or symbols not otherwise labeled.
- (12) ~~Each~~ Any map not certified for recording under G.S. 47-30, and all reports of survey, shall contain ~~a~~ this certificate signed by the Professional Land Surveyor in substantially the following form:
 "I certify that this map was drawn under my supervision from an actual survey made under my supervision (deed description recorded in Book _____, page _____ or other reference source _____); that the boundaries not surveyed are indicated as drawn from information in Book _____, page _____ or other reference source _____; that the ratio of precision or positional accuracy is _____; and that this map meets the requirements of The Standards of Practice for Land Surveying in North Carolina (21 NCAC 56.1600)."
 This _____ day of _____, 2_____.
 Seal _____
 Professional Land Surveyor

Authority G.S. 89C-10; 89C-20.

21 NCAC 56.1606 SPECIFICATIONS FOR TOPOGRAPHIC AND PLANIMETRIC MAPPING, INCLUDING GROUND, AIRBORNE, AND SPACEBORNE SURVEYS

(a) General.

- (1) Topographic surveys are defined as surveys that have as their major purpose the determination of the configuration (relief) of the earth (ground) and the location of natural or artificial objects thereon.

- (2) Planimetric mapping is defined as producing a map that presents the horizontal positions only for the features represented; distinguished from a topographic map by the omission of relief in measurable form.
- (3) Airborne and spaceborne surveys are defined as the use of photogrammetry, LIDAR, IFSAR, or other similar measurement technologies for obtaining reliable information about physical objects and the environment, including terrain surface, through the process of recording, measuring, and interpreting images and patterns of electromagnetic radiant energy and other phenomena. This Rule establishes minimum allowable photogrammetric production procedures and standards for photogrammetric mapping and digital data production.

(b) Production procedures for topographic and planimetric mapping surveys shall be in accordance with the standards established by Part 3 of the Federal Geographic Data Committee (FGDC) Geospatial Positioning Accuracy Standard and applicable extensions and revisions. These standards are incorporated by reference including subsequent amendments and editions. The material is available from the Board office at the cost of reproduction as a public record or from the FGDC at www.fgdc.gov at no cost. Reporting accuracy shall be in accordance with Part 1 of the FGDC geospatial standards.

(c) Topographic or planimetric maps, orthophotos, and related electronic data, unless marked as "Preliminary Map," shall meet one of the below classes, as contractually specified to FGDC Standards, or NAIP Standards, or to State adopted base mapping standards for horizontal and vertical accuracies (in the absence of specified standards, the National Map Accuracy Standards apply) and shall be certified by the licensee, accuracies. In the absence of a specified standard, the surveyor shall conform the survey to the requirements for a Class B survey.

- (1) For horizontal accuracy five general classifications are:
 - (A) Class AA surveys. For Class AA surveys in North Carolina, the relative accuracy shall be equal to or no less than 0.033 meter (0.10 feet);
 - (B) Class A surveys. For Class A surveys in North Carolina, the relative accuracy shall be equal to or less than 0.5 meter (1.64 feet);
 - (C) Class B surveys. For Class B surveys in North Carolina, the relative accuracy shall be equal to or less than 1.0 meter (3.28 feet);
 - (D) Class C surveys. For Class C surveys in North Carolina, the relative accuracy shall be equal to or less than 2 meters (6.56 feet); and
 - (E) Class D surveys. For Class D surveys in North Carolina, the relative

accuracy shall be equal to or less than 5 meters (16.40 feet).

- (2) For vertical accuracy, three general classifications are:

- (A) Urban and suburban vertical control surveys. (Class A). Urban and suburban vertical control surveys include lands which lie within or adjoining a town or city. For Class A vertical control surveys in North Carolina, the vertical error in feet shall not exceed 0.10 times the square root of the number of miles run from the reference datum.

- (B) Other vertical control surveys (Class B). Other vertical control surveys include all lands which are not covered by Class A as described in Item (1) of this Rule. For Class B vertical control surveys in North Carolina, the vertical error in feet shall not exceed 0.20 times the square root of the number of miles run from the reference datum.

- (C) Trigonometric vertical control surveys (Class C). Trigonometric vertical control surveys can be used for vertical control for aerial and topographic mapping. The vertical error in feet shall not exceed 0.3 times the square root of the number of miles run from the reference datum.

(d) When the resulting product is a digital (electronic) data set, or a map or document consists of more than one sheet or otherwise cannot be certified, a project report shall be certified. The report shall be marked "Preliminary" if applicable.

(e) Ground control for topographic and planimetric mapping projects shall be in North Carolina State Plane Coordinate System grid coordinates and distances when the project is tied to Grid. A minimum of one permanent project vertical control point shall be shown.

(f) The project map or report shall contain the following information:

- (1) Date of original data acquisition;
- (2) Altitude of sensor and sensor focal length, as applicable;
- (3) Date of document or data set compilation;
- (4) If hard copy product is produced, the maps shall contain a north arrow, map legend, final document scale, including bargraph, and contour interval, as applicable;
- (5) Coordinate system for horizontal and vertical denoting SI or English units (i.e., NAD83, assumed, or other coordinate system);
- (6) A list or note showing the control points used for the project. The minimum data shown for each point shall include: physical attributes

e.g. iron rod, railroad spike), latitude and longitude (or X and Y Grid coordinates), and elevation, as applicable;

(7) If other data is included, the source and accuracy of those items must be indicated;

~~(8) A statement of horizontal and vertical accuracy at the 95 percent confidence level (2 sigma) complying with contractually specified FGDC standards consistent with Paragraph (e) of this Rule;~~

~~(9)(8)~~ For topographic maps or data sets, contours in areas obscured by man-made or natural features shall be uniquely identified or enclosed by a polygon identifying the obscured area. The accuracies of the contours or of features in this obscured area shall be noted "No reliance is to be placed on the accuracy of these contours;"

~~(10)(9)~~ A vicinity map depicting the project location on the first sheet of all hard copy maps or in the report accompanying digital files; and

~~(11)(10)~~ The name of the client for whom the project was conducted.

(g) Nothing in this Section shall be construed to negate or replace the relative accuracy standards found in Rules .1601 through .1608.

(h) A certificate, substantially in the following form, shall be affixed to all maps or reports:

" I, _____, certify that this project was completed under my direct and responsible charge from an actual survey made under my supervision; that this _____ (insert as appropriate: ground, airborne or spaceborne) survey was performed at the 95 percent confidence level (2 sigma) to meet Federal Geographic Data Committee Standards; that this survey was performed to meet the requirements for a topographic/planimetric survey to the accuracy of Class _____ and vertical accuracy when applicable to the Class _____ standard; that the horizontal accuracy is _____, that the vertical accuracy is _____ and that the original data was obtained on _____(date)_____; that the survey was completed on _____(date)_____; that contours shown as [broken lines] may not meet the stated standard; and all coordinates are based on _____(NAD 83 (NSRS 2007), NAD 83/2001, or other); ['NAD 83' and realization (date of adjustment of coordinate system) or 'NAD 27'] and all elevations are based on _____(NGV 29, NGVD 29, NAVD 88, or other)."

(i) Documents transmitted electronically shall have the computer-generated seal removed from the original file and a copy of the project report shall be certified and sent to the client. The electronic data shall have the following inserted in lieu of the signature and date:

"This document originally issued and sealed by (name of sealer), (license number), on (date of sealing). This electronic media shall not be considered a certified document. See the project report for certificate and seal."

Authority G.S. 89C-10; 89C-20.

21 NCAC 56 .1608 CLASSIFICATION/LAND INFORMATION SYSTEM/GEOGRAPHIC INFORMATION SYSTEM SURVEYS

(a) General: Land Information System/Geographic Information System (LIS/GIS) surveys are defined as the measurement of existing surface and subsurface features for the purpose of determining their accurate geospatial location for inclusion in an LIS/GIS database. All LIS/GIS surveys as they relate to property lines, rights-of-way, easements, subdivisions of land, the position for any survey monument or reference point, the determination of the configuration or contour of the earth's surface or the position of fixed objects thereon, and geodetic surveying which includes surveying for determination of the size and shape of the earth both horizontally and vertically and the precise positioning of points on the earth utilizing angular and linear measurements through spatially oriented spherical geometry, shall be performed by a Land Surveyor who is a licensee of this Board unless exempt by G.S. 89C-25. For the purpose of specifying minimum allowable surveying standards, five general classifications of LIS/GIS surveys are established, any of which may be specified by the client. In the absence of a specified standard, the surveyor shall conform the survey to the requirements for a Class B survey. ~~The five classifications are:~~

(1) For horizontal accuracy five general classifications are:

(A) Class AA LIS/GIS Surveys. For Class AA LIS/GIS surveys in North Carolina, the relative accuracy shall be equal to or no less than 0.033 meter (0.10 feet);

(B) Class A LIS/GIS surveys. For Class A LIS/GIS surveys in North Carolina, the relative accuracy shall be equal to or less than 0.5 meter (1.64 feet);

(C) Class B LIS/GIS surveys. For Class B LIS/GIS surveys in North Carolina, the relative accuracy shall be equal to or less than 1.0 meter (3.28 feet);

(D) Class C LIS/GIS surveys. For Class C LIS/GIS surveys in North Carolina, the relative accuracy shall be equal to or less than 2 meters (6.56 feet); and

(E) Class D LIS/GIS surveys. For Class D LIS/GIS surveys in North Carolina, the relative accuracy shall be equal to or less than 5 meters (16.40 feet).

(2) For vertical accuracy, three general classifications are:

(A) Urban and suburban vertical control surveys. (Class A). Urban and suburban vertical control surveys include lands which lie within or adjoining a town or city. For Class A vertical control surveys in North Carolina, the vertical error in feet shall not exceed 0.10 times the square root of the number of miles run from the reference datum.

- (B) Other vertical control surveys (Class B). Other vertical control surveys include all lands which are not covered by Class A as described in Item (1) of this Rule. For Class B vertical control surveys in North Carolina, the vertical error in feet shall not exceed 0.20 times the square root of the number of miles run from the reference datum.

- (C) Trigonometric vertical control surveys (Class C). Trigonometric vertical control surveys can be used for vertical control for aerial and topographic mapping. The vertical error in feet shall not exceed 0.3 times the square root of the number of miles run from the reference datum. The vertical error in Global Navigation Satellite System (GNSS) surveys shall not exceed five centimeters relative to the referenced benchmark(s) at the 95 percent confidence level (2 sigma) accuracy as defined in Federal Geographic Data Committee Standards.

(b) Nothing in this Rule negates or replaces the relative accuracy standards found in Rules .1601 through .1607 of this Chapter.

(c) The Professional Land Surveyor in responsible charge of the LIS/GIS boundary or geodetic control survey shall certify to all of the following in either written or digital form:

- (1) Class of LIS/GIS survey. Method used to evaluate the accuracy shall be described as either statistical testing or least squares adjustment results, comparison with values of higher accuracy, and repeat measurements. The reporting standard in the horizontal component is the radius of a circle of uncertainty, such that the true or theoretical location of the point falls within that circle 95 percent of the time. ~~For vertical accuracy requirements, see 21 NCAC 56 .1605; time;~~
- (2) Method of measurement (i.e. global navigation satellite systems, electronic scanners, theodolite and electronic distance meter, transit and tape);
- (3) Date(s) of the survey; and
- (4) Datum used for the survey.

(d) A certificate, substantially in the following form, shall be affixed to all maps or reports:

"I, _____, certify that this project was completed under my direct and responsible charge from an actual survey made under my supervision; that this survey was performed to meet the requirements for an LIS/GIS LIS/GIS survey [21 NCAC 56.1608] to the accuracy of Class ____ and vertical accuracy; when applicable to the Class ____ standard ~~[(21 NCAC 56.1605(a))];~~ method used to evaluate the accuracy was _____; method of measurement

_____; date(s) of survey _____; datum used for survey _____; and all coordinates are based on ~~(NAD 83 (NSRS 2007), NAD 83/2001, or other);~~ ['NAD 83' and realization (date of adjustment of coordinate system) or 'NAD 27'] and all elevations are based on ~~(NGV 29, (NGVD 29, NAVD 88, or other))."~~

Authority G.S. 89C-10; 89C-20.

SECTION .1700 – CONTINUING PROFESSIONAL COMPETENCY

21 NCAC 56 .1703 REQUIREMENTS

Every licensee shall obtain 15 PDH units during the renewal period. If a licensee exceeds the annual requirement in any renewal period, a maximum of 15 PDH units may be carried forward into the subsequent renewal period. Selection of courses and activities which meet the requirements of Rule .1702(4) of this Section is the responsibility of the licensee. Licensees may select courses other than those offered by sponsors. Post evaluation of courses may result in non-acceptance. PDH units may be earned as follows:

- (1) Completion of college courses;
- (2) Completion of continuing education courses, seminars, or workshops;
- (3) Completion of correspondence, televised, internet, videotaped, audiotaped, and other courses or tutorials provided an exam is required for completion. No exam is required for attendance at a webinar presentation if attendance is documented;
- (4) Presenting or attending seminars, in-house courses, workshops, or professional or technical presentations made at meetings, conventions or conferences;
- (5) Teaching or instructing in Items (1) through (4) of this Rule;
- (6) Authoring published papers, articles, or books;
- (7) Active participation in professional or technical societies as defined in Rule .1705(f) of this Section;
- (8) Patents; and
- (9) Authoring exam questions accepted for use in the engineering or land surveying exams.
- (10) Active participation on boards, commissions, committees or councils of private, local, state or federal government entities as defined in Rule .1705(f) of this Section.

Authority G.S. 89C-10(a); 89C-17.

21 NCAC 56 .1704 UNITS

The conversion of other units of credit to PDH units is as follows:

- | | | |
|-----|---------------------------------|--------|
| (1) | 1 College or unit semester hour | 45 PDH |
| (2) | 1 College or unit quarter hour | 30 PDH |
| (3) | 1 Continuing Education Unit | 10 PDH |

- (4) 1 Contact hour of professional development in course work, seminars, 1 PDH or professional or technical presentations made at meetings, conventions or conferences. Contact hours equal the actual time of instruction and shall be credited to the nearest one-third of an hour.
- (5) For teaching in Items (1) – (4) of this Rule, PDH credits are doubled. Teaching credit is valid for teaching a course or seminar for the first time only. Teaching credit does not apply to full-time faculty, as defined by the institution where a licensee is teaching.
- (6) Each published paper, article or book. 10 PDH
- (7) Active participation in professional and technical society. 2 PDH (Each organization.)
- (8) Each patent 10 PDH
- (9) Each question used 2 PDH
- (10) Active participation on boards, commissions, committees or councils of private, local, state or federal government entities (Each entity) 2 PDH

Authority G.S. 89C-10(a); 89C-17.

21 NCAC 56 .1705 DETERMINATION OF CREDIT

- (a) The Board of Examiners has final authority with respect to approval of courses, sponsors, credit, PDH value for courses, and other methods of earning credit.
- (b) Credit for college or community college courses shall be based upon course credit established by the college.
- (c) Credit for continuing education courses, seminars and workshops shall be based on one PDH unit for each hour of attendance. Attendance at programs presented at professional and technical society meetings shall earn PDH units for the actual time of each program.
- (d) Credit for correspondence, televised, internet, videotaped, audiotaped, and other courses or tutorials, provided an exam is required for completion, shall be based upon one PDH unit for each hour assigned to the course, provided such hours are a reasonably estimated time for an average professional to complete the course.
- (e) Credit determination, as allowed in 21 NCAC 56 .1704(6), for published papers, articles and books and obtaining patents is the responsibility of the licensee.
- (f) Credit for active participation in professional and technical societies (limited to 2 PDH per organization), requires that a licensee serve as an officer or participate in a committee of the organization. PDH credits are not earned until the end of each year of service is completed.
- (g) Credit for active participation on boards, commissions, committees or councils of private, local, state or federal government entities (limited to 2 PDH per entity) requires utilizing engineering or land surveying knowledge (as applicable) in the active participation. PDH credits are not earned until the end of each year of service is completed.

Authority G.S. 89C-10(a); 89C-17.

TITLE 26 – OFFICE OF ADMINISTRATIVE HEARINGS

Notice is hereby given in accordance with G.S. 150B-21.2 that the Office of Administrative Hearings intends to adopt the rule cited as 26 NCAC 03 .0132 and amend the rule cited as 26 NCAC 03 .0103.

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

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

Link to agency website pursuant to G.S. 150B-19.1(c):
http://www.ncoah.com/

Proposed Effective Date: *May 1, 2014*

Public Hearing:

Date: *February 27, 2014*

Time: *10:00 a.m.*

Location: *1711 New Hope Church Road, Raleigh, NC 27609*

Reason for Proposed Action:

Rule .0103 – The amendments to this rule allow a party who fails to pay the correct filing fee at the time of submission to do so within 60 days from the filing date; and pursuant to G.S. 150B-23.2(d), repeats the requirement that the filing fee will be refunded in the contested case where the State is the losing party.

Rule .0132 – G.S. 150B-33(b)(11) allows an ALJ to award reasonable attorney and witness fees against a State agency after making findings that the agency has either acted arbitrarily and capriciously and substantially prejudiced the petitioner's rights or in certain state personnel cases. This rule sets forth the methodology the ALJ will use in determining the amount of the award.

Comments may be submitted to: *Gene Cella, OAH General Counsel, 1711 New Hope Church Road, Raleigh, NC 27609, email gene.cella@oah.nc.gov.*

Comment period ends: *March 17, 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 03 - HEARINGS DIVISION

SECTION .0100 - HEARING PROCEDURES

26 NCAC 03 .0103 COMMENCEMENT OF CONTESTED CASE: NOTICE AND FILING FEE

(a) A contested case in the Office of Administrative Hearings is commenced by the filing of a petition as required by G.S. 150B-23 and payment of the appropriate filing fee (if a fee is required by G.S. 150B-23.2).

(b) Within five days of filing a petition to commence a contested case, the Chief Administrative Law Judge shall assign an administrative law judge to the case. Within ten days of the filing of a petition commencing a contested case, the chief hearings clerk of the Office of Administrative Hearings shall serve a Notice of Contested Case Filing and Assignment upon all who are parties to the dispute. The notice shall contain the following:

- (1) Name of case and date of filing;
- (2) Name, address, and telephone number of the administrative law judge; and
- (3) A request that the party send within 30 days a copy of the document constituting the agency action that caused the filing of the petition.

(c) In contested cases commenced by a person aggrieved involving the following causes of action, the petitioner shall pay a filing fee of one hundred twenty-five dollars (\$125.00):

- (1) Contested cases challenging certificate of need filed pursuant to G.S. 131E-188;
- (2) Contested cases challenging permit actions under G.S. 143-215.1, G.S. 143-215.10C, G.S. 143-215.15, and G.S. 143-215.108;
- (3) Contested cases where the amount in controversy is fifty thousand dollars (\$50,000) or greater.

(d) In contested cases commenced by a person aggrieved which do not involve the causes of action listed in Paragraph (c) of this Rule, the petitioner shall pay a fee of twenty dollars (\$20.00).

(e) The filing fee shall be waived in a contested case in which the petition is filed in forma pauperis and supported by such proofs as are required in G.S. 1-110. A petitioner seeking to have the filing fee waived under this Paragraph shall file the appropriate OAH form with the chief hearings clerk simultaneously when filing the petition for a contested case.

(f) The filing fee shall be waived in a contested case involving a mandated federal cause of action.

(g) If the filing fee is not paid or is paid in an incorrect amount at the time of filing, the Office of Administrative Hearings shall notify the petitioner in writing and permit a late payment of the filing fee to be made within 60 days of the date the petition was filed. If the filing fee is not paid as provided herein, the petition may be dismissed at the discretion of the assigned Administrative Law Judge.

(h) The filing fee shall be refunded in a contested case in which the losing party is the State as set forth in Rule .0105 of this Section.

~~(g)~~(i) The method of payment shall be:

- (1) cash;
- (2) money order;
- (3) certified check; or
- (4) check drawn on an attorney's trust or operating account.

Authority G.S. 7A-751; 150B-23; 150B-23.2; 150B-33.

26 NCAC 03 .0132 ASSESSMENT OF REASONABLE ATTORNEY AND WITNESS FEES BY THE ADMINISTRATIVE LAW JUDGE

(a) In ordering the assessment of attorney fees pursuant to G.S. 150B-33(b)(11), the administrative law judge shall award:

- (1) attorney fees at a reasonable hourly rate based on the prevailing market rate but at a rate no higher than the fee agreement between the parties;
- (2) Law Clerk, Paralegal, or Legal Assistant fees at a reasonable hourly rate based on the prevailing market rate but at a rate no higher than the fee agreement between the parties; and
- (3) travel time at a maximum rate of one-half the applicable hourly attorney or legal support staff fee rate.

(b) Attorney and witness fees shall be documented by an itemized--per activity--accounting of the hours expended, in addition to a copy of the fee agreement between the parties and any relevant receipts or other documentation of prior payment.

(c) In determining the prevailing market rate in Subparagraph (a)(1) of this Rule, the administrative law judge shall consider the complexity of the case and the experience of the attorney. The fee shall be commensurate with others in the area with similar experience and expertise.

Authority G.S. 7A-751; 150B-33(b)(11).

Notice is hereby given that the Rules Review Commission intends to amend the rules cited as 26 NCAC 05 .0105-.0106.

Link to agency website pursuant to G.S. 150B-19.1(c):
<http://www.ncoah.com/rules/rrc.html>

Proposed Effective Date: April 1, 2014

Public Hearing:

Date: February 20, 2014

Time: 11:00 a.m. or at the conclusion of the RRC meeting, whichever is later

Location: RRC Commission Meeting Room, 1711 New Hope Church Road, Raleigh, NC 27609

Reason for Proposed Action: Both rules currently allow members of the public or a state agency to make oral statements supporting or opposing a rule. The rules are proposed for amendment to include allowing members of the public or a state agency to support or oppose the report by the agency as required by G.S. 150B-21.3A.

In addition Rule .0106 is proposed for amendment to allow the chairman to limit repetitive points made by the same speaker.

Comments may be submitted to: Joseph J. DeLuca, Rules Review Commission, 6714 Mail Service Center, Raleigh, NC 27699-6714, phone (919)431-3081, joe.deluca@oah.nc.gov.

Comment period ends: March 17, 2014

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

CHAPTER 05 – RULES REVIEW COMMISSION

26 NCAC 05 .0105 REQUIRED NOTICE PRIOR TO ORAL RRC PRESENTATION

(a) The Chair may allow an agency or any person to make oral statements in support of or in opposition to a ~~rule, rule or report~~ as set forth in Rule .0206 of this Chapter.

(b) Any person or agency desiring to make an oral statement concerning a permanent rule shall notify the RRC staff in writing by 5:00 p.m. of the second business day before the RRC meeting. The notice shall identify the rule upon which the oral statement will be made and shall also include the name, address, telephone number, fax number and email address of the individual who will be making the oral statement. If the person did not submit a written comment, the person shall state whether the oral statement will support or oppose the ~~rule, rule or report~~.

(c) Any person or agency desiring to make an oral statement concerning a temporary rule shall notify the RRC staff prior to the start of the RRC meeting or RRC designee meeting at which a temporary rule will be reviewed. The notice shall identify the

rule upon which the oral statement will be made and shall also include the name, address, telephone number, fax number and email address of the individual who will be making the oral statement. If the person did not submit a written comment, the person shall state whether the oral statement will support or oppose the rule.

(d) At the same time the person notifies the RRC staff, the person shall also notify the rule making coordinator for the agency proposing the rule if the person wishes to speak in opposition to the ~~rule, rule or report~~. If a person fails to notify the agency in accordance with this rule, the Chair may deny a request to make an oral statement to the RRC.

(e) If the Commission asks an individual to address a ~~rule or report, the prior notice required by this Rule does not apply.~~

Authority G.S. 143B-30.1.

26 NCAC 05 .0106 LIMITATIONS ON ORAL PRESENTATIONS

(a) The RRC Chair in open session may set time limits on oral presentations before the Commission.

(b) Unless the Chair sets other time limits for oral presentations, the time allowed for presentations shall not exceed ten minutes for each requesting person or agency. The Chair may require that oral presentations be limited to representative spokespersons for those advocating or those opposing rule approval by the RRC.

(c) Factors that the Chair may use in determining time limits include the length of the agenda and time remaining in the meeting; the number of contested rules; the complexity of the issues; the public interest in a particular ~~rule, rule or report~~; the number of people desiring to address the RRC concerning the ~~rule, rule or report~~; the variations in their arguments (i.e., whether they are adding additional information to the debate or merely being repetitive of earlier ~~speakers~~ speakers or earlier points raised by the same speaker) and the level of agreement within their positions or relationships; the nature of the comments in relation to the RRC scope of review; and the amount of notice given to the agency.

(d) The agency adopting the rule shall be allowed an opportunity to address the Commission when a person addresses the Commission in opposition to a rule, unless the agency fails to appear after notice of written comments opposing approval of the rule. When a comment in opposition to a rule first occurs by an oral comment at the Commission meeting, the agency shall be allowed an opportunity to address the Commission at the next meeting of the Commission or Commission's designee where the rule is under review.

Authority G.S. 143B-30.1.

This Section contains information for the meeting of the Rules Review Commission on December 19, 2013 and January 16, 2014 at 1711 New Hope Church Road, RRC Commission Room, Raleigh, NC. Anyone wishing to submit written comment on any rule before the Commission should submit those comments to the RRC staff, the agency, and the individual Commissioners. Specific instructions and addresses may be obtained from the Rules Review Commission at 919-431-3000. Anyone wishing to address the Commission should notify the RRC staff and the agency no later than 5:00 p.m. of the 2nd business day before the meeting. Please refer to RRC rules codified in 26 NCAC 05.

RULES REVIEW COMMISSION MEMBERS**Appointed by Senate**

Jeff Hyde
Margaret Currin
Jay Hemphill
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

January 16, 2014 February 20, 2014
March 20, 2014 April 17, 2014

**RULES REVIEW COMMISSION MEETING
MINUTES****December 19, 2013**

The Rules Review Commission met on Thursday, December 19, 2013, in the Commission Room at 1711 New Hope Church Road, Raleigh, North Carolina. Commissioners present were: Anna Choi, Margaret Currin, Jeanette Doran, Garth Dunklin, Jay Hemphill, Jeff Hyde, Stephanie Simpson, Ralph Walker and Faylene Whitaker.

Staff members present were: Commission Counsels Joe DeLuca, Amanda Reeder, and Abigail Hammond; and Molly Masich, Dana Vojtko, Julie Brincefield, and Tammara Chalmers.

The meeting was called to order at 10:01 a.m. with Vice-Chairman Currin presiding. She read the notice required by NCGS 138A-15(e) and reminded the Commission members that they have a duty to avoid conflicts of interest and the appearances of conflicts.

APPROVAL OF MINUTES

Vice-Chairman Currin asked for any discussion, comments, or corrections concerning the minutes of the November 21, 2013 meeting. There were none and the minutes were approved as distributed

LOG OF FILINGS

Vice-Chairman Currin presided over the review of the log of permanent rules.

NC Rural Electrification Authority

Frances Liles from the agency addressed the Commission.

The Commission objected to all the rules from the agency based on ambiguity. The rules as written are unclear and do not clearly state the purposes or procedures contemplated in the rules. In addition, the Commission objected to Rule 04 NCAC 08 .0210 for lack of statutory authority, as there does not appear to be any authority for the Rural Electrification Authority to investigate member complaints against Telephone Membership Corporations.

Commission for Public Health

All rules were unanimously approved.

Home Inspector Licensure Board

The Commission extended the period of review for all the rules from the board to allow the Home Inspector Licensure Board additional time to review staff's Requests for Technical Changes.

Environmental Management Commission

Joelle Bursleson from the agency addressed the Commission.

All the rules were unanimously approved with the following exceptions:

15A NCAC 02D .1002 was approved contingent on receiving a technical change by 5:00 p.m. on Friday, December 20th. The technical change was subsequently received.

The Commission extended the period of review for 15A NCAC 02D .1003 in response to a request from the agency.

15A NCAC 02D .1104 and 15A NCAC 02Q .0711 have received 10 letters of objection and are now subject to legislative review.

Department of Environmental and Natural Resources

15A NCAC 12B .0901 was unanimously approved.

Commission for Public Health

15A NCAC 13B .0832 was unanimously approved.

Department of Secretary of State

Prior to the review of the rules from Department of Secretary of State, Commissioner Doran recused herself and did not participate in any discussion or vote concerning these rules because she is a registered lobbyist and the responsible officer of a lobbyist principal.

All rules were unanimously approved.

Board of Certified Public Accountant Examiners

Bob Brooks from the board addressed the Commission.

Prior to the review of the rules from the Board of Certified Public Accountant Examiners, Commissioner Choi recused herself and did not participate in any discussion or vote concerning these rules because her law firm provides legal services to this board.

All rules were unanimously approved.

Board of Cosmetic Art Examiners

All the rules were unanimously approved.

Board of Dental Examiners

Prior to the review of the rule from the Board of Dental Examiners, Commissioner Choi recused herself and did not participate in any discussion or vote concerning the rule because her law firm provides legal services to this board.

Prior to the review of the rule from the Board of Dental Examiners, Commissioner Simpson recused herself and did not participate in any discussion or vote concerning the rule because of a possible conflict concerning her husband's law firm.

21 NCAC 16H .0203 was unanimously approved.

Landscape Contractors Registration Board

21 NCAC 28 .0101 was unanimously approved.

Board of Occupational Therapy

Elizabeth Kirk from the board addressed the Commission.

The Commission objected to Rule 21 NCAC 38 .0301 based on ambiguity. As written, the Rule does not specify how a licensee may request an exemption, under what circumstance the Board will grant the request and how the Board will notify the licensee of its decision.

The Commission objected to Rule 21 NCAC 38 .0802 based upon a lack of statutory authority for the Board to require the \$50 fee proposed in Paragraph (f) in the Rule.

Social Work Certification and Licensure Board

Prior to the review of the rules from the Social Work Certification and Licensure Board, Commissioner Choi recused herself and did not participate in any discussion or vote concerning these rules because her law firm provides legal services to this board.

All rules were unanimously approved.

G.S 150B-19.1(h) RRC CERTIFICATION

Vice-Chairman Currin presided over the review of the log of RRC Certification.

Board of Agriculture

The Commission certified that the agency adhered to the principles in G.S. 150B-19.1 for proposed rules 02 NCAC 20B .0104 and 37 .0202.

Private Protective Services Board

The Commission certified that the agency adhered to the principles in G.S. 150B-19.1 for proposed rule 12 NCAC 07D .0901.

Criminal Justice Education and Training Standards Commission

The Commission certified that the agency adhered to the principles in G.S. 150B-19.1 for proposed rules 12 NCAC 09A .0108; 09B .0311; 09C .0217, .0218, .0220; 09F .0102.

COMMISSION BUSINESS

The Commission discussed rules to be amended that address the HB 74 process. RRC Rules 05 .0105 and .0106 were proposed for amendment and publication in the NCR and are attached.

Staff updated the Commission on the schedule for the HB 74 process.

The meeting adjourned at 11:28 a.m.

The next scheduled meeting of the Commission is Thursday, January 16th at 10:00 a.m.

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

Respectfully Submitted,

Julie Brincefield
Editorial Assistant

Minutes approved by the Rules Review Commission:

Margaret Currin, Vice-Chair

Rules Review Commission

Meeting

Please **Print** Legibly

DECEMBER 19, 2013

Name	Agency
Stere Schliesser	NC DENR - DAQ
Joelle Burleson	NC DENR - DAQ
Bryan Downy	NCDENR - PARKS & Recreation
Joel Brown	SOS - Lobbying
JASON ROBINSON	NCDENR - DWR
Frances Liles	NCREA
Lynda Elliott	nc Bd of Cosmetic Arts.
Terry Townsend	nc DOT
Ellen Horschelton	NCDENR
Michael Ford	NC DENR
Mick Lilly	Social Work Board
Jeff Gray	ASLB/PPSVs
John Polimato	NC Automobile Dealers Association
BOBBY WHITE	NC DENTAL BOARD
CAROLIN BAKWELL	NC DENTAL BOARD
Daisy Morris	JPHT
MGMALL AWHU	SLC
Trevor Allen	CSETS
Elizabeth Kirk	NCBMBT/OT
Bill Lane	Kiparrick Townsend
Bob Brooks & DAVID NANCE	NC STATE Bd of CPA Exam

28:14

26 NCAC 05 .0105 is proposed for amendment as follows:

26 NCAC 05 .0105 REQUIRED NOTICE PRIOR TO ORAL RRC PRESENTATION

- (a) The Chair may allow an agency or any person to make oral statements in support of or in opposition to a ~~rule~~. rule or report as set forth in Rule .0206 of this Chapter.
- (b) Any person or agency desiring to make an oral statement concerning a permanent rule shall notify the RRC staff in writing by 5:00 p.m. of the second business day before the RRC meeting. The notice shall identify the rule upon which the oral statement will be made and shall also include the name, address, telephone number, fax number and email address of the individual who will be making the oral statement. If the person did not submit a written comment, the person shall state whether the oral statement will support or oppose the ~~rule~~. rule or report.
- (c) Any person or agency desiring to make an oral statement concerning a temporary rule shall notify the RRC staff prior to the start of the RRC meeting or RRC designee meeting at which a temporary rule will be reviewed. The notice shall identify the rule upon which the oral statement will be made and shall also include the name, address, telephone number, fax number and email address of the individual who will be making the oral statement. If the person did not submit a written comment, the person shall state whether the oral statement will support or oppose the rule.
- (d) At the same time the person notifies the RRC staff, the person shall also notify the rule making coordinator for the agency proposing the rule if the person wishes to speak in opposition to the ~~rule~~. rule or report. If a person fails to notify the agency in accordance with this rule, the Chair may deny a request to make an oral statement to the RRC.
- (e) If the Commission asks an individual to address a rule or report, the prior notice required by this Rule does not apply.

*History Note: Authority G.S. 143B-30.1;
 Eff. August 1, 2008;
 Amended Eff. March 1, 2014.*

26 NCA C 05 .0106 is proposed for amendment as follows:

26 NCAC 05 .0106 LIMITATIONS ON ORAL PRESENTATIONS

- (a) The RRC Chair in open session may set time limits on oral presentations before the Commission.
- (b) Unless the Chair sets other time limits for oral presentations, the time allowed for presentations shall not exceed ten minutes for each requesting person or agency. The Chair may require that oral presentations be limited to representative spokespersons for those advocating or those opposing rule approval by the RRC.
- (c) Factors that the Chair may use in determining time limits include the length of the agenda and time remaining in the meeting; the number of contested rules; the complexity of the issues; the public interest in a particular ~~rule~~; rule or report; the number of people desiring to address the RRC concerning the ~~rule~~; rule or report; the variations in their arguments (i.e., whether they are adding additional information to the debate or merely being repetitive of earlier ~~speakers~~) speakers or earlier points raised by the same speaker) and the level of agreement within their positions or relationships; the nature of the comments in relation to the RRC scope of review; and the amount of notice given to the agency.
- (d) The agency adopting the rule shall be allowed an opportunity to address the Commission when a person addresses the Commission in opposition to a rule, unless the agency fails to appear after notice of written comments opposing approval of the rule. When a comment in opposition to a rule first occurs by an oral comment at the Commission meeting, the agency shall be allowed an opportunity to address the Commission at the next meeting of the Commission or Commission's designee where the rule is under review.

History Note: *Authority G.S. 143B-30.1;*
 Eff. August 1, 2008;
 Amended Eff. March 1, 2014.

LIST OF APPROVED PERMANENT RULES
December 19, 2013 Meeting

PUBLIC HEALTH, COMMISSION FOR

<u>Medical Services Covered</u>	10A NCAC 43H .0111
<u>General</u>	10A NCAC 45A .0101
<u>Definitions</u>	10A NCAC 45A .0102
<u>Determination of Financial Eligibility</u>	10A NCAC 45A .0202
<u>Determination</u>	10A NCAC 45A .0204
<u>Authorization</u>	10A NCAC 45A .0302
<u>Payment</u>	10A NCAC 45A .0303
<u>General</u>	10A NCAC 45A .0401
<u>Reimbursement for Inpatient Hospitalization</u>	10A NCAC 45A .0402
<u>Reimbursement for Professional Outpatient Other Services</u>	10A NCAC 45A .0403
<u>Reimbursement for Services not Covered by Medicaid</u>	10A NCAC 45A .0404
<u>Billing the Patient Prohibited</u>	10A NCAC 45A .0405

ENVIRONMENTAL MANAGEMENT COMMISSION

<u>Jordan Water Supply Nutrient Strategy: Purpose and Scope</u>	15A NCAC 02B .0262
<u>Applicability</u>	15A NCAC 02D .1002
<u>On-Board Diagnostic Standards</u>	15A NCAC 02D .1005
<u>Sale and Service of Analyzers</u>	15A NCAC 02D .1006
<u>Model Year 2008 & Subsequent Model Year</u>	15A NCAC 02D .1009
<u>Toxic Air Pollutant Guidelines</u>	15A NCAC 02D .1104
<u>Emission Rates Requiring a Permit</u>	15A NCAC 02Q .0711

ENVIRONMENT AND NATURAL RESOURCES, DEPARTMENT OF

<u>Firearms; Weapons; Explosives</u>	15A NCAC 12B .0901
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PUBLIC HEALTH, COMMISSION FOR

<u>General Provisions</u>	15A NCAC 13B .0832
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SECRETARY OF STATE, DEPARTMENT OF

<u>Limitations on Fee Reduction or Waiver</u>	18 NCAC 12 .0404
<u>Nonprofits to Which No Fee Reduction or Waiver Shall Be G...</u>	18 NCAC 12 .0405
<u>Nonprofit Fee Reduction Procedure</u>	18 NCAC 12 .0406
<u>Submission of Reduced Fee</u>	18 NCAC 12 .0407
<u>Submission of Documentation Supporting Fee Reduction Request</u>	18 NCAC 12 .0408
<u>Fee Reduction Applies to Both Lobbyist and Principal</u>	18 NCAC 12 .0409
<u>Payment of Remainder of Fee if Reduction</u>	18 NCAC 12 .0410
<u>Consequences of Failure to Pay Reminder of Fee</u>	18 NCAC 12 .0411
<u>Nonprofit Fee Waiver Procedure</u>	18 NCAC 12 .0412
<u>Submission of Fee with Request for Waiver</u>	18 NCAC 12 .0413
<u>Refund of Fee if Request for Waiver Granted</u>	18 NCAC 12 .0414
<u>Submission of Documentation Supporting Fee Waiver Request</u>	18 NCAC 12 .0415
<u>Fee Waiver Applies to Both Lobbyist and Principal</u>	18 NCAC 12 .0416
<u>General Proof of Nonprofit Status</u>	18 NCAC 12 .0417
<u>Officers or Persons Authorized to Demonstrate Nonprofit S...</u>	18 NCAC 12 .0418
<u>Submission of Federal Tax-Exempt Determination Letter</u>	18 NCAC 12 .0421
<u>Documents to be Submitted by Nonprofit Principals Without...</u>	18 NCAC 12 .0422
<u>Additional Information for Fee Reduction for Nonprofit wi...</u>	18 NCAC 12 .0423
<u>Additional Information for Fee Reduction for Nonprofit wi...</u>	18 NCAC 12 .0424
<u>Contents for Fee Reduction Request for Nonprofit Without ...</u>	18 NCAC 12 .0425
<u>Additional Information for Fee Waiver</u>	18 NCAC 12 .0426

CERTIFIED PUBLIC ACCOUNTANT EXAMINERS, BOARD OF

<u>Definitions</u>	21 NCAC 08A .0301
<u>Filing of Examination Applications and Fees</u>	21 NCAC 08F .0103
<u>Application for CPA Certificate</u>	21 NCAC 08F .0502
<u>CPE Requirements for CPAS</u>	21 NCAC 08G .0401
<u>Qualification of CPE Sponsors</u>	21 NCAC 08G .0403
<u>Computation of CPE Credits</u>	21 NCAC 08G .0409
<u>Professional Ethics and Conduct CPE</u>	21 NCAC 08G .0410
<u>Modification of Discipline</u>	21 NCAC 08I .0104
<u>Retired and Inactive Status: Change of Status</u>	21 NCAC 08J .0105

<u>Forfeiture or Inactivation of Certificate and Reissuance ...</u>	21	NCAC 08J .0106
<u>Mailing Addresses of Certificate Holders and CPA Firms</u>	21	NCAC 08J .0107
<u>Peer Review Requirements</u>	21	NCAC 08M .0105
<u>Deceptive Conduct Prohibited</u>	21	NCAC 08N .0202
<u>Discreditable Conduct Prohibited</u>	21	NCAC 08N .0203
<u>Reporting Convictions Judgments and Disciplinary Actions</u>	21	NCAC 08N .0208

COSMETIC ART EXAMINERS, BOARD OF

<u>Requirements for Operating Cosmetic Art Schools</u>	21	NCAC 14G .0101
<u>Equipment and Teachers</u>	21	NCAC 14G .0107
<u>Visitation</u>	21	NCAC 14G .0108
<u>Student Credit</u>	21	NCAC 14G .0109
<u>Transferability of Letters of Approval</u>	21	NCAC 14G .0110
<u>Changes of Location Ownership or Management</u>	21	NCAC 14G .0111
<u>Condition of Equipment</u>	21	NCAC 14G .0112
<u>Teacher/Student Ratio</u>	21	NCAC 14G .0113
<u>Changes in Teaching Staff</u>	21	NCAC 14G .0117
<u>School Curriculum Approval (A) No Cosmetic Art Shop or an...</u>	21	NCAC 14G .0118
<u>Permanent Files</u>	21	NCAC 14I .0101
<u>Daily Record</u>	21	NCAC 14I .0102
<u>Inspection Reports and Reports of Students Hours</u>	21	NCAC 14I .0103
<u>Withdrawals</u>	21	NCAC 14I .0104
<u>Transfer of Credit</u>	21	NCAC 14I .0105
<u>Student Daily Records</u>	21	NCAC 14I .0106
<u>Report of Enrollment</u>	21	NCAC 14I .0107
<u>Seal</u>	21	NCAC 14I .0108
<u>Summary of Cosmetic Art Education</u>	21	NCAC 14I .0109
<u>Uniform</u>	21	NCAC 14I .0110
<u>Reception Area</u>	21	NCAC 14I .0201
<u>Reception Area Sign</u>	21	NCAC 14I .0202
<u>Bulletin Board</u>	21	NCAC 14I .0203
<u>Sanitation Rules</u>	21	NCAC 14I .0204
<u>Dressing Room</u>	21	NCAC 14I .0205
<u>Recitation Room</u>	21	NCAC 14I .0301
<u>Library</u>	21	NCAC 14I .0302
<u>Classroom Bulletin Board</u>	21	NCAC 14I .0303
<u>Classroom Work</u>	21	NCAC 14I .0304
<u>Department System</u>	21	NCAC 14J .0101
<u>Uniform</u>	21	NCAC 14J .0102
<u>Time Requirements According to Hours</u>	21	NCAC 14J .0103
<u>Approved Rules</u>	21	NCAC 14J .0107
<u>Eligibility for Advanced Department</u>	21	NCAC 14J .0201
<u>Storing and Labeling of Cosmetics</u>	21	NCAC 14J .0202
<u>Storing and Labeling of Cosmetics</u>	21	NCAC 14J .0203
<u>Equipment in Advanced Department</u>	21	NCAC 14J .0206
<u>Uniforms</u>	21	NCAC 14K .0101
<u>Course of Study</u>	21	NCAC 14K .0102

<u>Equipment and Instruments</u>	21	NCAC 14K .0103
<u>Services Performed</u>	21	NCAC 14K .0104
<u>Identification Pins</u>	21	NCAC 14K .0105
<u>Supervision of Cosmetic Art Teacher Trainee</u>	21	NCAC 14L .0208
<u>Time Requirements for Teacher Trainee Program</u>	21	NCAC 14L .0209
<u>Effect on Student-Teacher Ration</u>	21	NCAC 14L .0210
<u>Work on Public Prohibited</u>	21	NCAC 14L .0211
<u>Teacher's Manual and Supervision</u>	21	NCAC 14L .0215
<u>Teacher Training Curriculum</u>	21	NCAC 14L .0216
<u>Uniforms</u>	21	NCAC 14O .0101
<u>Course of Study</u>	21	NCAC 14O .0102
<u>Equipment and Instruments</u>	21	NCAC 14O .0103
<u>Services Performed</u>	21	NCAC 14O .0104
<u>Identification Pins</u>	21	NCAC 14O .0105
<u>Sanitary Ratings and Posting of Ratings - Applicable to E...</u>	21	NCAC 14P .0112
<u>Uniform</u>	21	NCAC 14S .0101
<u>Time Requirements According to Hours</u>	21	NCAC 14S .0102
<u>Approved Field Trips</u>	21	NCAC 14S .0103
<u>Equipment for Beginner Department</u>	21	NCAC 14S .0104
<u>Storing and Labeling of Cosmetics</u>	21	NCAC 14S .0105
<u>Equipment</u>	21	NCAC 14S .0106
<u>Performances</u>	21	NCAC 14S .0107
<u>Students' Personal Supplies</u>	21	NCAC 14S .0108
<u>Tests</u>	21	NCAC 14S .0109
<u>Approval of Credit for Natural Hair Care Instruction/Anot...</u>	21	NCAC 14S .0110
<u>Services Performed</u>	21	NCAC 14S .0111
<u>Licensing of Natural Hair Care Specialists</u>	21	NCAC 14S .0112
<u>Permanent Records, Forms and Documentation</u>	21	NCAC 14T .0502

DENTAL EXAMINERS, BOARD OF

<u>Permitted Functions of Dental Assistant II</u>	21	NCAC 16H .0203
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LANDSCAPE CONTRACTORS REGISTRATION BOARD

<u>Authority: Name and Location of Board</u>	21	NCAC 28 .0101
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SOCIAL WORK CERTIFICATION AND LICENSURE BOARD

<u>Renewal Fees</u>	21	NCAC 63 .0403
<u>Required Reporting By Licensee of Changes to Board</u>	21	NCAC 63 .0405
<u>Petitions for Adoption of Rules</u>	21	NCAC 63 .0701
<u>Declaratory Rulings</u>	21	NCAC 63 .0704

**LIST OF CERTIFIED RULES
December 19, 2013 Meeting**

AGRICULTURE, BOARD OF

<u>Admission Rules</u>	02	NCAC 20B .0104
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Plant Analysis Service 02 NCAC 37 .0202

PRIVATE PROTECTIVE SERVICES BOARD

Requirements for a Firearms Trainer Certificate 12 NCAC 07D .0901

CRIMINAL JUSTICE EDUCATION AND TRAINING STANDARDS COMMISSION

Applicability of Radar/TDS Standards Pre 7/1/82 12 NCAC 09A .0108

Certified Instructors Pre 7/1/82 12 NCAC 09B .0311

Application for Law Enforcement Employment 12 NCAC 09C .0217

Form Order Blank 12 NCAC 09C .0218

Acquisition of Forms 12 NCAC 09C .0220

Topical Areas 12 NCAC 09F .0102

AGENDA
RULES REVIEW COMMISSION
Thursday, January 16, 2014 10:00 A.M.
1711 New Hope Church Rd., Raleigh, NC 27609

- I. Ethics reminder by the chair as set out in G.S. 138A-15(e)
 - II. Approval of the minutes from the last meeting
 - III. Follow-up matters:
 - A. NC Rural Electrification Authority – 04 NCAC 08 .0101, .0102, .0107, .0108, .0109, .0110, .0111, .0112, .0201, .0202, .0203, .0204, .0205, .0206, .0207, .0208, .0209, .0210, .0211, .0212, .0301, .0302, .0303, .0305, .0306, .0307, .0308, .0309, .0310, .0311, .0312, .0401, .0404 (Reeder)
 - B. Home Inspector Licensure Board – 11 NCAC 08 .1202, .1203, .1204, .1205 (Hammond)
 - C. Environmental Management Commission – 15A NCAC 02D .1003 (Reeder)
 - D. Board of Occupational Therapy – 21 NCAC 38 .0301, .0802 (Reeder)
 - IV. Review of Log of Filings (Permanent Rules) for rules filed between November 21, 2013 and December 20, 2013
 - V. Review of Log of Filings (Temporary Rules) for any rule filed within 15 business days prior to the RRC Meeting
 - VI. G.S. 150B-19.1 Certification
 - VII. Commission Business
 - Next meeting: February 20, 2014
-

Commission Review
Log of Permanent Rule Filings
November 21, 2013 through December 20, 2013

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

CHILD CARE COMMISSION

The rules in Chapter 9 are child care rules and include definitions (.0100); general provisions related to licensing (.0200); procedures for obtaining a license (.0300); issuance of provisional and temporary licenses (.0400); age and developmentally appropriate environments for centers (.0500); safety requirements for child care centers (.0600); health

and other standards for center staff (.0700); health standards for children (.0800); nutrition standards (.0900); transportation standards (.1000); building code requirements for child care centers (.1300); space requirements (.1400); temporary care requirements (.1500); family child care home requirements (.1700); discipline (.1800); special procedures concerning abuse/neglect in child care (.1900); rulemaking and contested case procedures (.2000); religious-sponsored child care center requirements (.2100); administrative actions and civil penalties (.2200); forms (.2300); child care for mildly ill children (.2400); care for school-age children (.2500); child care for children who are medically fragile (.2600); criminal records checks (.2700); voluntary rated licenses (.2800); developmental day services (.2900); and NC pre-kindergarten services (.3000).

<u>Application for a License for a Child Care Center</u>	10A	NCAC	09	.0302
Amend/*				
<u>Application for a License for a Family Child Care Home</u>	10A	NCAC	09	.1702
Amend/*				
<u>General Safety Requirements</u>	10A	NCAC	09	.2506
Amend/*				
<u>Scope</u>	10A	NCAC	09	.2701
Adopt/*				
<u>Definitions</u>	10A	NCAC	09	.2702
Amend/*				
<u>Criminal Record Check Requirements for Child Care Providers</u>	10A	NCAC	09	.2703
Amend/*				
<u>Criminal Record Check Requirements for Nonlicensed Home P...</u>	10A	NCAC	09	.2704
Amend/*				
<u>Staff Qualifications</u>	10A	NCAC	09	.2903
Amend/*				

MENTAL HEALTH, COMMISSION FOR

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

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

assertive community treatment service (.5700); supportive employment for individuals of all disability groups (.5800); case management for individuals of all disability groups (.5900); inpatient hospital treatment for individuals who have mental illness or substance abuse disorders (.6000); emergency services for individuals of all disability groups (.6100); outpatient services for individuals of all disability groups (.6200); companion respite services for individuals of all disability groups (.6300); personal assistants for individuals of all disabilities groups (.6400); employment assistance programs (.6500); specialized foster care services (.6600); forensic screening and evaluation services for individuals of all disability groups (.6700); prevention services (.6800); consultation and education services (.6900); local management entity response to complaints (.7000); and target population (.7100).

Local Management Entity Client Rights Oversight Committee...
Amend/**

10A NCAC 27G .0504

CRIMINAL JUSTICE EDUCATION AND TRAINING STANDARDS COMMISSION

The rules in Chapter 9 are from the Criminal Justice Education and Training Standards Commission.

This Commission has primary responsibility for setting statewide education, training, employment, and retention standards for criminal justice personnel (not including sheriffs). The rules in Subchapter 9B cover minimum standards for: employment (.0100); schools and training programs (.0200); criminal justice instructors (.0300); completion of training (.0400); school directors (.0500); and certification of post-secondary criminal justice education programs (.0600).

Basic Law Enforcement Training
Amend/*

12 NCAC 09B .0205

Completion of Basic Law Enforcement Training Course
Amend/*

12 NCAC 09B .0405

The rules in Subchapter 9E relate to the law enforcement officers' in-service training program.

Minimum Training Specifications: Annual In-Service Training
Amend/*

12 NCAC 09E .0105

The rules in Subchapter 9F cover concealed handgun training.

Filing and Fees
Amend/*

12 NCAC 09F .0107

SHERIFFS EDUCATION AND TRAINING STANDARDS COMMISSION

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

Minimum Standards for Justice Officers
Amend/*

12 NCAC 10B .0301

Basic Law Enforcement Training Course for Deputies
Amend/*

12 NCAC 10B .0502

Detention Officer Certification Course
Amend/*

12 NCAC 10B .0601

Evaluation for Training Waiver
Amend/*

12 NCAC 10B .0603

Completion of Detention Officer Certification Course
Amend/*

12 NCAC 10B .0605

Intermediate Law Enforcement Certificate

12 NCAC 10B .1004

Amend/*				
<u>Advanced Law Enforcement Certificate</u>	12	NCAC	10B	.1005
Amend/*				
<u>Intermediate Detention Officer Professional Certificate</u>	12	NCAC	10B	.1204
Amend/*				
<u>Advanced Detention Officer Professional Certificate</u>	12	NCAC	10B	.1205
Amend/*				
<u>Intermediate Telecommunicator Certificate</u>	12	NCAC	10B	.1604
Amend/*				
<u>Advanced Telecommunicator Certificate</u>	12	NCAC	10B	.1605
Amend/*				
<u>Military and Military Spouse Transferees</u>	12	NCAC	10B	.1901
Adopt/**				
<u>Minimum Training Requirements</u>	12	NCAC	10B	.2005
Amend/*				

MARINE FISHERIES COMMISSION

The rules in Subchapter 3I are general and miscellaneous rules.

<u>Definitions</u>	15A	NCAC	03I	.0101
Amend/*				

The rules in Subchapter 3J concern the use of nets in general (.0100) and in specific areas (.0200); the use of pots, dredges, and other fishing devices (.0300); fishing gear (.0400); and pound nets (.0500).

<u>Trawl Nets</u>	15A	NCAC	03J	.0104
Amend/*				
<u>Duke Energy Progress Brunswick Nuclear Plant Intake Canal</u>	15A	NCAC	03J	.0207
Amend/*				
<u>Pots</u>	15A	NCAC	03J	.0301
Amend/*				

The rules in Subchapter 3K concern oyster, clams, scallops and mussels including shellfish, general (.0100); crabs (.0200); hard clams (mercenaria) (.0300); rangia clams (.0400); and scallops (.0500).

<u>Public Health and Control of Oysters, Clams, Scallops and...</u>	15A	NCAC	03K	.0110
Adopt/*				

The rules in Subchapter 3L concern shrimp (.0100); crabs (.0200); and lobsters (.0300).

<u>Crab Harvest Restrictions</u>	15A	NCAC	03L	.0201
Amend/*				
<u>Crab Trawling</u>	15A	NCAC	03L	.0202
Amend/*				
<u>Crab Dredging</u>	15A	NCAC	03L	.0203
Amend/*				
<u>Crab Pots</u>	15A	NCAC	03L	.0204
Amend/*				
<u>Crab Spawning Sanctuaries</u>	15A	NCAC	03L	.0205
Amend/*				
<u>Peeler Crabs</u>	15A	NCAC	03L	.0206
Repeal/*				
<u>Recreational Harvest of Crabs</u>	15A	NCAC	03L	.0209

Repeal/*

The rules in Subchapter 3M cover harvesting of finfish including general rules (.0100); striped bass (.0200); mackerel (.0300); menhaden and Atlantic herring (.0400); and other finfish (.0500).

Minimum Size Limits 15A NCAC 03M .0103

Amend/*

Hybrid Striped Bass Culture 15A NCAC 03M .0206

Repeal/*

Sheepshead 15A NCAC 03M .0521

Adopt/*

The rules in Subchapter 3O cover various licenses (.0100); leases and franchises (.0200); license appeal procedures (.0300); Standard Commercial Fishing License Eligibility Board (.0400); and licenses, leases and franchises (.0500).

Permit Conditions; Specific 15A NCAC 03O .0503

Amend/*

The rules in Subchapter 3Q cover the joint and separate jurisdictions of the Marine Fisheries Commission and the Wildlife Resources Commission including general regulations (.0100); and boundary lines between inland, joint, and coastal waters (.0200).

Descriptive Boundaries for Coastal-Joint-Inland Waters 15A NCAC 03Q .0202

Amend/*

The rules in Subchapter 3R specify boundaries for various areas (.0100); and fishery management areas (.0200).

Designated Pot Areas 15A NCAC 03R .0107

Amend/*

Designated Seed Oyster Management Areas 15A NCAC 03R .0116

Amend/*

Exempted Crab Pot Escape Ring Areas 15A NCAC 03R .0118

Adopt/*

WILDLIFE RESOURCES COMMISSION

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

Hyde County 15A NCAC 10F .0313

Amend/*

Camden County 15A NCAC 10F .0352

Amend/*

APPRAISAL BOARD

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

Fitness for Registration or Certification 21 NCAC 57A .0202

Amend/*

SPEECH AND LANGUAGE PATHOLOGISTS AND AUDIOLOGISTS, BOARD OF EXAMINERS FOR

The rules in Chapter 64 are from the Board of Examiners for Speech and Language Pathologists and Audiologists and include general provisions (.0100); interpretative rules (.0200); code of ethics (.0300); rulemaking petitions (.0400); notice of rulemaking (.0500); conduct of rulemaking hearings (.0600); declaratory rulings (.0700); contested case hearings (.0800); other matters relating to administrative hearings (.0900); and use of speech/language pathology assistants (.1000).

<u>Supervision of Professional Experience</u>	21	NCAC	64	.0206
Amend/**				
<u>Remote Location Telepractice</u>	21	NCAC	64	.0219
Amend/**				
<u>Good Moral Conduct</u>	21	NCAC	64	.0307
Adopt/**				

CONTESTED CASE DECISIONS

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

OFFICE OF ADMINISTRATIVE HEARINGS

Chief Administrative Law Judge
JULIAN MANN, III

Senior Administrative Law Judge
FRED G. MORRISON JR.

ADMINISTRATIVE LAW JUDGES

Beecher R. Gray
Selina Brooks
Melissa Owens Lassiter
Don Overby

Randall May
A. B. Elkins II
Craig Croom

<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>DATE</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
<u>ALCOHOLIC BEVERAGE CONTROL COMMISSION</u>			
James Ivery Smith, Ivy Lee Armstrong v. ABC Commission	11 ABC 08266	04/12/12	
Trawick Enterprises LLC v. ABC Commission	11 ABC 08901	05/11/12	27:01 NCR 39
Dawson Street Mini Mart Lovell Glover v. ABC Commission	11 ABC 12597	05/23/12	
ABC Commission v. Christian Broome Hunt T/A Ricky's Sports Bar and Grill	11 ABC 13161	05/03/12	
Alabarati Brothers, LLC T/A Day N Nite Food Mart, v. ABC Commission	11 ABC 13545	05/01/12	
Playground LLC, T/A Playground v. ABC Commission	11 ABC 14031	05/16/12	27:01 NCR 64
ABC Commission v. Quick Quality, Inc., T/A Rock Star Grill and Bar	11 ABC 14036	07/05/12	
ABC Commission v. D's Drive Thru Inc. T/A D's Drive Thru	12 ABC 00060	05/29/12	
ABC Commission v. Choudhary, LLC T/A Speedway	12 ABC 00721	05/01/12	
ABC Commission v. Dos Perros Restaurant LLC T/A Dos Perros Restaurant	12 ABC 05312	09/25/12	
ABC Commission v. Bobby Warren Joyner T/A Hillsdale Club	12 ABC 06153	11/06/12	
ABC Commission v. Quick Quality, Inc., T/A Rock Star Grill and Bar	12 ABC 07260	12/11/12	
ABC Commission v. Fat Cats Grill and Oyster Bar Inc, T/A Fat Cats Grill and Oyster Bar	12 ABC 08988	12/19/12	
ABC Commission v. Wachdi Khamis Awad T/A Brothers in the Hood	12 ABC 09188	03/06/13	
ABC Commission v. Double Zero, LLC, T/A Bad Dog	12 ABC 11398	04/08/13	
ABC Commission v. Soledad Lopez de Avilez T/A Tienda Avilez	13 ABC 00002	06/06/13	
ABC Commission v. Two Brothers Food Market, Inc., T/A Circle Mart	13 ABC 10356	07/11/13	
Rio Sports Restaurant and Lounge Inc. v. ABC Commission	13 ABC 11233	08/02/13	28:13 NCR 1573
ABC Commission v. Grandmas Pizza LLC T/A Grandmas Pizza	13 ABC 11401	08/13/13	
Hector Diaz v. ABC Commission	13 ABC 13071	11/08/13	
ABC Commission v. Ola Celestine Morris T/A Nitty Gritty Soul Cafe	13 ABC 14197	10/09/13	
ABC Commission v. Alvin Boyd Turner T/A Community Store	13 ABC 15827	11/20/13	
Two Brothers Food Market Inc., Circle Mart, Kenneth Kirkman v. ABC Commission	13 ABC 16233	09/30/13	
ABC Commission v. Art in a Pickle, LLC T/A Neal's Deli	13 ABC 17128	12/03/13	
<u>DEPARTMENT OF CRIME CONTROL AND PUBLIC SAFETY</u>			
Maggie Yvonne Graham v. Victims Compensation Commission	09 CPS 05287	04/09/13	
Vivian Davis Armstrong v. The NC Crime Victims Compensation Commission	11 CPS 10539	12/06/13	
Brian J. Johnson v. Department of Public Safety Victim Services	12 CPS 01664	12/21/12	
George H. Jagers, III v. Crime Victims Compensation Commission	12 CPS 01693	11/01/12	
Teresa Herbin v. Department of Public Safety Victim Services	12 CPS 03680	08/10/12	

CONTESTED CASE DECISIONS

Jacqueline M Davis victim-Antonio T Davis v. Dept. of Public Safety	12 CPS 05919	11/06/12
Demario J. Livingston v. Dept. of Public Safety Victim Services	12 CPS 06245	10/19/12
Shirley Ann Robinson v. NC Crime Victims Compensation Commission	12 CPS 07601	12/07/12
Harold Eugene Merritt v. State Highway Patrol	12 CPS 07852	05/24/13
Vanda Lawanda Johnson v. Office of Victim Compensation	12 CPS 09709	04/25/13
Latoya Nicole Ritter v. Crime Victim Compensation Commission, Janice Carmichael	12 CPS 10572	04/25/13

Ruffin J. Hyman v. Department of Public Safety, Division of Victim Compensation Services	13 CPS 01570	11/19/13
Teresa f. Williams v. Crime Victims Compensation Commission	13 CPS 09790	07/11/13
Angela Clendenin King v. Office of Administrative Hearings NC Crime Victims Comp Commission	13 CPS 11239	08/02/13
Matthew B. McGee v. NC Victims Compensation Commission	13 CPS 12133	08/26/13

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Stonestrow Group Home Medicaid Provider #6603018 Owned by Alberta Professional Services Inc v. DHHS, Division of Mental Health/Development Disabilities/Substance Abuse, and DMA	09 DHR 05790	01/11/13
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Bright Haven Residential and Community Care d/b/a New Directions Group Home v. Division of Medical Assistance, DHHS	10 DHR 00232	04/27/12
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Warren W Gold, Gold Care Inc. d/b/a Hill Forest Rest Home, v. DHHS/Division of Health Service Regulation, Adult Care Licensure Section	10 DHR 01666	05/18/12
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Warren W Gold, Gold Care Inc. d/b/a Hill Forest Rest Home v. DHHS, Division of Health Service Regulation, Adult Care Licensure and Certification Section	10 DHR 05801	05/18/12
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Gold Care Inc. Licensee Hill Forest Rest Home Warren W. Gold v. DHHS, Adult Care Licensure Section	10 DHR 05861	05/18/12
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Robert T. Wilson v. DHHS, DHSR	10 DHR 07700	01/29/13
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Daniel J. Harrison v. DHHS Division of Health Service Regulation	10 DHR 07883	04/12/13	28:02 NCR 73
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Mary Ann Barnes v. DHHS, Division of Health Service Regulation, Health Care Personnel Registry	11 DHR 6488	07/16/12
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Comprehensive PT Center v. DHHS, Division of Medical Assistance	11 DHR 9197	08/14/12	27:12 NCR 1204
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Cherry's Group Home, Alphonso Cherry v. DHSR Michelle Elliot	11 DHR 09590	07/12/12
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Leslie Taylor v. DHHS, Division of Health Regulation	11 DHR 10404	10/19/12
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Powell's Medical Facility and Eddie N. Powell, M.D., v. DHHS, Division of Medical Assistance	11 DHR 01451	03/05/12	27:01 NCR 75
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Julie Sadowski v. DHHS, Division of Health Service Regulation	11 DHR 01955	04/03/12
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Carlos Kendrick Hamilton v. DHHS, Division of Social Services	11 DHR 11161	10/16/12	27:16 NCR 1679
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Teresa Diane Marsh v. DHHS, Division of Health Service Regulation	11 DHR 11456	04/27/12
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Betty Parks v. Division of Child Development, DHHS	11 DHR 11738	06/20/12
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Lorrie Ann Varner v. DHHS, Regulation Health Care Personnel Registry Section	11 DHR 11867	08/02/12
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Brenda Brewer v. DHHS, Division of Child Development	11 DHR 12064	08/03/12	27:12 NCR 1210
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Timothy John Murray v. DHHS, Division of Health Service Regulation	11 DHR 12594	06/15/12
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Holly Springs Hospital II, LLC v. DHHS, Division of Health Service Regulation, CON Section and Rex Hospital, Inc., Harnett Health System, Inc. and WakeMed	11 DHR 12727	04/12/12	27:04 NCR 486
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Rex Hospital, Inc., v. DHHS, Division of Health Service Regulation, CON Section and WakeMed, Holly Springs Hospital II, LLC, and Harnett Health System, Inc.	11 DHR 12794	04/12/12	27:04 NCR 486
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Harnett Health System, Inc., v. DHHS, Division of Health Service Regulation, CON Section and Rex Hospital, Inc., Holly Springs Hospital II, LLC, and WakeMed	11 DHR 12795	04/12/12	27:04 NCR 486
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WakeMed v. DHHS, Division of Health Service Regulation, CON Section and Holly Springs Hospital II, LLC, Rex Hospital, Inc., and Harnett Health System, Inc	11 DHR 12796	04/12/12	27:04 NCR 486
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Sandra Ellis v. DHHS	11 DHR 12959	07/11/12
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Shirley Dowdy v. DHHS	11 DHR 13267	03/25/13
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Vendell Haughton v. DHHS, Division of Medical Assistance	11 DHR 13616	07/05/12
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Tarsand Denise Morrison v. DHHS, Division of Health Service Regulation	11 DHR 13906	07/11/12
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Care Well of Charlotte Inc, Joy Steele v. DHHS	11 DHR 13909	08/02/12
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Carrie's Loving Hands Inc. #MHL #040-047 Felicia McGee v. DHHS, DHSR, Mental Health Licensure and Certification	11 DHR 14172	01/22/13
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Carrie's Loving Hands Inc. #MHL #010-047 Felicia McGee v. DHHS, DHSR, Mental Health Licensure and Certification	11 DHR 14173	01/22/03
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Michael Timothy Smith, Jr. v. DHHS, Division of Health Service Regulation	11 DHR 14184	08/01/12
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John S. Won v. DHHS	11 DHR 14232	09/05/12	27:15 NCR 1547
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Cynthia Tuck Champion v. DHHS, Division of Health Service Regulation	11 DHR 14283	06/15/12
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Leslie Taylor, and Octavia Carlton v. Mecklenburg County Department of Social Services Youth and Family Services Division	11 DHR 14335	10/12/12
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CONTESTED CASE DECISIONS

Lauren Stewart v. DHHS, Division of Health Service Regulation, Health Care Personnel Registry	11 DHR 14570	06/08/12	
Alice M. Oakley v. Division of Child Development, DHHS	11 DHR 14571	05/15/12	27:04 NCR 508
Andrea D. Pritchett v. DHHS Healthcare Personnel Registry Section	11 DHR 14885	01/04/13	28:02 NCR 91
McWilliams Center for Counseling Inc., v. DHHS, Division of Mental Health, Developmental Disabilities, Substance Abuse Services, and agency of the State of NC	11 DHR 15098	11/13/12	
Althea L. Flythe v. Durham County Health Department	12 DHR 00242	05/17/12	
Jerri Long v. DHHS, Division of Health Service Regulation, Health Care Personnel Registry	12 DHR 00361	07/06/12	
Renal Advantage, Inc., v. DHHS, Division of Health Service Regulation, CON Section and DVA Healthcare Renal Care, Inc	12 DHR 00518	08/28/12	27:15 NCR 1553
Angela Moye v. DHHS, Division of Health Service Regulation, Health Care Personnel Registry	12 DHR 00642	08/23/12	27:12 NCR 1218
Jessica Lynn Ward v. DHHS	12 DHR 00643	05/17/12	
Howard Gene Whitaker v. DHHS, Office of Emergency Medical Services	12 DHR 00888	09/05/13	28:13 NCR 1534
Trinity Child Care II & I v. DHHS, Division of Public Health, Child and Adult Care Food Program	12 DHR 00861	04/20/12	27:04 NCR 518
Dr. Karen J. Williams, LPC v. DHHS, Division of Medical Assistance	12 DHR 00926	09/18/12	
Faith Home Care of NC, Bonita Wright v. DHHS, DMA	12 DHR 00928	07/25/12	
Olar Underwood v. Division of Child Development and Early Education	12 DHR 00990	10/22/12	
Angela C Jackson v. DHHS	12 DHR 01097	06/19/12	
Paula N Umstead v. DHHS	12 DHR 01098	05/11/12	
Daniel W. Harris, Jr., v. DHHS, Division of Health Service Regulation	12 DHR 01138	10/19/12	
ACI Support Specialists Inc. Case #2009-4249 v. DHHS	12 DHR 01141	06/06/12	
AriLand Healthcare Service, LLC, NCMHL #018-092, Shawn Kuhl Director of Operations v. DHHS, Emery E. Milliken, General Counsel	12 DHR 01165	05/25/12	
Kenneth Holman v. DHHS	12 DHR 01244	06/05/12	
Hillcrest Resthome Inc. (\$2000 penalty) v. DHHS	12 DHR 01289	05/30/12	
Hillcrest Resthome Inc. (\$4000 penalty) v. DHHS	12 DHR 01290	05/30/12	
Vivian Barrear v. DHHS, Division of Medical Assistance DHHS	12 DHR 01296	06/06/12	
Patricia Satterwhite v. DHHS	12 DHR 01338	07/23/12	
Anthony Moore d/b/a Hearts of Gold II v. DHHS, Division of Health Service Regulation, Adult Care Licensure Section	12 DHR 01346	04/12/13	28:03 NCR 256
Timothy L Durham v. DHHS, Division of Health Services Regulation	12 DHR 01396	09/04/12	
Clydetta Dickens v. Nash Co DSS	12 DHR 01625	05/15/12	
Nicole Lynn Hudson v. DHHS, Division of Health Service Regulation	12 DHR 01732	03/11/13	28:09 NCR 921
American Mobility LLC, Norman Mazer v. DHHS	12 DHR 01733	11/20/12	27:21 NCR 1980
American Mobility LLC, Norman Mazer v. DHHS	12 DHR 01733	03/6/13	28:03 NCR 266
Robert Lee Raines v. DHHS	12 DHR 01736	05/30/12	
Ms. Antoinette L. Williams v. DHHS	12 DHR 01739	06/15/12	
Felicia McGee Owner of Carrie's Loving Hand Inc. and Caring Arms Inc v. DHHS, DHSR Mental Health Licensure Certification	12 DHR 01796	01/22/13	
Tricia Watkins v. DHHS, Division of Medical Assistance, Office of Medicaid TLW-Auditing Office	12 DHR 01807	06/01/12	
First Path Home Care Services Gregory Locklear v. DHHS	12 DHR 01878	06/22/12	
Rochelle A. Gaddy v. DHHS, Division of Health Service Regulation	12 DHR 01998	06/04/13	28:11 NCR 1253
Patriotic Health Care Systems, LLC v. DHHS	12 DHR 02105	09/19/12	
John and Christina Shipman v. DHHS	12 DHR 02107	07/24/12	
Team Daniel, LLC v. DHHS, DMA	12 DHR 02162	09/11/13	27:16 NCR 1696
Leslie Taylor, Octavia Carlton, Paula Carlton	12 DHR 02217	08/31/12	
Madeline Brown v. DHHS, Division of Health Service Regulation	12 DHR 02257	06/01/12	
Evelyn Evans v. DHHS, Division of Health Service Regulation	12 DHR 02258	07/02/12	
Shannon Santimore v. DHHS, Division of Public Health, Epidemiology Section	12 DHR 02348	12/20/12	
Precious Haven Inc. Melissa McAllister v. DHHS, Program Integrity	12 DHR 02430	05/18/12	
Michael and Jamie Hart v. Davidson County, Department of Social Services	12 DHR 02542	07/03/12	
Annamae R. Smith v. DHHS, Division of Medical Assistance	12 DHR 02657	11/05/12	
Our Daily Living, Christopher OnWuka, Director v. DHHS	12 DHR 02777	10/17/12	
Right Trax Inc., Maria Lewis v. DHHS, Division of Health Service Regulation, Mental Health Licensure & Certification	12 DHR 02779	05/06/13	
Jessica L Thomas v. Randolph County DSS	12 DHR 02955	07/24/12	
Moses E Shoffner v. DHHS, Division of Child Development	12 DHR 03459	08/15/12	
Marco Evans v. DHHS, Division of Health Service Regulation	12 DHR 04110	07/30/12	
James C. Bartley v. DHHS, DMA	12 DHR 04116	07/25/12	
Estate of Mary P Lipe Medicaid ID #901463645S Alvena C Heggins v. DHHS, DMS	12 DHR 04260	01/16/13	

(DHHS Medicaid)			
Emelda Bih Che v. Health Care Personnel Registry	12 DHR 04834	01/24/13	
Daycare for all the Nations, Abura B. Jackson v. DHHS, Division of Child Development	12 DHR 04944	01/03/13	28:03 NCR 275
LaBrenda Jane Elliot v. DHHS, Division of Medical Assistance	12 DHR 04993	09/24/12	
Esther H Beal v. Office of Chief Medical Examiner	12 DHR 05094	11/14/12	27:21 NCR 1987
James Johnson v. DHHS, Division of Health Service Regulation	12 DHR 05148	09/11/12	
Youth Opportunities v. DHHS, Division of Medical Assistance	12 DHR 05227	07/11/13	
Tammy Isley v. Division of Child Development and Early Education	12 DHR 05405	05/15/13	
Cathy Crosland v. DHHS, Division of Health Service Regulation	12 DHR 05610	08/06/12	
Dwight William Osborne v. Glana M Surles, DHHS (Medicaid)	12 DHR 05693	09/14/12	
Brenda Triplett Andrews v. DHHS, Division of Health Service Regulation	12 DHR 05745	12/10/12	
Southern Living Home Care Agency Inc., v. DHHS	12 DHR 05864	11/06/12	
Symakla Home Healthcare v. DHHS-Hearing Office	12 DHR 05918	08/02/13	
Beverly Coleman v. DHHS, Division of Health Service Regulation, Health Care Personnel Registry Section	12 DHR 05961	09/05/12	
Esther McMillian v. DHHS	12 DHR 06061	11/26/13	
Gregory Howard v. Health Care Personnel Registry	12 DHR 06157	09/07/12	
Joshua Goss v. DHHS, Division of Health Service Regulation, Health Care Personnel Registry	12 DHR 06158	03/04/13	
Harrison E Shell Jr v. Wake County Human Services	12 DHR 06203	08/28/12	
A Unique Solution Bertha M. Darden v. Division of Child Development & Early Education	12 DHR 06314	05/20/13	
Valtina Bronson v. DHHS, Division of Health Service Regulation	12 DHR 06365	08/29/12	
Danny Skipper AKA Danny Skipper v. DHHS, Division of Health Services Regulation	12 DHR 06403	10/22/12	
Stalin Bailon v. Department of Social Services	12 DHR 06528	10/17/12	
Tonya Diane Warfield v. DHHS, Division of Health Service Regulation, Health Care Personnel Registry Section	12 DHR 06682	01/07/13	
Our Daily Living, Christopher OnWuka, Director v. DHHS	12 DHR 06683	10/17/12	
Latricia N. Yelton, OT v. DHHS, Division of Medical Assistance	12 DHR 06686	04/10/13	28:03 NCR 282
Brittney Nicole Brabham v. DHHS, Division Health Service Regulation, Healthcare Personnel Registry	12 DHR 06786	03/27/13	
Darina Renee Ford v. DHHS	12 DHR 07166	11/19/12	
Marquis Gerade Harrell v. DHHS, Health Care Personnel Registry, Leslie Chabet	12 DHR 07170	10/23/12	
Future Innovations, LLC and David F. Curtis v. DHHS, Division of Health Service Regulation, Mental Health Licensure Section	12 DHR 07215	04/16/13	28:05 NCR 443
Future Innovations, LLC and David F. Curtis v. DHHS, Division of Health Service Regulation, Mental Health Licensure Section	12 DHR 07216	04/16/13	28:05 NCR 443
Future Innovations, LLC and David F. Curtis v. DHHS, Division of Health Service Regulation, Mental Health Licensure Section	12 DHR 07217	04/16/13	28:05 NCR 443
KMG Holdings Inc. – The Lighthouse II of Clayton MHL #051-138 v. DHHS, Division of Health Licensure and Certification	12 DHR 07292	11/08/12	
Curtain Climbers, Rhonda Corn v. Division of Child Development, DHHS	12 DHR 07295	01/16/13	
Speakeasy Therapy, LLC v. DHHS, Division of Medical Assistance	12 DHR 07296	04/25/13	28:05 NCR 462
Faline Dial v. DHHS, Division of Medical Assistance	12 DHR 07440	02/07/13	28:05 NCR 488
PRN Medical Resources, PLLC v. DHHS, Division of Medical Assistance	12 DHR 07441	03/19/13	28:05 NCR 500
Denise Marie Shear v. DHHS, Division of Health Service Regulation	12 DHR 07547	11/07/12	
Irene Renee McGhee v. DHHS	12 DHR 07589	08/29/13	
Terique Epps, Family Legacy Mental Health Services DBA Task Inc v. DHHS and PBH	12 DHR 07616	11/09/12	
Angela Mackey v. DHHS, Division of Health Service Regulation	12 DHR 07619	10/05/12	
Eloise Dowtin v. The Emmanuel Home IV v. Division of Health Service Regulation	12 DHR 07620	11/06/12	
Orlando Stephen Murphy v. DHHS, DHSR, Health Care Personnel	12 DHR 07640	02/05/13	
Irene Wortham Center, Inc., v. DHHS, DMA	12 DHR 07699	04/12/13	
Yolanda McKinnon v. DHHS	12 DHR 07711	01/11/13	
Koffi Paul Aboagye v. DHHS, Division of Health Service Regulation	12 DHR 07731	11/20/12	
Mark Thomas v. DHHS, Division of Health Service Regulation	12 DHR 07853	01/04/13	
Annie Garner Ham v. DHHS, Division Health Service Regulation	12 DHR 08103	03/04/13	
Darrion Smith v. Murdock Developmental Center and the NC DHHS; Ricky Bass v. NC DHHS; Darrion Smith v. NC DHHS	12 DHR 08134	07/24/13	28:12 NCR 1472
Darrion Smith v. Murdock Developmental Center and the NC DHHS; Ricky Bass v. NC DHHS; Darrion Smith v. NC DHHS	12 DHR 08136	07/24/13	28:12 NCR 1472
Daniel Saft, A+ Residential Care (MHL #092-811) v. DHHS, DHSR, Mental Health Licensure and Certification Section	12 DHR 08197	01/16/13	
Jannett E. Myers v. DHHS, Division of Health Service Regulation	12 DHR 08257	08/07/13	
Gloria Mitchell v. DHHS, Division of Medical Assistance	12 DHR 08258	02/14/13	28:05 NCR 511
Katherine Free v. DHHS, Division of Medical Assistance	12 DHR 08395	04/12/13	
Ronald Dixon v. Division of Child Development, DHHS	12 DHR 08446	11/14/12	

CONTESTED CASE DECISIONS

Hillcrest Convalescent Center, Inc. v. DHHS, Division of Health Service Regulation, Certificate of Need Section, and E.N.W., LLC and Bellarose Nursing and Rehab Center, Inc.; 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; Britthaven, Inc. and Spruce LTC Group, LLC; and AH North Carolina Owner LLC d/b/a The Heritage of Raleigh	12 DHR 08666	06/20/13	28:09 NCR 928
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
Jah Mary Weese v. DHHS, Division of Health Service Regulation	12 DHR 08672	01/09/13	
AH North Carolina Owner LLC d/b/a The Heritage of Raleigh 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.; 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; and Britthaven, Inc. and Spruce LTC Group, LLC	12 DHR 08691	06/20/13	28:09 NCR 928
Mission Hospital, Inc. v. DHHS Division of Health Service Regulation Certificate of Need Section, and Fletcher Hospital, Inc. d/b/a Park Ridge Health and Carolina Gastroenterology Endoscopy Center, LLC	12 DHR 08733	06/18/13	28:10 NCR 1095
Clifford Lee Druml v. DHHS, Division of Medical Assistance	12 DHR 08776	04/25/13	
Natasha Dionne Howell v. DHHS, Division of Health Service Regulation	12 DHR 08814	03/07/13	
White Oak Homes II Inc., Lisa Atkinson v. DHHS, Mental Health Licensure and Certification Section, Division of Health Service	12 DHR 08994	02/08/13	
Erica Eileen Thomas v. DHHS, Division of Health Service Regulation	12 DHR 09139	04/17/13	
Tammy Isley v. Division of Child Development and Early Education	12 DHR 09350	05/15/13	
Eddie Cannon v. DHHS, Division of Health Service Regulation, Personnel Registry	12 DHR 09352	05/21/13	
Carolyn Ragin v. DHHS, Division of Health Services Regulation	12 DHR 09373	12/18/12	
Omar Vickers v. Office of Administrative Hearings	12 DHR 09475	04/16/13	
April Hood-Baker v. DHHS, DMA Glana M Surles	12 DHR 09489	01/15/13	
Heritage Home Care Agency Inc., Rico Akvia Wagner v. Department of Human Services Hearing Office	12 DHR 09511	07/05/13	
Surgical Care Affiliates, LLC and Blue Ridge Day Surgery Center, L.P. v. DHHS, Division of Health Service Regulation, Certificate of Need Section, and WakeMed	12 DHR 09678	07/23/13	
Tyshon & Shannetta Barfield v. DHHS	12 DHR 09692	02/08/13	
Vicki Lucas-Crowder v. Division of Medical Assistance	12 DHR 09832	04/26/13	
Cynthia M Rose v. Division of Child Development, DHHS	12 DHR 09846	01/23/13	
Gina Lynne Gilmore Lipscomb v. Health Care Personnel Registry	12 DHR 09953	09/17/13	
Asheville Speech Associates v. DHHS, Division of Medical Assistance	12 DHR 10367	06/21/13	
Our Daily Living MHL 032-481 Christopher Onwuka v. DHHS, DHSR, Mental Health Licensure and Certification	12 DHR 10402	05/06/13	
Glenda Lee Hansley v. DHHS	12 DHR 10430	08/01/13	
Therapeutic Life Center, Inc. v. DHHS, Division of Medical Assistance	12 DHR 10447	07/08/13	28:12 NCR 1450
Sonia Coles Bowers v. DHHS, Division of Social Services	12 DHR 10511	08/26/13	
A Great Choice for Home Care, Inc. v. DHHS	12 DHR 10569	08/09/13	28:12 NCR 1461
Carolina Solution, Inc v DHHS	12 DHR 10668	02/08/13	
A Unique Solution Bertha M. Darden v. Division of Child Development & Early Education	12 DHR 10926	05/20/13	
Angels Home Health, Charlotte Robinson, and LaShonda Wofford v. DHHS	12 DHR 11035	04/22/13	
David Keith Trayford v. Division of Medical Assistance via Administrative Hearing Office	12 DHR 11180	07/01/13	
Favour McKinnon v. DHHS, Division of Health Service Regulation	12 DHR 11319	11/15/13	
Cumberland County Hospital System, Inc. d/b/a Cape Fear Valley Health System v. DHHS, Division of Health Service Regulation Certificate of Need Section and FirstHealth of the Carolinas, Inc. d/b/a FirstHealth Moore Regional Hospital	12 DHR 12088	05/23/13	28:11 NCR 1262
Speech and Therapy Solutions v. DHHS	12 DHR 12402	03/27/13	
Agape Services, Inc. v. Program Integrity Section of DMA	12 DHR 12405	05/23/13	28:11 NCR 1269
Treasure Dominique Corry v. State of NC Nurse Aide Registry	12 DHR 12408	03/15/13	
Cumberland County Hospital System, Inc. d/b/a Cape Fear Valley Health System v. DHHS, Division of Health Service Regulation Certificate of Need Section and FirstHealth of the Carolinas, Inc. d/b/a FirstHealth Moore Regional Hospital	12 DHR 12088		
Bio-Medical Applications of North Carolina, Inc., D/B/A FMC Anderson Creek	12 DHR 19650	12/17/12	27:22 NCR 2101

CONTESTED CASE DECISIONS

Linda Johnson v. Caswell Center	13 DHR 01926	03/06/13	
Carolina Family Alliance, c/o Sabrian Mack Exec Director v. DHHS	13 DHR 02679	03/28/13	
National Deaf Academy Judy Caldwell, RN v. Office of Administrative Hearings, Value Options North Carolina	13 DHR 02701	11/15/13	
Inder P Singh v. DHHS, WIC	13 DHR 05263	03/27/13	
Natasha Howell v. DHHS, Division of Health Service Regulation	13 DHR 07602	08/02/13	
Restoration Home Care Services, Inc., Diane Sherrill, Owner/President v. PCG Consulting Group Consulting Group, DHHS	13 DHR 08373	12/13/13	
Loretta Tinnin v. Division of Medical Assistance	13 DHR 08954	10/03/13	
Family Choice Home Care v. DHHS	13 DHR 08987	08/14/13	
Leenorta Cooper v. DHHS, Division of Health Service Regulation	13 DHR 09097	10/03/13	
Larry Ratliff, Jr., Alena Ratliff, Larry Ratliff, Sr. v. DHHS, Division of Health Service Regulation, Health Care Personnel Registry	13 DHR 09144	07/15/13	
Larry Ratliff, Jr., Alena Ratliff, Larry Ratliff, Sr. v. DHHS, Division of Health Service Regulation, Health Care Personnel Registry	13 DHR 09145	07/15/13	
Larry Ratliff, Jr., Alena Ratliff, Larry Ratliff, Sr. v. DHHS, Division of Health Service Regulation, Health Care Personnel Registry	13 DHR 09146	07/15/13	
Nikko & Shannon Scott v. DHHS	13 DHR 09422	06/26/13	
Brittany Hinson v. DHHS	13 DHR 09511	11/19/13	
Clarice Johnson v. DHHS, Division of Health Service Regulation	13 DHR 09736	10/28/13	
Doris Wilson v. DHHS, Division of Health Service Regulation	13 DHR 09742	07/15/13	
Elton Bishop v. Food Stamps	13 DHR 09976	12/05/13	
Teresa Anne Davis v. DHHS, Division of Health Service Regulation, Health Care Personnel Registry	13 DHR 10037	09/20/13	
Marcella Marsh v. Forsyth County Department of Social Services	13 DHR 10124	06/21/13	
Wanda Jones v. DHHS	13 DHR 10289	08/15/13	
Berta M. Spencer v. DHHS, Office of the Controller	13 DHR 10335	07/05/13	
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	
Lashondrea Nixon v. DHHS, Division of Health Service Regulation	13 DHR 10594	08/30/13	
Edward E. Speaks, Jr. v. Central Regional Hospital	13 DHR 10749	09/10/13	
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	
Holly L. Crowell v. DHHS, Division of Health Service Regulation	13 DHR 11091	07/05/13	
Christopher H. Brown DDS PA v. Department of Medical Assistance	13 DHR 11610	07/01/13	
Lawson Support Services LLC v. DHHS, Division of Medical Assistance	13 DHR 11836	10/04/13	
Juan M. Noble v. DHHS, Division of Health Service Regulation	13 DHR 11965	07/12/13	
Veronica Janae McLemore v. DHHS, Division of Health Service Regulation, Health Care Personnel Registry	13 DHR 12033	12/02/13	
Supermexicana Los Reyes Elena D. Flores Garcia Owner v. Nutrition Services Branch, DHHS, Division of Public Health	13 DHR 12129	08/01/13	28:14 NCR 1688
Monalisa Victoria Freeman v. DHHS, Division of Health Service Regulation	13 DHR 12328	07/31/13	
Johnathan Bradley v. DHHS, Division of Health Service Regulation	13 DHR 12685	08/02/13	
Melissa Stephen Ingle v. DHHS, Division of Child Development	13 DHR 12700	08/30/13	
E. W. Stone Adult Care Center, Evelyn W. Stone v. DHHS	13 DHR 12814	07/29/13	
Martha Watson v. DHHS, Division of Social Services	13 DHR 13302	11/12/13	
Lawson Support Services LLC v. DHHS, Division of Medical Assistance	13 DHR 13349	11/13/13	
Matthew Bradshaw v. DHHS, Division of Health Service Regulation	13 DHR 13381	09/03/13	
Countryside Villa Hal 026-046 John A. Weeks v. DHHS, Division of Health Service Regulation	13 DHR 13545	09/19/13	
Betty S. Mintz v. DHHS, Division of Health Service Regulation	13 DHR 13547	09/10/13	
Lashawn R. Holland v. DHHS, Division of Health Service Regulation	13 DHR 13858	09/03/13	
Thomas and Elberta Hudson v. DHHS, Division of Social Services	13 DHR 13957	08/02/13	
Victoria S. Hargrave v. DHHS, Division of Health Service Regulation	13 DHR 15147	08/07/13	
Paul A. Fredette v. DHHS, Division of Health Service Regulation	13 DHR 14025	09/30/13	
A Angel's Touch In Home Care v. DHHS	13 DHR 14303	09/24/13	
Tabitha Mason v. DHHS, Division of Health Service Regulation, Health Care Personnel Registry	13 DHR 14452	12/06/13	
Candace Richardson v. Health Care Personnel Registry	13 DHR 15028	09/30/13	
Americare "Hardin House", Perry Tanis Watkins v. DHHS	13 DHR 16307	11/19/13	
Kenneth W. Haney v. DHHS, Medical Assistance, Third Party Recovery Section	13 DHR 16563	11/20/13	
Estate of Ross Lewis; Ronald B. Lewis v. Office of Administrative Hearings	13 DHR 16694	10/23/13	
Prosperous Home Care Services LLC, Lennis Brown v. DHHS DHSR, Acute and Home Care Licensure and Certification Section	13 DHR 16962	11/26/13	

Dennishia Marsalia DuBose v. Sol Weiner RN HCPR Investigator	13 DHR 17085	11/06/13
Precyous Cheniae Johnson v. DHHS, Division of Health Service Regulation	13 DHR 17316	11/05/13
A Angel's Touch In Home Care v. DHHS	13 DHR 17446	10/31/13
Elizabeth Shea Bonner v. DHHS	13 DHR 17448	11/15/13
Shonda Richardson v. DHHS, Liberty Commons Nursing & Rehab	13 DHR 17910	11/15/13
Latesha Monique Morse v. Nash County Department of Social Services, Food & Nutrition Unit	13 DHR 18224	01/02/14

DEPARTMENT OF ADMINISTRATION

Meherrin Indian Tribe v. Commission of Indian Affairs	12 DOA 00986	01/18/13	
Medical Review of North Carolina, Inc. d/b/a The Carolinas Center for Medical Excellence v. NC Department of Administration and NC DHHS and Liberty Healthcare Corporation	13 DOA 12702	08/30/13	28:13 NCR 1585

DEPARTMENT OF CORRECTIONS

Myron Roderick Nunn v. Jennifer O'Neal, Accountant DOC	12 DOC 01022	07/12/12	
Moses Leon Faison v. Department of Correction	13 DOC 10227	04/08/13	
Clarence E. Williams, Jr. v. State of NC, D.H.O. Austin	13 DOC 12137	09/30/13	
Clarence E. Williams, Jr. v. State of NC, D.H.O. Linwood M. Best	13 DOC 14201	09/30/13	

DEPARTMENT OF JUSTICE

Tommy Keith Lymon v. Criminal Justice Education and Training Standards Commission	09 DOJ 03751	07/30/12	27:06 NCR 649
Greary Michael Chlebus v. Criminal Justice Education and Training Standards Commission	11 DOJ 4829	04/27/12	
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	
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	

CONTESTED CASE DECISIONS

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	
Shannon Pendergrass v. Criminal Justice Education and Training Standards Commission	12 DOJ 08008	12/05/13	
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
Brian Thomas Jones v. Sheriffs' Education and Training Standards Commission	12 DOJ 08023	11/26/13	
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
Joseph Ryan Fowler v. Sheriffs' Education and Training Standards Commission	12 DOJ 10184	11/26/13	
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	
Ron Allen Hedrington v. Criminal Justice Education and Training Standards Commission	12 DOJ 10204	08/23/13	28:13 NCR 1544
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	
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	
Antonio R. Dickens v. Private Protective Services Board	13 DOJ 08953	08/09/13	28:14 NCR 1695
Danielle J. Rankin v. Private Protective Services Board	13 DOJ 09038	08/09/13	28:14 NCR 1700
Thomas Lee Phillips, Jr. v. Sheriffs' Education and Training Standards Commission	13 DOJ 09571	11/19/13	
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	
Patricia Mary Cotto v. Criminal Justice Education and Training Standards Commission	13 DOJ 12452	12/10/13	
Myron Troy Davidson v. Private Protective Services Board	13 DOJ 13379	09/13/13	
Rhonda N. Thorpe v. NC Alarm Systems Licensing Board	13 DOJ 13600	12/11/13	
Marcus L. Fuller v. Private Protective Services Board	13 DOJ 13653	09/03/13	
Christopher T. Place v. NC Alarm Systems Licensing Board	13 DOJ 13859	08/02/13	28:14 NCR 1706

CONTESTED CASE DECISIONS

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
Deane Eugene Barnette v. Sheriffs' Education and Training Standards Commission	13 DOJ 16248	12/03/13
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 ETHICS COMMISSION

Reza M. Salami v. North Carolina A & T State University, Chancellor Harold Martin, General Counsel Charles Waldrup, Vice Chancellor Linda McAbee, Interim Provost Winsor Alexander, and Chairman Willie Deese	13 EBD 13916	11/20/13
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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	
Glennette McRae v. NC State Board of Education	12 EDC 10448	11/15/13	
Matthew Schneider v. Department of Public Instruction	12 EDC 12183	07/17/13	28:12 NCR 1467
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
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	

CONTESTED CASE DECISIONS

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	
Joe Waldroop v. NC DENR	13 EHR 12077	11/20/13	
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, Jamyan 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	
Jacob W. Scott v. Department of Crime Control and Public Safety Alcohol Law Enforcement	10 OSP 04582	07/19/13	28:12 NCR 1419
Dorothy H. Williams v. DHHS, Central Regional Hospital	10 OSP 05424	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
Barry G. Eriksen v. NC State University	11 OSP 4968	12/16/13	
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
Katheryn Renee Johnson v. NC Department of Correction	11 OSP 06493	12/16/13	
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	
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	

CONTESTED CASE DECISIONS

Phyllis Campbell v. DOC	11 OSP 13381	08/27/12	27:15 NCR 1579
Thomas W. Wheeler v. NC Department of Transportation	11 OSP 13440	12/03/13	
Raeferd 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	
Darrion Smith v. Murdock Developmental Center and the NC DHHS; Ricky Bass v. NC DHHS; Darrion Smith v. NC DHHS	12 OSP 06780	07/24/13	28:12 NCR 1472
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	
Gwendolyn Claire Montgomery v. NC DPS/DOCC/Lori Dunn	12 OSP 09069	08/05/13	28:13 NCR 1562
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
Patricia Burgess v. NC Community College System	12 OSP 10339	08/09/13	28:14 NCR 1680
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	

CONTESTED CASE DECISIONS

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
Amy J. Rains v. Department of Public Safety	13 OSP 11930	12/11/13
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
Dianne E. Pankey v. Department of Social Services Michael Becketts	13 OSP 13544	12/11/13
David M. Andrews v. Department of Transportation, Technical Services-Client Support	13 OSP 15144	10/03/13
Sharon Riddick v. Department of Public Safety, Adult Correction, Andrew Riddick v. Department of Public Safety, Adult Correction	13 OSP 15445	12/16/13
Sharon Riddick v. Department of Public Safety, Adult Correction, Andrew Riddick v. Department of Public Safety, Adult Correction	13 OSP 15446	12/16/13
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
Joy Diane Felton v. J. Iverson Riddle Developmental Center and DHHS	13 OSP 17603	11/13/13
Armin Robinson v. North Carolina Central Prison	13 OSP 18463	12/31/13
Dominic Corwin v. Equal Opportunity/ADA Office-University of North Carolina	13 OSP 18836	01/03/14
Maxine Evans-Armwood v. Department of Public Safety	13 OSP 19059	01/03/14

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
Karim B. Mawji/Mama Brava's v. Department of Revenue	13 REV 13648	12/18/13	
Olivier N. Sayah v. Department of Revenue	13 REV 13956	11/19/13	
Joseph Lewis Moore v. Department of Revenue	13 REV 17720	11/13/13	
Tavious Montrell Hinson v. Department of Revenue	13 REV 17727	11/26/13	
Mark A. Lovely v. Department of Revenue	13 REV 18226	12/23/13	

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	
Connie Huntsman v. Department of the Secretary of State	13 SOS 16505	12/13/13	
Dianne Michele Carter v. Department of the Secretary of State, Ozie Stalworth, and John Lynch	13 SOS 18498	12/18/13	

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
Deborah Wright v. UNC Hospitals	13 UNC 10574	11/15/13
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
Robbyn L. Labelle v. UNC Hospitals	13 UNC 13685	11/18/13
Pamela Klute v. UNC Hospitals	13 UNC 15828	11/25/13

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
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Filed

STATE OF NORTH CAROLINA

COUNTY OF WAKE

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
12 OSP 10339

Office of
Administrative Hearings

PATRICIA BURGESS,
Petitioner,

v.

NORTH CAROLINA COMMUNITY
COLLEGE SYSTEM
Respondent.

DECISION

On May 8, 2013, Senior Administrative Law Judge Fred G. Morrison Jr. heard this contested case in Raleigh, North Carolina.

ISSUE

Whether the N.C. Community College System's ("Respondent") dismissal of Patricia Burgess ("Petitioner") via a "reduction in force" ("RIF") was a pretext to disguise either disciplinary dismissal without just cause, or retaliation for Petitioner's complaints of illegal employment discrimination.

APPEARANCES

Petitioner: Michael C. Byrne
Law Offices of Michael C. Byrne
150 Fayetteville Street, Suite 1130
Raleigh, North Carolina 27601

Respondent: Stephanie A. Brennan
Assistant Attorney General
N.C. Department of Justice
Post Office Box 629
Raleigh, North Carolina 27602

WITNESSES

Petitioner: Patricia Burgess, Angelica Pickett

Respondent: Jennifer Haygood, Sandra Williams, Chris Cline, James "Danny" Gilchrist, and Jane Phillips

EXHIBITS

Petitioner

1. Respondent Request For Production Responses
2. Respondent Requests For Admissions Responses
3. EEOC Charge
4. Respondent's Agency Action Document
5. Respondent's Prehearing Statement
6. Petitioner's Discovery Responses
7. RIF Letter
8. Respondent's Discovery Responses

Respondent

1	25 N.C.A.C. 01C .1004
2	State Personnel Manual, RIF Policy
3	State Personnel Manual, RIF Guidelines
4	NCCCS RIF Policy, Bates 609-12
5	Reduction in Force Plan for NCCCS, June 2011, Bates 340-45
6	Management Template for RIF, Bates 346-53
7	5/24/11 RIF Notice to Burgess, Bates 313-14
8	6/22/07 Offer Letter, Bates 28
9	Petitioner's Deposition Transcript
10	Petitioner's Discovery Responses
11	OSB Memo, Bates 630
12	Scenario 1 and 2, Bates 455
13	10/10 emails from Haygood, Bates 266-68
14	System Office Proposed Reductions, Bates 265
15	10/10 emails re operating reductions worksheet, Bates 280-81
16	Operating Reductions Worksheet, Bates 282-85
17	10/10 emails between Williams and Haygood, Bates 286-87
18	Technology & Workforce Development Division Information for Positions to be Eliminated, Bates 288-91
19	Emails re substitution, Bates 293-95
20	House budget document
21	10/14/10 Cline email and attached chart, Bates 276-78
22	May 1, 2010-April 30, 2011 Work Plan for Patricia Burgess with Addendum to Work Plan
23	June 1, 2011 letter from Pickett, Bates 315
24	Angelica's Review Responses, Bates 316-33 (NOTE: Better Copy Included as 24A)
25	Warnings to P. Burgess from A. Pickett, Bates 166, 219-20, 298-302
26	June 2010 reviews by D. Gilchrist, Bates 199-202
27	June 2010 Memo from Performance Review Rating Panel, Bates 177-179
28	2007-2008 Work Plan, Bates 56-67

FINDINGS OF FACT

Based on the testimony of witnesses, documents in evidence, and the entire record, the undersigned finds the following facts. In doing so, the undersigned weighed appropriate factors for judging credibility, including demeanor and any interests, bias, or prejudice the witness may have. Further, the undersigned carefully considered the opportunity of the witness to see, hear, know or remember the facts or occurrences about which the witness testified, whether the testimony is reasonable, and whether the testimony is consistent with other believable evidence.

1. Respondent North Carolina Community College System ("Respondent") is an Article III agency for N.C. Gen. Stat. § 150B purposes.
2. Petitioner Patricia Burgess ("Petitioner") worked in Respondent's Technology and Workforce Development Division (the "Division") from June 29, 2007 to June 30, 2011. Her position title was Business and Technology Applications Analyst. ("BTA Analyst")
3. Because of budget requirements, Respondent eliminated eleven vacant and eight filled positions via a reduction-in-force (the "RIF") effective June 30, 2011. The RIF included four filled and five vacant positions in Petitioner's Division.
4. When the RIF was implemented, Petitioner was a career status employee of Respondent in a position subject to the State Personnel Act.
5. The RIF eliminated two filled BTA Analyst positions. Petitioner was one of the eight people whom the RIF separated from employment.
6. Petitioner believes that certain managers within the Division selected her for the RIF to retaliate for the civil rights claims Petitioner had filed or to circumvent a lack of just cause for disciplinary dismissal.
7. From January 2010 to June 2011, Petitioner reported directly to Angelica Pickett (African-American female). Danny Gilchrist (white male) and Bruce Humphrey (African-American male) were, respectively, Petitioner's second and third-line supervisors.
8. As the senior vice president of the Division, Saundra Williams (African-American female), was Petitioner's fourth-line and ultimate supervisor.
9. In the two and a half years Petitioner worked for Respondent before coming under Pickett's supervision, Petitioner did not grieve any performance reviews, file any civil rights charges, or receive any formal discipline.
10. After Pickett became Petitioner's supervisor in January 2010, Petitioner received generally lower performance reviews than she had under her previous supervisor. While Petitioner's supervisor, Pickett did not give any employee worse ratings than those she gave to Petitioner.

11. In April 2010, Petitioner filed a charge of national origin discrimination against Respondent concerning Pickett's behavior and management's response—or perceived lack thereof—to Petitioner's complaints about Pickett. Petitioner is Hispanic and from Colombia.
12. Pickett issued a written warning to Petitioner in July 2010.
13. Petitioner filed two civil rights charges against Respondent in August 2010, one alleging continued harassment and a second alleging retaliation for her initial complaint.
14. Petitioner filed another civil rights charge in January 2011, alleging that she did not get a job for which she interviewed out of retaliation for her previous activity.
15. Pickett issued a second written warning to Petitioner in March 2011, less than two months before she learned of the RIF. Pickett did not issue written warnings to any other employee while serving as Petitioner's supervisor.
16. Both warnings concerned unacceptable personal conduct, such as issues about leave time, rather than unsatisfactory job performance. Petitioner saw the warnings as unjustified and arbitrary.
17. Petitioner's overall performance rating for May 1, 2010-April 30, 2011 was "good." Petitioner filed Step 1 and Step 2 grievances to challenge her 2010-11 rating, which was upheld by agency superiors.
18. When Petitioner learned of the impending RIF in May 2011, both her most recent civil rights filing and her most recent performance review were unresolved.
19. Pickett supervised two other employees besides Petitioner. A second employee working under Pickett's supervision had also filed a civil rights charge against her, likewise citing national origin discrimination. As planned in October 2010, the RIF would have eliminated that employee's position along with the Petitioner's. As implemented, the RIF did cut his position, then vacant because he had quit in the meantime.
20. The other BTA Analyst who lost his job under the RIF was later rehired. Petitioner interviewed with the Respondent three different times after the RIF, and had priority employment rights, but was not rehired.
21. As a lower-level manager, Pickett did not attend meetings to plan the RIF or provide any direct input concerning it.
22. Petitioner learned that she was selected for the RIF through a letter from Williams in May 2011. The notice was timely.
23. Williams was aware of the civil rights charges that Petitioner filed, the grievances

against her performance rating, and the discipline that she had received.

24. Petitioner found a job with Campbell University within a couple weeks of the RIF that she has continued to hold.

25. In September 2010, the State Budget Director asked Respondent to plan for substantial budget reductions for fiscal year 2011. After identifying opportunities to shift costs, reduce non-personnel expenses, and eliminate vacant positions, the senior management team met to discuss functions that could be eliminated.

26. At Williams's request, Chris Cline worked with her direct reports, mainly staff under Bruce Humphrey (Petitioner's third-line supervisor), to identify potential cuts, starting with operating expenses. That group—Cline, Arthur Hohnsbehn, Danny Gilchrist (Petitioner's second-line supervisor), Annette Busby, and human resources director Jane Phillips—turned to job function, specifically those that, if eliminated, could be reasonably covered by remaining employees assuming additional duties.

27. The group specifically looked at the BTA Analyst classification first when considering personnel reductions. That designation, considered to have roughly the same skill set, was the largest, distributed across the three groups led respectively by Gilchrist, Hohnsbehn, and Busby.

28. The Respondent considered and applied the factors set forth in its RIF policy, including (1) the needs of the agency to deliver services; (2) employee performance; (3) length of service; and (4) adverse impact on protected groups.

29. In mid-October 2010, Cline sent Williams a spreadsheet outlining the team's proposed budget reductions. It identified nine positions for RIF, based on job function, then 2009-10 work plan evaluations, then length of state service. Petitioner's position was on that list.

30. Williams was ultimately responsible for the Division's recommendations. The chart titled "Technology and Workforce Development Information for Positions to be Eliminated" that Williams submitted to Haygood on October 27, 2010 differs some from the recommendations that Williams had received from her team two weeks earlier but still includes the Petitioner's position.

31. Those recommendations included real names, on the justification that specific salary and benefit data was needed to calculate savings from the cut. Those employees were not necessarily those actually affected by the RIF, as the model was based on the previous year's evaluation.

32. Between the RIF planning fall 2010 and its implementation in spring 2011, Respondent designed a template for documenting the RIF selection process. The template begins by identifying functions for redistribution or elimination, which in this case were: Tier 3 help desk tickets and associated documentation, software change requests, and request for change analysis and implementation.

33. The Petitioner described her duties as implementing updates and applying customizations to software, resolving help desk tickets that have escalated to Tier 3, and toward the end of her tenure, working in the ARCR module. Respondent represented that those particular functions were subject to reassignment because they could be performed by remaining analysts, once trained.

34. The template's next step listed by position number all employees who performed those duties (yielding 18 results) and expanded the list to include all who shared that position classification (23 results).

35. Within the 23 BTA Analysts considered for RIF, Petitioner was one of the two employees with the lowest performance rating and least state service.

CONCLUSIONS OF LAW

1. The Office of Administrative Hearings has jurisdiction over the parties and the subject matter under N.C. Gen. Stats. § 126 and 150B.

2. In retaliation claims, a burden-shifting scheme applies: first, the petitioner must establish a prima facie case. McDonnell Douglas Corp. v. Green, 411 U.S. 792, 93 S. Ct. 1817 (1973). See e.g., Hoyle v. Freightliner, LLC, 650 F.3d 321, 337 (4th Cir. 2011). If a petitioner can do so, the burden then shifts to the respondent to articulate a legitimate reason—one not fueled by discrimination or retaliation—for its decision. If the Respondent makes such a showing, then the burden shifts back to the Petitioner to prove that the Respondent's purported reason was a pretext for discrimination or retaliation. Hoyle, 650 F.3d at 337.

3. Petitioner's prima facie case comprises showing that 1) she engaged in protected activity; 2) Respondent took adverse action against her; and 3) a causal connection exists between the protected activity and the adverse action. Ziskie v. Mineta, 547 F.3d 220, 229 (4th Cir. 2008).

4. Petitioner made a prima facie case: she filed civil rights claims, she was involuntarily separated from employment not too long thereafter, and she produced some evidence that the former influenced the latter.

5. Respondent showed legitimate, non-discriminatory reasons for its actions. It conducted the RIF that eliminated Petitioner's position, along with others, because of reduced funding from the General Assembly. Its senior management, when faced with the potential of severe budget reductions, first looked to reduce operating expenses, use alternative sources of revenue, and eliminate vacant positions before resorting to cutting filled posts.

6. When cutting filled positions, Respondent applied its RIF policy and used facially objective criteria to determine which specific individuals would be subject to the RIF.

7. The RIF's very occurrence, also affecting seven others of varying backgrounds, was not a pretext just to retaliate against the Petitioner, nor was its methodology.


DECISION

Petitioner is not entitled to any relief from Respondent.

NOTICE

Under N.C. Gen. Stat. § 150B-45, any party wishing to appeal the Administrative Law Judge's decision 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 **within 30 days of being served with a written copy of the final decision.** Conforming to the Office of Administrative Hearings' rules, 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 as indicated by the date on the attached certificate of service.** 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. § 150-47, the Office of Administrative Hearings must file the official record in the contested case with the Clerk of Superior Court within 30 days of receiving the petition for judicial review. Consequently, a copy of the petition for judicial review must be sent to the Office of Administrative Hearings when the appeal begins to ensure that the record is timely filed.

This the 9th day of August 2013.

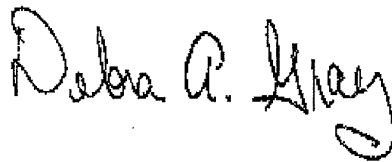

Fred G. Morrison Jr.
Senior Administrative Law Judge

A copy of the foregoing was mailed to:

Michael Byrne
Wachovia Capital Center
Suite 1130
150 Fayetteville Street Mall
Raleigh, NC 27601
ATTORNEY FOR PETITIONER

Stephanie Brennan
Assistant Attorney General
North Carolina Department of Justice
9001 Mail Service Center
Raleigh, NC 27699-9001
ATTORNEY FOR RESPONDENT

This the 9th day of August 2013.



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

Filed

STATE OF NORTH CAROLINA
COUNTY OF RANDOLPH

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
13DHR12129

<p>SUPERMEXICANA LOS REYES ELENA D. FLORES GARCIA OWNER, Petitioner,</p> <p>v.</p> <p>NUTRITION SERVICES BRANCH, NORTH CAROLINA DEPARTMENT OF HEALTH AND HUMAN SERVICES, DIVISION OF PUBLIC HEALTH, Respondent.</p>	<p align="center">FINAL DECISION</p>
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This contested case was heard before Beecher R. Gray, Administrative Law Judge, on June 20, 2013, in High Point, North Carolina. Petitioner's proposed decision as corrected and approved by Respondent's counsel was filed on July 17, 2013.

APPEARANCES

For Petitioner: Jason G. Goins, Attorney at Law
167 E. Salisbury Street
Asheboro, NC 27203

For Respondent: Donna Smith
Assistant Attorney General
N.C. Department of Justice
PO Box 629
Raleigh, NC 27602

ISSUE

1. Whether Petitioner's claimed reimbursement for the sale of an amount of a specific supplemental food item, which exceeded the store's documented inventory of that supplemental food item for six or more days within a 60 day period, violated 7 C.F.R. § 246.12(1)(iii)(B), 10A N.C.A.C. 43D .0708 (30) and .0710(a)(1), and the WIC Vendor Agreement.
2. Whether Respondent correctly assessed \$967.56 as overpayment for WIC approved infant formula as a result of an audit.

BURDEN OF PROOF

Under N.C. Gen. Stat. § 108C-12(d), Respondent bears the burden of proof in this matter.

DOCUMENTARY EVIDENCE

The parties agreed and stipulated to the authenticity and admissibility of the following exhibits which were admitted into evidence:

For Respondent:

1. N.C. WIC Vendor Application, December 1, 2009
2. WIC Vendor Agreement, October 1, 2009 through September 30, 2012
3. N.C. WIC Vendor Information Update, August 8, 2011
4. Letter to Elena D. Flores Garcia dated June 29, 2012.
5. Letter to Elena D. Flores Garcia dated September June 27, 2012
6. Notice of Intent to Disqualify and Notice of Claim dated April 3, 2012
7. Reduction off Claim dated May 31, 2012
8. WIC Inventory count dated March 23 ,2012
9. Letter to Elena D. Flores Garcia dated March 26, 2012
10. WIC Inventory count dated June 22, 2012
11. Purchase documentation request dated June 22, 2012
12. Letter to Elena D. Flores Garcia dated June 26, 23012
13. Invoice summary with invoices
14. Daily sales with food instruments
15. Daily inventory
16. Audit summary
17. Audit memorandum dated September 25, 2012
18. Invoice date-stamped received October 3, 2012
19. Audit memorandum dated March 28, 2012
20. Daily inventory
21. Audit summary
22. Audit memorandum dated May 23, 2013
23. Renewal Training for Authorized WIC Program Vendors 2011, agenda with training materials
24. WIC Program Vendor Training 2011 Verification of Attendance
25. N.C. WIC Program Vendor Manual Oct. 1, 2011 to Sept. 30, 2012
26. participant access data

For Petitioner:

1. March 22, 2012 Page 2 of La Tortilleria invoice to Petitioner

WITNESSES**Witnesses for Petitioner:**

Petitioner

Witnesses for Respondent:

Gerrell Smith, Vendor Compliance Officer, Nutrition Services Branch, NC DHHS

Craig Forsythe, Senior Auditor, Office of the Internal Auditor, NC DHHS

Janet Nelson-Cagle, Vendor Manager, Randolph County Health Department

FINDINGS OF FACT

1. The parties received notice of hearing by certified mail more than 15 days prior to the hearing, and each stipulated on the record that notice was proper.
2. Petitioner does not dispute the finding of an overpayment by Respondent to Petitioner from the Hearing Officer's decision in the following amount: \$967.56. Petitioner already has paid Respondent the sum of \$967.56 as reimbursement of the alleged overpayment to Petitioner.
3. Respondent conducted a review of Petitioner's inventory with respect to WIC items on March 23, 2012, and again on June 22, 2012. The auditor was Craig Forsythe, Senior Auditor, Office of the Internal Auditor, NC DHHS.
4. Auditor Forsythe testified that the purpose of his audit was to check whether Petitioner had sufficient infant formula, in relation to her transaction amount on food instruments submitted for payment.
5. On March 23, 2012, Auditor Forsythe introduced himself to Petitioner Elena Garcia at her store. He asked whether any food instruments had been transacted that day, and Petitioner responded "no." Auditor Forsythe counted product on the shelf in the presence of Petitioner and asked where the infant formula was. Auditor Forsythe asked Petitioner whether there was any more of that product in the store, her car, etc. Auditor Forsythe felt that he had no problem communicating with Petitioner.
6. Auditor Forsythe returned to Petitioner's store on June 22, 2012 and re-counted inventory.
7. Afterward, Auditor Forsythe obtained transaction documents for the items that he was auditing: WIC items of supplemental foods; Enfamil Gentlease, 12.4 oz powder; Enfamil PREMIUM Infant, 12.5 oz powder; and other WIC-endorsed products.
8. Auditor Forsythe documented what he believed to be 7 patterns of claiming reimbursement for the sale of the WIC supplemental food items shown below, which exceeded the store's documented inventory:

- a. WIC Supplemental food
- b. Enfamil PREMIUM Infant, 12.5 oz powder.

Auditor Forsythe found what he believed to be seven patterns of violation.

9. Petitioner was served notice of the violations on April 3, 2013, and May 31, 2013. Petitioner was requested to submit all documentation of all purchases of all infant formula and all transaction documents to Auditor Forsythe.
10. Petitioner submitted original documents to Auditor Forsythe. Petitioner's exhibit 1, Page 1 of a shipping document with delivery date March 22, 2012 from La Tortilleria to Petitioner included five cases of Enfamil Lipil Premium Polvo 5/12. This document had not been considered in Auditor Forsythe's audit.
11. Petitioner testified that on March 23, 2012, there were 60 cans of Enfamil in her store, temporarily stored in space underneath her cash register because of lack of shelf space in the store. Petitioner further testified that she had not understood Auditor Forsythe's questions about additional product, which was not on the shelf. Had these 60 can been included in Auditor Forsythe's audit, Petitioner would not have been found in violation of WIC requirements during the subject audit period.
12. Gerelle Smith, Vendor Compliance Officer for NCDHHS Public Health, explained the WIC Program. Compliance Officer Smith explained that vendor violations violate federal regulation violations. A violation is an act that violates the WIC program. WIC vendors are checked by monitors or audit and reviewed by the USDA.
13. Compliance Officer Smith explained the audit process as an examination of purchase documents to see if a vendor purchased enough food to cover instruments for a certain time period. If a vendor's claims for money exceed inventory, then WIC must proceed with a claim.
14. Mrs. Janet Nelson Cagle testified that she has been Randolph County's WIC vendor manager for 25 years. WIC Manager Cagle explained the WIC vendor training process. She stated that an interpreter fluent in Spanish was available at the July 27, 2011, WIC vendor training; however, the training was not actually conducted in Spanish.
15. Dulce Vazquez was sworn as an interpreter for Petitioner Elena D. Flores Garcia for purposes of this contested case hearing. Petitioner, first being sworn, testified through the interpreter.
16. Petitioner testified that Auditor Forsythe was very friendly and very professional but that she did not understand much of what he said to her. She testified that she sent an employee to the WIC training sessions who spoke better English than she did. Petitioner did pay the original assessment to Respondent for the alleged overpayment of \$967.56. She testified that her understanding of the WIC program was to help the poor.

17. Auditor Forsythe agreed that an additional 30 cans of infant formula on Petitioner's premises would have put her in compliance with the WIC requirements during the audit period.
18. Relevant definitions for the purposes of this hearing are included in 10A NCAC 43D.0202 et seq.
19. Title 7 C.F.R. § 246.12(1)(iii)(B) provides that the state agency must disqualify a vendor for three years for a pattern of claiming reimbursement for the sale of an amount of a specific supplemental food item which exceeds the store's documented inventory of that supplemental food item for a specific period of time. Title 10A N.C.A.C. 43D .0710(A)(1) provides that a pattern is established when a vendor claims reimbursement for the sale of an amount of a specific supplemental food item which exceeds the store's documented inventory of that supplemental food item for six or more days within a 60-day period.
20. The relevant statutes, rules, and regulations are as follows: N.C. Gen. Stat. § 130A-361; 7 C.F.R. § 246.12(1)(1)(iii)(B); and 10A N.C.A.C. 43D.01087(30) and .071(a)(1).
21. It appears by a preponderance of the evidence that Respondent's audit did not include page 1 of a purchase document for Enfamil delivered to Petitioner on March 22, 2013, introduced into evidence as Petitioner's Exhibit 1.

CONCLUSIONS OF LAW

1. The parties properly are before the Office of Administrative Hearings.
2. Respondent bears the burden of proof in this matter under the provisions of N.C. Gen. Stat. § 108C-11D.
3. Because of a language barrier and incomplete understanding by Petitioner of Auditor Craig Forsythe's instructions about inventory not on the shelf, Auditor Forsyth's initial inventory of March 23, 2013, did not include 60 cans of Enfamil, which was stored in storage space under Petitioner's cash register. The existence of this additional amount of Enfamil was supported and corroborated by the invoice admitted as Petitioner's Exhibit 1. Inclusion of this amount of inventory would have brought Petitioner into WIC Program compliance as to that product.
4. The incomplete initial audit did not establish a pattern of violation of a specific supplemental food item--Enfamil--which exceeded the store's documented inventory of that supplemental food item for six or more days within a 60-day period and does not create cause for Petitioner's disqualification from the WIC program.

5. Petitioner is entitled to a refund of \$967.56, the amount she repaid to Respondent upon Respondent's request for repayment upon its contention that Petitioner had been overpaid by that amount for the allegation of a violation by Petitioner in this contested case.


FINAL DECISION

Petitioner did not establish a pattern of violations in the audit conducted by Senior Auditor Craig Forsythe for the WIC Program from March 23, 2012, through June 22, 2012, under the evidence shown in this hearing. Petitioner is not disqualified from the WIC program under the evidence produced in this hearing and is entitled to a reimbursement of \$967.56 from Respondent.

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 01 day of August, 2013.


Beecher R. Gray
Administrative Law Judge

On this date mailed to:

Jason G. Goins
Attorney At Law
167 E Salisbury St
Asheboro, NC 27203-
Attorney For Petitioner

Donna D Smith
Assistant Attorney General
9001 MAIL SERVICE CENTER
RALEIGH, NC 27699
Attorney For Respondent

This the 1st day of August, 2013.



Office of Administrative Hearings
6714 Mail Service Center
Raleigh NC 27699-6714
Telephone: 919/431-3000
Fax: 919/431-3100

Filed

STATE OF NORTH CAROLINA

IN THE OFFICE OF

2013 AUG -9 PM 5:04

ADMINISTRATIVE HEARINGS

COUNTY OF WAKE

13 DOJ 08953

Office of
Administrative Hearings

ANTONIO R. DICKENS,

Petitioner,

v.

N.C. PRIVATE PROTECTIVE
SERVICES BOARD,

Respondent.

PROPOSAL FOR DECISION

THE ABOVE-ENTITLED MATTER was heard before the undersigned Augustus B. Elkins II, Administrative Law Judge, on April 23, 2012 in Raleigh, North Carolina. This case was heard pursuant to N.C.G.S. § 150B-40(e), designation of an Administrative Law Judge to preside at the hearing of a contested case under Article 3A, Chapter 150B of the North Carolina General Statutes. The record was left open for the parties' submission of further materials, including but not limited to supporting briefs, memorandums of law and proposals. The Petitioner submitted a letter from the N.C. Detective Agency in Durham, North Carolina. Respondent filed proposals with the Clerk's Office on June 21, 2013 which was received by the Undersigned on June 25, 2013. The record was closed on June 25, 2013.

APPEARANCES

Petitioner appeared *pro se*.

Respondent was represented by Jeffrey D. McKinney.

WITNESSES

For Petitioner – Petitioner testified on his own behalf.

For Respondent – Anthony Bonapart, Deputy Director, testified for Respondent Board.

ISSUE

Whether grounds exist for Respondent to deny Petitioner's application for a new unarmed guard registration permit pursuant to N.C. Gen. Stat. § 74C-1 *et seq* as evidenced by Petitioner's criminal record.

STATUTES AND RULES APPLICABLE TO THE CONTESTED CASE

Official notice is taken of the following statutes and rules applicable to this case:

N.C. Gen. Stat. §§ 74C-3(a)(6); 74C-8; 74C-9; 74C-11; 74C-12;
12 NCAC 07 SubChapter D

EXHIBITS

Petitioner's letter from the NC Detective Agency after the hearing.

Respondent's Exhibits 1-3 were introduced and admitted.

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

FINDINGS OF FACT

1. Respondent Board is established pursuant to N.C. Gen. Stat. § 74C-1, *et seq.*, and is charged with the duty of licensing and registering individuals engaged in the armed and unarmed guard business.
2. On September 3, 2012, Petitioner's applied to Respondent Board for a new unarmed guard permit. Petitioner's application was introduced and admitted as Respondent's Exhibit 1.
3. Respondent introduced Petitioner's criminal record search for Wake County as Exhibit 2. Exhibit 2 was admitted as part of the record. The criminal record check revealed the following convictions:

 (1) Wake County 10/3/07 (M) Larceny Guilty
4. Mr. Bonapart testified that pursuant to Petitioner's criminal conviction, Petitioner's application for registration was denied. Respondent Board introduced as Exhibit 3, a "For Cause" denial letter dated December 10, 2010. Exhibit 3 was admitted as part of the record.

5. Petitioner testified on his own behalf. Petitioner admitted to the criminal conviction on his record. Petitioner explained that the incident occurred while he was working for a company in Morrisville, North Carolina as a forklift driver. He stated that one of the truck drivers who delivered products would sell MP3 players and memory cards to the employees. He related that the driver would take products from the inventory and falsify the paperwork in order to hide the theft. One day after Petitioner had purchased some MP3 players and Memory Cards, he was pulled over by the police, who searched his vehicle. He was charged with felony larceny, but worked with the police to catch the driver, and then accepted a plea bargain with the district attorney for misdemeanor larceny.

6. Petitioner also introduced a letter from his employer giving Petitioner high praise and stating that Petitioner's efforts have helped secure a contract extension for the company with a client.

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

CONCLUSIONS OF LAW

1. The parties are properly before the Office of Administrative Hearings. Respondent is an "occupational licensing agency" pursuant to N.C. Gen. Stat. § 150B-2(4b).

2. Pursuant to N.C.G.S. § 74C-12(a)(25), Respondent Board may refuse to grant a registration if it is determined that the applicant lacks good moral character or has demonstrated intemperate habits. Acts that are prima facie evidence of intemperate habits or lack of good moral character are found under N.C.G.S. § 74C-8(d)(2). They include conviction of any crime involving the illegal use, carrying, etc. of a firearm; illegal use, sale, etc. of a controlled substance; conviction of a crime involving felonious assault or other act of violence; conviction of burglary, larceny, etc.; or a history of addiction.

3. "The use of the word 'may' generally connotes permissive or discretionary action and does not mandate or compel a particular act." *Brock and Scott Holding, Inc. v. Stone*, 203 N.C. App. 135, 137, 691 S.E.2d 37, 39 (2010) (quoting *Campbell v. First Baptist Church of the City of Durham*, 298 N.C. 476, 483, 259 S.E.2d 558, 563 (1979)) (emphasis added).

4. Under G.S. § 74C-8(d)(2) conviction of any crime involving a larceny is *prima facie* evidence that the applicant lacks good moral character or temperate habits as contemplated in a refusal to grant registration.

5. Larceny is the act of illegally taking away another person's property with the intent to use that property and thus deprive the person of their rightful possession.

6. Good moral character has been defined as "honesty, fairness, and respect for the rights of others and for the laws of state and nation." See *Daniel Brannon Gray v. N.C. Sheriffs*

Education and Training Standards Commission, 09 DOJ 4364 (March 15, 2010 citing *In Re Willis*, 299 N.C. 1, 10 (1975).

7. Respondent Board presented evidence that Petitioner had demonstrated intemperate habits and lacked good moral character through his criminal record.

BASED UPON the foregoing Findings of Fact and Conclusions of Law the Undersigned makes the following:

PROPOSAL FOR DECISION

The Undersigned finds and holds that there is sufficient evidence in the record to properly and lawfully support the Conclusions of Law cited above. The weight of the evidence in this case sustains the holding of the Respondent to deny Petitioner's application for an Unarmed Permit. In accordance with N.C.G.S. § 74C-12(a)(25), Respondent Board may refuse to grant a registration if it is determined that the applicant lacks good moral character or has demonstrated intemperate habits. As Petitioner's letter of recommendation was submitted after the hearing with no chance of Respondent exploring its contents, the Board should explore its contents with Petitioner and Respondent before issuing a final decision.

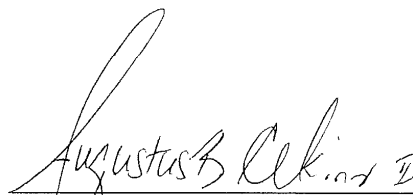
NOTICE

The agency making the final decision in this contested case is required to give each party an opportunity to file exceptions to this Proposal for Decision, to submit proposed findings of fact, and to present oral and written arguments to the agency. N.C.G.S. § 150B-40(e). The agency that will make the final decision in this contested case is the North Carolina Private Protective Services Board.

A copy of the final agency decision or order shall be served upon each party personally or by certified mail addresses to the party at the latest address given by the party to the agency and a copy shall be furnished to his attorney of record. N.C.G.S. § 150B-42(a). It is requested that the agency furnish a copy to the Office of Administrative Hearings.

IT IS SO ORDERED.

This is the 8th day of August, 2013.

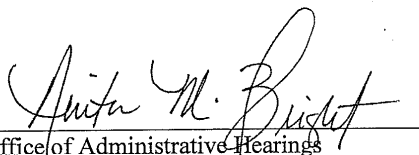

Augustus B. Elkins II
Administrative Law Judge

A copy of the foregoing was mailed to:

ANTONIO R DICKENS
411 EAST JONES STREET
FUQUAY VARINA, NC 27526
Petitioner

JEFFREY D. McKINNEY
BAILEY & DIXON, LLP
PO BOX 1351
RALEIGH, NC 27602
Attorney For Respondent

This the 9th day of August, 2013.



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STATE OF NORTH CAROLINA

COUNTY OF WAKE

Filed

2013 JUN -9 PM 5:04

IN THE OFFICE OF

ADMINISTRATIVE HEARINGS

13 DOJ 9038

DANIELLE J. RANKIN,
Petitioner,

v.

N.C. PRIVATE PROTECTIVE
SERVICES BOARD,
Respondent.

Office of
Administrative Hearings

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PROPOSAL FOR DECISION

THE ABOVE-ENTITLED MATTER was heard before the undersigned Augustus B. Elkins II, Administrative Law Judge, on April 23, 2012 in Raleigh, North Carolina. This case was heard pursuant to N.C.G.S. § 150B-40(e), designation of an Administrative Law Judge to preside at the hearing of a contested case under Article 3A, Chapter 150B of the North Carolina General Statutes. The record was left open for the parties' submission of further materials, including but not limited to supporting briefs, memorandums of law and proposals. The Petitioner submitted no further material. Respondent filed proposals with the Clerk's Office on June 21, 2013 which was received by the Undersigned on June 25, 2013. The record was closed on June 25, 2013.

APPEARANCES

Petitioner appeared *pro se*.

Respondent was represented by Jeffrey D. McKinney.

WITNESSES

For Petitioner – Petitioner testified on her own behalf.

For Respondent – Anthony Bonapart, Deputy Director, testified for Respondent Board.

ISSUE

Whether grounds exist for Respondent to deny Petitioner's application for a new unarmed guard registration permit pursuant to N.C. Gen. Stat. § 74C-1 *et seq.* based on Petitioner's lack of good moral character and temperate habits.

STATUTES AND RULES APPLICABLE TO THE CONTESTED CASE

Official notice is taken of the following statutes and rules applicable to this case:

N.C. Gen. Stat. §§ 74C-3(a)(6); 74C-8; 74C-9; 74C-11; 74C-12;
12 NCAC 7D § .0700.

EXHIBITS

Petitioner's Exhibits A-C were introduced and admitted.

Respondent's Exhibits 1-4 were introduced and admitted.

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

FINDINGS OF FACT

1. Respondent Board is established pursuant to N.C. Gen. Stat. § 74C-1, *et seq.*, and is charged with the duty of licensing and registering individuals engaged in the armed and unarmed guard business.
2. On October 10, 2012, Petitioner's applied to Respondent Board for a new unarmed guard permit. Petitioner's application was admitted as Respondent's Exhibit 1.
3. Respondent also introduced Petitioner's criminal record check for Rowan County as Exhibit 2 and for Durham County as Exhibit 3. Respondent's Exhibits 2 and 3 were admitted as part of the Record.
4. Petitioner's criminal record check revealed the following convictions:

(1)	Durham County	11/12/08	(M)	Hit/Run; Fail to Stop; Property Damage	Guilty
(2)	Rowan County	10/30/07	(M)	Simple Worthless Check	Guilty
(3)	Rowan County	10/30/07	(M)	Simple Worthless Check	Guilty

(4)	Rowan County	10/30/07	(M)	Simple Worthless Check	Guilty
(5)	Rowan County	10/30/07	(M)	Simple Worthless Check	Guilty

5. Mr. Bonapart testified that pursuant to Petitioner's criminal conviction, Petitioner's application for registration was denied. Respondent Board introduced as Exhibit 4, a "For Cause" denial letter dated December 17, 2012. Exhibit 4 was admitted as part of the record.

6. Petitioner testified on her own behalf. Petitioner admitted to the criminal convictions on her record. Petitioner explained that the simple worthless check convictions arose from an incident where she paid for gas with a check at a point when she thought she had money in the bank. Thereafter, Petitioner wrote a series of bad check in what she explained was an effort to fix the initial mistake. Petitioner entered a plea of guilty and testified that she paid all the related fines. Petitioner explained that she was a parent who was also attending school. She believed that taking responsibility for her mistakes and dealing with them showed the true strength of character that she had.

7. Petitioner testified that the hit and run incident arose four and a half years ago when she allowed a relative to drive a car that Petitioner had rented. Petitioner explained that the relative hit another car, and then fled the scene to return to Petitioner's apartment. The police ran the tags and found the vehicle. Petitioner was charged as the vehicle was rented in her name. Petitioner's relative refused to testify in the trial. Petitioner was found guilty.

8. Petitioner also introduced several letters of character recommendation. Paulette Thorpe, Petitioner's supervisor at Dick's Sporting Goods for three years, stated that Petitioner had access and worked with sensitive information including social security numbers and account numbers and that Petitioner could be trusted. She also found that Petitioner not only worked well as a team but individually was a person who paid attention to detail. Another employer, Samuel Whitted, manager at Winn Dixie, stated he had known Petitioner for eleven years and found her trustworthy in not only handling money but in following procedures and completing daily tasks.

9. Candy Redmond, IT Manager at the RTP campus of Strayer University, wrote that Petitioner was organized and responsible with excellent communication skills. She further found Petitioner to be an easy going individual who had an excellent rapport with persons of all ages.

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

CONCLUSIONS OF LAW

1. The parties are properly before the Office of Administrative Hearings. Respondent is an "occupational licensing agency" pursuant to N.C. Gen. Stat. § 150B-2(4b).

2. Pursuant to N.C.G.S. § 74C-12(a)(25), Respondent Board may refuse to grant a registration if it is determined that the applicant lacks good moral character or has demonstrated

intemperate habits. Acts that are *prima facie* evidence of intemperate habits or lack of good moral character are found under N.C.G.S. § 74C-8(d)(2). They include conviction of any crime involving the illegal use, carrying, etc. of a firearm; illegal use, sale, etc. of a controlled substance; conviction of a crime involving felonious assault or other act of violence; conviction of burglary, larceny, etc.; or a history of addiction.

3. Under G.S. § 74C-8(d)(2), which provides a non-exhaustive list, conviction of any crime involving a larceny is *prima facie* evidence that the applicant does not have good moral character or temperate habits.

4. Under G.S. § 14-107, Worthless Checks, “It is unlawful for any person, firm or corporation, to draw, make, utter or issue and deliver to another, any check or draft on any bank or depository, for the payment of money or its equivalent, knowing at the time of the making, drawing, uttering, issuing and delivering the check or draft, that the maker or drawer of it has not sufficient funds on deposit in or credit with the bank or depository with which to pay the check or draft upon presentation.”

5. Larceny is the act of illegally taking away another person's property with the intent to use that property and thus deprive the person of their rightful possession. Larceny of property under \$1000 is a class 1 misdemeanor.

6. The United States Supreme Court has described the term “good moral character” as being “unusually ambiguous.” In *Konigsberg v. State*, 353 U.S. 252, 262-63 (1957), the Court explained: The term good moral character...is by itself...*unusually ambiguous*. It can be defined in an almost unlimited number of ways for any definition will necessarily reflect the attitudes, experiences, and prejudices of the definer. Such a vague qualification, which is easily adapted to fit personal views and predilections, can be a dangerous instrument for arbitrary and discriminatory denial.... Police administrators, officers and others have considerable differences of opinion as to what constitutes good moral character.”

7. Because of concerns about the flexibility and vagueness of the good moral character rule, any denial, suspension or revocation based on an allegation of a lack of good moral character should be reserved for clear and severe cases of misconduct. See *Jonathan Mims v. North Carolina Sheriff's Education and Training Standards Commission*, 02 DOJ 1263, 2003 WL 22146102

8. Petitioner presented evidence sufficient to explain the misdemeanor convictions and to rebut the evidence of lack of good moral character and temperate habits.

9. Further, in accordance with N.C.G.S. § 74C-12(a)(25), Respondent Board *may* refuse to grant a registration if it is determined that the applicant lacks good moral character or has demonstrated intemperate habits. (emphasis added) “The use of the word ‘*may*’ generally connotes permissive or discretionary action and does not mandate or compel a particular act.” *Brock and Scott Holding, Inc. v. Stone*, 203 N.C. App. 135, 137, 691 S.E.2d 37, 39 (2010) (quoting *Campbell v. First Baptist Church of the City of Durham*, 298 N.C. 476, 483, 259 S.E.2d 558, 563 (1979)) (emphasis added).

BASED UPON the foregoing Findings of Fact and Conclusions of Law the Undersigned makes the following:

PROPOSAL FOR DECISION

The Undersigned finds and holds that there is sufficient evidence in the record to properly and lawfully support the Conclusions of Law cited above. The weight of the evidence in this case sustains a holding, and the Undersigned so proposes, that the Board **REVERSE** its initial decision to deny Petitioner's application for an Unarmed Permit.

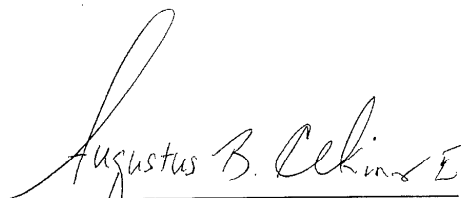
NOTICE

The agency making the final decision in this contested case is required to give each party an opportunity to file exceptions to this Proposal for Decision, to submit proposed findings of fact, and to present oral and written arguments to the agency. N.C.G.S. § 150B-40(e). The agency that will make the final decision in this contested case is the North Carolina Private Protective Services Board.

A copy of the final agency decision or order shall be served upon each party personally or by certified mail addresses to the party at the latest address given by the party to the agency and a copy shall be furnished to his attorney of record. N.C.G.S. § 150B-42(a). It is requested that the agency furnish a copy to the Office of Administrative Hearings.

IT IS SO ORDERED.

This is the 7th day of August, 2013.



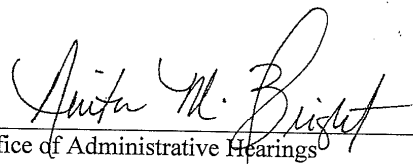
Augustus B. Elkins II
Administrative Law Judge

On this date mailed to:

DANIELLE J RANKIN
1710 PALMER STREET APT F
DURHAM, NC 27707
PETITIONER

JEFFREY D. MCKINNEY
BAILEY & DIXON, LLP
PO BOX 1351
RALEIGH, NC 27602
ATTORNEY FOR RESPONDENT

This the 9th day of August, 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 WAKE

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
13 DOJ 13859

CHRISTOPHER T. PLACE

Petitioner,

v.

N.C. ALARM SYSTEMS LICENSING
BOARD,

Respondent.

**PROPOSAL
FOR
DECISION**

This contested case was heard before Senior Administrative Law Judge Fred G. Morrison Jr. on July 23, 2013, in Raleigh, North Carolina.

APPEARANCES

Petitioner appeared *pro se*.

Respondent was represented by attorney Jeffrey P. Gray.

WITNESSES

Petitioner - Petitioner testified on his own behalf.

Respondent - Alarm Systems Licensing Board Deputy Director Anthony Bonapart testified for Respondent Board.

ISSUE

Whether grounds exist for Respondent to deny Petitioner's application for an alarm systems registration permit based on Petitioner's conviction of crimes involving moral turpitude and a lack of good moral character or temperate habits.

BURDEN OF PROOF

Respondent has the burden of proving that Petitioner lacks good moral character or temperate habits. Petitioner may rebut Respondent's showing.

STATUTES AND RULES APPLICABLE TO THE CONTESTED CASE

Official notice is taken of the following statutes and rules applicable to this case:
N.C.G.S. §§ 74D-2; 74D-6; 74D-8; 74D-10; 12 NCAC 11 .0300, *et seq.*

FINDINGS OF FACT

1. The parties received notice of hearing by certified mail more than 15 days prior to the hearing and each stipulated on the record that notice was proper.
2. Respondent Board is established under N.C.G.S. § 74D-4, *et seq.*, and is charged with the duty of licensing and registering individuals engaged in the alarm systems business.
3. By application dated November 21, 2012, Petitioner applied to Respondent Board for an Alarm Registrant Permit. (R. Ex. 1). On the application, Petitioner answered "yes" to the following question: "Have you ever pled guilty or been convicted of any crime (Felony or Misdemeanor)?"
4. A criminal record search revealed that on June 22, 2000, Petitioner had been convicted of the Class C Felony of Possess without a prescription. He worked out a plea deal and completed probation, drug rehab, and community service successfully.
5. By letter dated March 13, 2013, Respondent denied Petitioner's application for alarm registration "For Cause" based on the above criminal convictions. (R. Ex. 2).
6. Petitioner is 34 years old and has completed high school and one year of college. He moved to North Carolina in 2006. He's been married for 13 years and has two children. He was 21 at the time of his offense, fulfilled all sentence requirements, and has been law-abiding since June 2000. He works regularly, cares for his family, teaches Sunday School, and is a good role model for his children.

CONCLUSIONS OF LAW

1. The parties are properly before the Office of Administrative Hearings. Conviction of a crime involving illegal possession, sale and distribution of drugs is prima facie evidence that the applicant lacks good moral character or

temperate habits.

2. Respondent Board presented evidence of Petitioner's conviction of a crime involving moral turpitude and his lack of good moral character and temperate habits.
3. Petitioner presented evidence sufficient to rebut the prima facie evidence of lack of good moral character and temperate habits. The crime was committed more than thirteen (13) years ago and Petitioner has presented evidence indicating maturity, rehabilitation and responsibility since then.

Based on the foregoing, the undersigned renders the following:

PROPOSAL FOR DECISION

It is proposed that the Board **REVERSE** its initial decision to deny Petitioner's application for alarm registration on the basis that Petitioner has rebutted the original presumption that he lacks good moral character or temperate habits.

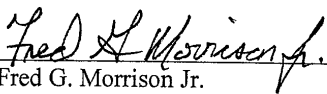
ORDER

It is hereby ordered that the agency serve a copy of the final decision on the Office of Administrative Hearings, 6714 Mail Service Center, Raleigh, NC 27699-6714, in accordance with G.S. §150B-40(e).

NOTICE

The North Carolina Alarm Systems Licensing Board is the agency that will make the Final Decision in this case. As the final decision-maker, that agency is required to give each party an opportunity to file exceptions to this Proposal for Decision, to submit proposed findings of fact, and to present oral and written arguments to the agency pursuant to N.C.G.S. §150B-40(e).

This the 2nd day of August, 2013.

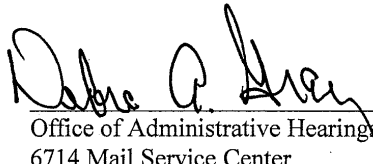

Fred G. Morrison Jr.
Senior Administrative Law Judge

A copy of the foregoing was mailed to:

Christopher T. Place
3614 East Cotton Gin Drive
Clayton, NC 27527
PETITIONER

Jeffrey P. Gray
Bailey & Dixon, LLP
PO Box 1351
Raleigh, NC 27602
ATTORNEY FOR RESPONDENT

This the 2nd day of August, 2013.


Office of Administrative Hearings
6714 Mail Service Center
Raleigh, North Carolina 27699-6714
FAX: 919-431-3100
Telephone: 919-431-3000