

NORTH CAROLINA REGISTER

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March 17, 2014

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Contact List for Rulemaking Questions or Concerns

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

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

Office of Administrative Hearings
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Fiscal Notes & Economic Analysis and Governor's Review

Office of State Budget and Management

116 West Jones Street

(919) 807-4700

Raleigh, North Carolina 27603-8005

(919) 733-0640 FAX

Contact: Anca Grozav, Economic Analyst

osbmruleanalysis@osbm.nc.gov

(919) 807-4740

NC Association of County Commissioners

215 North Dawson Street

(919) 715-2893

Raleigh, North Carolina 27603

contact: Amy Bason

amy.bason@ncacc.org

NC League of Municipalities

(919) 715-4000

215 North Dawson Street

Raleigh, North Carolina 27603

contact: Erin L. Wynia

ewynia@nclm.org

Legislative Process Concerning Rule-making

Joint Legislative Administrative Procedure Oversight Committee

545 Legislative Office Building

300 North Salisbury Street

(919) 733-2578

Raleigh, North Carolina 27611

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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) text of proposed rules;
- (3) text of permanent rules approved by the Rules Review Commission;
- (4) emergency rules
- (5) Executive Orders of the Governor;
- (6) 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; and
- (7) 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 Human Resources 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 ***

**Proposed Amendment to ROTATION WRECKER SERVICE REGULATIONS
RESCHEDULED PUBLIC HEARING**

Notice is hereby given in accordance with G.S. 150B-21.2 that the Department of Public Safety/State Highway Patrol intends to amend the rule cited as 14B NCAC 07A .0116.

[Click here to read the full text of Title 14B NCAC 07A .0116 along with the proposed changes.](#)

Proposed Effective Date: *July 1, 2014*

Public Hearing: **Date and time changed due to inclement weather.**

~~**Date:** *March 4, 2014*~~ ***April 2, 2014***

~~**Time:** *9:00 a.m.*~~ ***10:00 a.m.***

Location: *SHP Troop C Headquarters, 1831 Blue Ridge Road, Raleigh, NC 27607*

Reason for Proposed Action: *Agency desires to improve existing rules.*

Procedure by which a person can object to the agency on a proposed rule: *The agency will accept written objections to the proposed rule amendment until the expiration of the comment period on April 21, 2014.*

Comments may be submitted to:

Captain Freddy L. Johnson Jr.

4231 Mail Service Center

Raleigh, NC 27699-4231

Phone: (919) 436-3072

Fax (919) 733-2161

Email: freddy.johnson@ncdps.gov

Comment period ends: *April 21, 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. If the Rules Review Commission receives written and signed objections in accordance with G.S. 150B-21.3(b)(2) 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.

PUBLIC NOTICE
NORTH CAROLINA ENVIRONMENTAL MANAGEMENT COMMISSION/NPDES UNIT
1617 MAIL SERVICE CENTER
RALEIGH, NC 27699-1617

NOTICE OF INTENT TO ISSUE A NPDES GENERAL WASTEWATER PERMIT

The North Carolina Environmental Management Commission proposes to issue the following NPDES wastewater general permit:

NPDES General Permit No. NCG590000 for the discharge of filter backwash, sedimentation washdown, and decant water from water treatment plants (or other similar activities).

Written comments regarding the proposed general permit will be accepted until 30 days after the publish date of this notice. The Director of the NC Division of Water Resources (DWR) may hold a public hearing should there be a significant degree of public interest. Please mail comments and/or information requests to DWR at the above address. Interested persons may visit the DWR/NPDES Unit at 512 N. Salisbury Street, Raleigh, NC to review information on file. Additional information on this notice may be found on our website: <http://portal.ncdenr.org/web/wq/swp/ps/npdes/calendar>, or by contacting Julie Grzyb at (919) 807-6389.

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 02 – DEPARTMENT OF AGRICULTURE

Notice is hereby given in accordance with G.S. 150B-21.2 that the Commissioner of Agriculture intends to amend the rules cited as 02 NCAC 52K .0301, .0401 and .0501.

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

- ☐ OSBM certified on:
☒ RRC certified on: February 20, 2014
☐ Not Required

Link to agency website pursuant to G.S. 150B-19.1(c):
<http://www.ncagr.gov/ProposedRules/index.htm>

Proposed Effective Date: July 1, 2014

Instructions on How to Demand a Public Hearing: (must be requested in writing within 15 days of notice): Any person may request a public hearing on the proposed rules by submitting a request in writing no later than April 1, 2014 to Chrissy Waggett, Rulemaking Coordinator, 1001 Mail Service Center, Raleigh, NC 27699-1001.

Reason for Proposed Action: Rule changes are proposed to broaden the list of people who may be at increased risk of illness to be consistent with recent guidance from the Center for Disease Control and Prevention, to maintain the separation of patrons from manure and bedding while still allowing for managed interaction with animals, and to reduce the potential for introduction of disease from people to animals that are part of a milking booth. Several technical corrections are also proposed based on comments from RRC Counsel.

Comments may be submitted to: Chrissy Waggett, 1001 Mail Service Center, Raleigh, NC 27699-1001; email christina.waggett@ncagr.gov

Comment period ends: May 16, 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 52 – VETERINARY DIVISION

SUBCHAPTER 52K – ANIMAL EXHIBITIONS

SECTION .0300 - SIGNAGE

02 NCAC 52K .0301 SIGNAGE

An animal contact exhibit shall provide visible signage at the entrance and exit of the exhibit to educate the public regarding:

- (1) the fact that animal contact may pose a health risk;
- (2) items that are prohibited in animal areas;
- (3) in the identity of high risk populations, including:
 - (a) the elderly;
 - (b) children under the age of six; ~~and~~
 - (c) women who are pregnant; and
 - (d) people with an existing health condition; and
- (4) the location of hand-washing stations.

Authority G.S. 106-520.3A.

SECTION .0400 – OPERATIONS AND STAFFING

02 NCAC 52K .0401 FENCING

(a) Animals and bedding shall be separated from the public with fencing to minimize the public's contact with manure and bedding. This does not apply to ~~persons riding ponies or horses or adults accompanying children riding ponies or horses; to:~~

- (1) animal rides (including, but not limited to, pony, camel, and elephant rides);
- (2) milking booths; or
- (3) the petting of an animal held or restrained outside of its housing area by an exhibit operator or patron as part of an educational or

photographic opportunity where there is limited possibility of contact with manure and bedding.

~~(b) Fencing may allow children to reach through or over to pet and feed animals.~~

~~(c) Fencing shall be at least 29 inches high. On the side(s) of the exhibit intended for public contact, the fencing shall have a solid board or panel at the bottom at least eight inches high to contain manure and bedding.~~

(b) Fencing shall be at least 29 inches high. On the side(s) of the exhibit intended for public contact, the fencing shall have a solid board or panel at the bottom at least eight inches high to contain manure and bedding.

(c) Fencing may allow children to reach through or over the pet and feed animals.

Authority G.S. 106-520.3A.

SECTION .0500 – FOOD, DRINK AND HAND-WASHING

02 NCAC 52K .0501 HAND-WASHING STATIONS

(a) Hand-washing stations with soap, running water, paper towels and disposal containers shall be located within 10 feet of the exit of an animal contact exhibit, wherever feasible.

(b) Hand-washing stations suitable for small children shall be available in the same ~~area~~ area as the stations in Paragraph (a) of this Rule.

(c) Signage shall be provided to direct patrons to hand-washing stations.

(d) In order to promote hand-washing with soap and water, dispensers for waterless hand sanitizing lotions, gels or hand wipes shall not be provided in the transition or exhibit area. Such dispensers may be placed at the entrance to milking booths to reduce the potential for introduction of disease to the exhibit animals.

Authority G.S. 106-520.3A.

TITLE 10A – DEPARTMENT OF HEALTH AND HUMAN SERVICES

Notice is hereby given in accordance with G.S. 150B-21.2 that the Commission for Public Health intends to amend the rule cited as 10A NCAC 41A .0101.

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

- ☒ **OSBM certified on:** February 19, 2014
- ☐ **RRC certified on:**
- ☐ **Not Required**

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

Proposed Effective Date: July 1, 2014

Public Hearing:

Date: April 17, 2014

Time: 9:00 a.m.

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

Reason for Proposed Action: When the 2009 H1N1 influenza pandemic was first identified, the North Carolina Division of Public Health requested local health departments to voluntarily report all confirmed and probable 2009 H1N1 influenza cases, including fatal cases. This requirement ended on September 23, 2009. The State Health Director then issued a temporary order pursuant to G.S. 130A-141.1 requiring physicians licensed to practice medicine in this State to report all influenza-associated deaths in persons 18 years of age or older. (Influenza-associated deaths in persons less than 18 years of age were made reportable in 2004.) The temporary order was subsequently adopted by the Rules Review Commission as a temporary rule. The temporary rule expired on September 11, 2010.

The reporting of all influenza deaths was deemed critical to influenza surveillance efforts and was critical in helping public health officials identify and characterize the groups who are at highest risk so that they could design appropriate public health interventions to help save lives. As such, the Commission adopted a permanent amendment to the rule that required that all flu deaths be reported. The amendment was adopted and became effective April 1, 2011. However, when the rule was more recently amended for HIV reporting changes, the language requiring flu death reporting was inadvertently removed from the rule. This amendment re-establishes flu death reporting for all ages.

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

Comment period ends: May 16, 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 41 – HEALTH: EPIDEMIOLOGY

SUBCHAPTER 41A – COMMUNICABLE DISEASE CONTROL

SECTION .0100 – REPORTING OF COMMUNICABLE DISEASES

10A NCAC 41A .0101 REPORTABLE DISEASES AND CONDITIONS

(a) The following named diseases and conditions are declared to be dangerous to the public health and are hereby made reportable within the time period specified after the disease or condition is reasonably suspected to exist:

- (1) acquired immune deficiency syndrome (AIDS) - 24 hours;
- (2) anthrax - immediately;
- (3) botulism - immediately;
- (4) brucellosis - 7 days;
- (5) campylobacter infection - 24 hours;
- (6) chancroid - 24 hours;
- (7) chlamydial infection (laboratory confirmed) - 7 days;
- (8) cholera - 24 hours;
- (9) Creutzfeldt-Jakob disease – 7 days;
- (10) cryptosporidiosis – 24 hours;
- (11) cyclosporiasis – 24 hours;
- (12) dengue - 7 days;
- (13) diphtheria - 24 hours;
- (14) Escherichia coli, shiga toxin-producing - 24 hours;
- (15) ehrlichiosis – 7 days;
- (16) encephalitis, arboviral - 7 days;
- (17) foodborne disease, including Clostridium perfringens, staphylococcal, Bacillus cereus, and other and unknown causes - 24 hours;
- (18) gonorrhea - 24 hours;
- (19) granuloma inguinale - 24 hours;
- (20) Haemophilus influenzae, invasive disease - 24 hours;
- (21) Hantavirus infection – 7 days;
- (22) Hemolytic-uremic syndrome – 24 hours;
- (23) Hemorrhagic fever virus infection – immediately;
- (24) hepatitis A - 24 hours;
- (25) hepatitis B - 24 hours;
- (26) hepatitis B carriage - 7 days;
- (27) hepatitis C, acute – 7 days;
- (28) human immunodeficiency virus (HIV) infection confirmed - 24 hours;
- (29) influenza virus infection causing death in persons less than 18 years of age – 24 hours;
- (30) legionellosis - 7 days;
- (31) leprosy – 7 days;
- (32) leptospirosis - 7 days;
- (33) listeriosis – 24 hours;
- (34) Lyme disease - 7 days;

- (35) lymphogranuloma venereum - 7 days;
- (36) malaria - 7 days;
- (37) measles (rubeola) - 24 hours;
- (38) meningitis, pneumococcal - 7 days;
- (39) meningococcal disease - 24 hours;
- (40) monkeypox – 24 hours;
- (41) mumps - 7 days;
- (42) nongonococcal urethritis - 7 days;
- (43) novel influenza virus infection – immediately;
- (44) plague - immediately;
- (45) paralytic poliomyelitis - 24 hours;
- (46) pelvic inflammatory disease – 7 days;
- (47) psittacosis - 7 days;
- (48) Q fever - 7 days;
- (49) rabies, human - 24 hours;
- (50) Rocky Mountain spotted fever - 7 days;
- (51) rubella - 24 hours;
- (52) rubella congenital syndrome - 7 days;
- (53) salmonellosis - 24 hours;
- (54) severe acute respiratory syndrome (SARS) – 24 hours;
- (55) shigellosis - 24 hours;
- (56) smallpox - immediately;
- (57) Staphylococcus aureus with reduced susceptibility to vancomycin – 24 hours;
- (58) streptococcal infection, Group A, invasive disease - 7 days;
- (59) syphilis - 24 hours;
- (60) tetanus - 7 days;
- (61) toxic shock syndrome - 7 days;
- (62) trichinosis - 7 days;
- (63) tuberculosis - 24 hours;
- (64) tularemia – immediately;
- (65) typhoid - 24 hours;
- (66) typhoid carriage (Salmonella typhi) - 7 days;
- (67) typhus, epidemic (louse-borne) - 7 days;
- (68) vaccinia – 24 hours;
- (69) vibrio infection (other than cholera) – 24 hours;
- (70) whooping cough – 24 hours; and
- (71) yellow fever - 7 days.

(b) For purposes of reporting, "confirmed human immunodeficiency virus (HIV) infection" is defined as a positive virus culture, repeatedly reactive EIA antibody test confirmed by western blot or indirect immunofluorescent antibody test, positive nucleic acid detection (NAT) test, or other confirmed testing method approved by the Director of the State Public Health Laboratory conducted on or after February 1, 1990. In selecting additional tests for approval, the Director of the State Public Health Laboratory shall consider whether such tests have been approved by the federal Food and Drug Administration, recommended by the federal Centers for Disease Control and Prevention, and endorsed by the Association of Public Health Laboratories.

(c) In addition to the laboratory reports for Mycobacterium tuberculosis, Neisseria gonorrhoeae, and syphilis specified in G.S. 130A-139, laboratories shall report:

- | | |
|---|--|
| <p>(1) Isolation or other specific identification of the following organisms or their products from human clinical specimens:</p> <p>(A) Any hantavirus or hemorrhagic fever virus.</p> <p>(B) Arthropod-borne virus (any type).</p> <p>(C) <i>Bacillus anthracis</i>, the cause of anthrax.</p> <p>(D) <i>Bordetella pertussis</i>, the cause of whooping cough (pertussis).</p> <p>(E) <i>Borrelia burgdorferi</i>, the cause of Lyme disease (confirmed tests).</p> <p>(F) <i>Brucella</i> spp., the causes of brucellosis.</p> <p>(G) <i>Campylobacter</i> spp., the causes of campylobacteriosis.</p> <p>(H) <i>Chlamydia trachomatis</i>, the cause of genital chlamydial infection, conjunctivitis (adult and newborn) and pneumonia of newborns.</p> <p>(I) <i>Clostridium botulinum</i>, a cause of botulism.</p> <p>(J) <i>Clostridium tetani</i>, the cause of tetanus.</p> <p>(K) <i>Corynebacterium diphtheriae</i>, the cause of diphtheria.</p> <p>(L) <i>Coxiella burnetii</i>, the cause of Q fever.</p> <p>(M) <i>Cryptosporidium parvum</i>, the cause of human cryptosporidiosis.</p> <p>(N) <i>Cyclospora cayetanensis</i>, the cause of cyclosporiasis.</p> <p>(O) <i>Ehrlichia</i> spp., the causes of ehrlichiosis.</p> <p>(P) Shiga toxin-producing <i>Escherichia coli</i>, a cause of hemorrhagic colitis, hemolytic uremic syndrome, and thrombotic thrombocytopenic purpura.</p> <p>(Q) <i>Francisella tularensis</i>, the cause of tularemia.</p> <p>(R) Hepatitis B virus or any component thereof, such as hepatitis B surface antigen.</p> <p>(S) Human Immunodeficiency Virus, the cause of AIDS.</p> <p>(T) <i>Legionella</i> spp., the causes of legionellosis.</p> <p>(U) <i>Leptospira</i> spp., the causes of leptospirosis.</p> <p>(V) <i>Listeria monocytogenes</i>, the cause of listeriosis.</p> <p>(W) Monkeypox.</p> <p>(X) <i>Mycobacterium leprae</i>, the cause of leprosy.</p> <p>(Y) <i>Plasmodium falciparum</i>, <i>P. malariae</i>, <i>P. ovale</i>, and <i>P. vivax</i>, the causes of malaria in humans.</p> | <p>(Z) Poliovirus (any), the cause of poliomyelitis.</p> <p>(AA) Rabies virus.</p> <p>(BB) <i>Rickettsia rickettsii</i>, the cause of Rocky Mountain spotted fever.</p> <p>(CC) Rubella virus.</p> <p>(DD) <i>Salmonella</i> spp., the causes of salmonellosis.</p> <p>(EE) <i>Shigella</i> spp., the causes of shigellosis.</p> <p>(FF) Smallpox virus, the cause of smallpox.</p> <p>(GG) <i>Staphylococcus aureus</i> with reduced susceptibility to vanomycin.</p> <p>(HH) <i>Trichinella spiralis</i>, the cause of trichinosis.</p> <p>(II) Vaccinia virus.</p> <p>(JJ) <i>Vibrio</i> spp., the causes of cholera and other vibrioses.</p> <p>(KK) Yellow fever virus.</p> <p>(LL) <i>Yersinia pestis</i>, the cause of plague.</p> <p>(2) Isolation or other specific identification of the following organisms from normally sterile human body sites:</p> <p>(A) Group A <i>Streptococcus pyogenes</i> (group A streptococci).</p> <p>(B) <i>Haemophilus influenzae</i>, serotype b.</p> <p>(C) <i>Neisseria meningitidis</i>, the cause of meningococcal disease.</p> <p>(3) Positive serologic test results, as specified, for the following infections:</p> <p>(A) Fourfold or greater changes or equivalent changes in serum antibody titers to:</p> <ul style="list-style-type: none"> (i) Any arthropod-borne viruses associated with meningitis or encephalitis in a human. (ii) Any hantavirus or hemorrhagic fever virus. (iii) <i>Chlamydia psittaci</i>, the cause of psittacosis. (iv) <i>Coxiella burnetii</i>, the cause of Q fever. (v) Dengue virus. (vi) <i>Ehrlichia</i> spp., the causes of ehrlichiosis. (vii) Measles (rubeola) virus. (viii) Mumps virus. (ix) <i>Rickettsia rickettsii</i>, the cause of Rocky Mountain spotted fever. (x) Rubella virus. (xi) Yellow fever virus. <p>(B) The presence of IgM serum antibodies to:</p> <ul style="list-style-type: none"> (i) <i>Chlamydia psittaci</i>. (ii) Hepatitis A virus. (iii) Hepatitis B virus core antigen. |
|---|--|

- (iv) Rubella virus.
 - (v) Rubeola (measles) virus.
 - (vi) Yellow fever virus.
- (4) Laboratory results from tests to determine the absolute and relative counts for the T-helper (CD4) subset of lymphocytes and all results from tests to determine HIV viral load.

Authority G.S. 130A-134; 130A-135; 130A-139; 130A-141.

TITLE 12 – DEPARTMENT OF JUSTICE

Notice is hereby given in accordance with G.S. 150B-21.2 that Department of Justice-Division of Criminal Information intends to repeal the rules cited as 12 NCAC 04E .0101-.0106, .0201-.0204, .0301-.0305, .0401-.0405; 04F .0101-.0102, .0201-.0203, .0301-.0303, .0401-.0408, .0501-.0502, .0601-.0604, .0701, .0801; and 04G .0101-.0102, .0201, .0301.

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

- ☐ OSBM certified on:
- ☒ RRC certified on: *November 21, 2013*
- ☐ Not Required

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

Proposed Effective Date: *July 1, 2014*

Public Hearing:

Date: *April 8, 2014*

Time: *10:00 a.m. – 12:00 p.m.*

Location: *SBI Headquarters Auditorium, 3320 Garner Road, Raleigh, NC 27610*

Reason for Proposed Action: *These rules are obsolete, and new rules are being adopted to replace them.*

Comments may be submitted to: *Joshua Hickman, P.O. Box 29500, 3320 Garner Road, Raleigh, NC 27626*

Comment period ends: *May 16, 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

SUBCHAPTER 04E - ORGANIZATIONAL RULES AND FUNCTIONS

SECTION .0100 - GENERAL PROVISIONS

12 NCAC 04E .0101 NAME AND LOCATION

- ~~(a) The name of this agency shall be the North Carolina State Bureau of Investigation Division of Criminal Information.~~
- ~~(b) The acronym used for this agency shall be DCI.~~
- ~~(c) The Administrative Office of DCI is located at 407 North Blount Street, Raleigh, North Carolina, 27601 1073. The telephone number for the agency is (919) 733 3171.~~

Authority G.S. 114-10; 114-10.1.

12 NCAC 04E .0102 FUNCTION OF DCI

- ~~(a) DCI is responsible for the collection, storage and dissemination of information that will assist criminal justice and law enforcement agencies in the performance of their duties. DCI serves as a central telecommunications center linking local, state and national criminal justice and law enforcement agencies for the purposes of collecting, organizing and retrieving data on crimes and criminals. The central computer network operates 24 hours a day, seven days a week.~~
- ~~(b) The DCI computer provides linkage with the following computer systems:~~
 - ~~(1) National Crime Information Center (NCIC);~~
 - ~~(2) National Law Enforcement Telecommunications System (NLETS); and~~
 - ~~(3) North Carolina Division of Motor Vehicles (DMV).~~
- ~~(c) Subscribers to DCI are provided with the capability to:~~
 - ~~(1) transmit or receive any law enforcement related message to any terminal connected to DCI;~~
 - ~~(2) enter into and retrieve information from DCI's recovered vehicle and state wanted persons files. The means is also provided to inquire into DCI's certified operator, certification enrollment, Uniform Crime Reporting (UCR) and Incident Base (I Base) files;~~
 - ~~(3) enter into and retrieve information from NCIC's stolen and recovered property, wanted person and missing person files;~~
 - ~~(4) access NCIC's criminal history data referred to as the Interstate Identification Index (III);~~
 - ~~(5) obtain, on a need to know basis, the record of an individual by inquiring into the state~~

~~Computerized Criminal History (CCH) file maintained by DCI, or CCH files maintained by other states and the Federal Bureau of Investigation (FBI) through the NCIC Interstate Identification Index (II);~~

- ~~(6) communicate with terminals in other states through NLETS with the capability to exchange registration information, criminal history record information, and other law enforcement related information;~~
- ~~(7) obtain information on North Carolina automobile registration, driver's license information and driver's history by accessing state maintained files; and~~
- ~~(8) obtain registration information on all North Carolina registered boats, and to inquire about aircraft registration and aircraft tracking.~~

~~(d) DCI is responsible for the administration of the Uniform Crime Reporting/Incident Base Program in North Carolina. Under these programs, DCI collects, analyzes and publishes statewide crime statistics for comparison purposes, legislative proposals, budgetary analysis, crime pattern comparison, planning and statistical research purposes.~~

~~(e) DCI maintains information on management and evidence tracking services for the North Carolina Department of Justice.~~

Authority G.S. 114-10; 114-10.1.

12 NCAC 04E .0103 ADVISORY POLICY BOARD

~~(a) The DCI Advisory Policy Board shall consist of not less than 14 members selected by the SBI Assistant Director for DCI for recommendation to the Director of the SBI with approval by the North Carolina Attorney General. Members shall serve for a term of two years. Membership shall consist of four police chiefs, four sheriffs, the Criminal Justice Information Services (CJIS) Working Group Local Representative from North Carolina, one representative each from the State Highway Patrol, Administrative Office of the Courts, Department of Correction, Division of Motor Vehicles (Enforcement), and the SBI Assistant Director for DCI. The SBI Assistant Director for DCI may serve as Chairman of the Board. The Board shall meet at least twice each year on dates and at locations determined by the SBI Assistant Director for DCI. If any Advisory Policy Board member or his designated representative is absent for two consecutive meetings, that member shall relinquish membership on the Board for the remainder of that term. Notification of such loss of membership shall be made by the SBI Assistant Director for DCI. The SBI Assistant Director for DCI may designate a replacement member to serve for the remainder of that term.~~

~~(b) The Board shall advise and make recommendations to the SBI Assistant Director for DCI regarding the philosophy, rule making, organization and operation of DCI. Minutes of each Advisory Policy Board meeting shall be recorded and mailed to each criminal justice agency in North Carolina.~~

~~(c) The Advisory Policy Board shall also determine and recommend all penalties applicable to any agency or agency employee with regard to a violation of any of DCI's rules.~~

~~(d) The Advisory Policy Board shall hear all appeals by agencies or individuals that have violated DCI's rules upon~~

~~request of such agencies or individuals. The appeal shall be conducted as an informal hearing.~~

~~(e) The Advisory Policy Board shall provide advice to the SBI Assistant Director for DCI when requested pursuant to the provisions of Subchapter 4F Rule .0407 of this Chapter.~~

~~(f) The Advisory Policy Board shall hear requests for reinstatement of services suspended pursuant to Subchapter 4G Rule .0101(1)(e) of this Chapter.~~

Authority G.S. 114-10; 114-10.1.

12 NCAC 04E .0104 DEFINITIONS

~~The following definitions shall apply throughout Chapter 4 of this Title:~~

- ~~(1) "Administration of Criminal Justice" means the performance of any of the following activities: detection, apprehension, detention, pretrial release, post trial release, prosecution, adjudication, and correctional supervision or rehabilitation of accused criminal offenders. The administration of criminal justice shall include criminal identification activities and the collection, storage, and dissemination of criminal history record information.~~
- ~~(2) "Administrative Message" means messages that may be used by DCI terminal operators to exchange official information of an administrative nature between in state law enforcement/criminal justice agencies and out of state agencies by means of NLETS.~~
- ~~(3) "Authorized Requestor" means any person who is authorized and approved to receive state and national criminal history data by virtue of being:

 - ~~(a) a member of an approved law enforcement/criminal justice agency pursuant to Rule .0201 of this Subchapter; or~~
 - ~~(b) any DCI or NCIC authorized non-criminal justice agency pursuant to local ordinance or a state or federal law.~~~~
- ~~(4) "Automated Fingerprint Identification System" (AFIS) means a computer based system for reading, encoding, matching, storage and retrieval of fingerprint minutiae and images.~~
- ~~(5) "CCH" means computerized criminal history.~~
- ~~(6) "Convicted" or "conviction" means for purposes of DCI operator certification, the entry of:

 - ~~(a) a plea of guilty;~~
 - ~~(b) a verdict or finding of guilt by a jury, judge, magistrate, or other duly constituted, established, and recognized adjudicating body, tribunal, or official, either civilian or military; or~~
 - ~~(c) a plea of no contest, nolo contendere, or the equivalent.~~~~

- (7) ~~"Criminal History Record Information" (CHRI) means information collected by and maintained in the files of criminal justice agencies concerning individuals, consisting of identifiable descriptions, notations of arrest, detentions, indictments or other formal criminal charges. This also includes any disposition, sentencing, correctional supervision, and release information. This term does not include identification information such as fingerprint records to the extent that such information does not indicate formal involvement of the individual in the criminal justice system.~~
- (8) ~~"Criminal Justice Agency" means the courts, a government agency, or any subunit thereof which performs the administration of criminal justice pursuant to statute or executive order and which allocates over 50 percent of its annual budget to the administration of criminal justice.~~
- (9) ~~"Criminal Justice Board" means a board composed of heads of law enforcement/criminal justice agencies which have management control over a communications center.~~
- (10) ~~"DCI" means Division of Criminal Information.~~
- (11) ~~"DCI Manual" means a manual containing guidelines for users on the operation of the DCI equipment and providing explanations as to what information may be accessed through the DCI.~~
- (12) ~~"Direct Access" means an authorized agency has access to the DCI network through a DCI terminal or through a computer interface.~~
- (13) ~~"Disposition" means information on any action which results in termination or indeterminate suspension of the prosecution of a criminal charge.~~
- (14) ~~"Driver's History" means information maintained on individual operators to include name, address, date of birth, license issuance and expiration information or control number issuance information, and moving vehicle violation convictions.~~
- (15) ~~"Dissemination" means any transfer of information, whether orally, in writing, or by electronic means.~~
- (16) ~~"DMV" means the North Carolina Division of Motor Vehicles.~~
- (17) ~~"Expunge" means to remove criminal history record information from the DCI and FBI computerized criminal history and identification files pursuant to state statute.~~
- (18) ~~"Full Access" means the ability of a terminal to access those programs developed and administered by the DCI for local law enforcement and criminal justice agencies specifically including state and national CCH and driver history access. This also includes non criminal justice governmental agencies performing criminal justice dispatching functions or data processing/information services for criminal justice agencies.~~
- (19) ~~"Full certification" means being operator certified with the ability and knowledge to use the DCI terminal accessing those programs which are developed and administered by DCI for local law enforcement and criminal justice agencies.~~
- (20) ~~"Hardware" means the physical computer equipment or devices and the peripheral equipment forming the DCI information processing system including the Automated Fingerprint Identification System (AFIS).~~
- (21) ~~"Hot Files" means DCI/NCIC files which contain information on stolen and recovered property and wanted/missing persons as entered by agencies across the nation.~~
- (22) ~~"Inappropriate Message" means any message which is incomplete, unnecessary, excessive, abusive, or not in keeping with the rules and regulations of DCI.~~
- (23) ~~"Incident Base" is a system used to collect criminal offense and arrest information for each criminal offense reported.~~
- (24) ~~"Indirect Access" means access to DCI through another agency's direct access terminal.~~
- (25) ~~"In-service Certification" means an operator's certification program provided by local departments and approved by DCI to certify and re certify their employees.~~
- (26) ~~"Interstate Identification Index (III)" means the FBI's files containing identifying information on persons who have been arrested in the United States for which fingerprints have been submitted to and retained by the FBI.~~
- (27) ~~"Interface" means a method (either software or hardware) to communicate between two computers or computer systems.~~
- (28) ~~"IRKS" means an internal records keeping system which DCI makes available to North Carolina criminal justice agencies. Included in IRKS is a jail record keeping system (JRKS).~~
- (29) ~~"JRKS" means a jail record keeping system that aids agencies in accounting for their jail detainees.~~
- (30) ~~"Limited Access" means the ability of a terminal to access those programs which are developed and administered by the DCI for local law enforcement and criminal justice agencies specifically excluding state and national CCH.~~
- (31) ~~"National Fingerprint File (NFF)" means an FBI maintained enhancement to the Interstate Identification Index whereby only a single~~

- fingerprint card is submitted per state to the FBI for each offender at the national level. Arrest fingerprint cards from the same state for subsequent arrests as well as final dispositions and expungements will be maintained at the state level.
- (32) ~~"NCIC" means the National Crime Information Center which is maintained in Washington, D.C. by the FBI.~~
- (33) ~~"Need to know" means for purposes of the administration of criminal justice or for purposes of criminal justice agency employment.~~
- (34) ~~"NLETS" means National Law Enforcement Telecommunications System, which is maintained in Phoenix, Arizona.~~
- (35) ~~"Non criminal Justice Agency" means any agency created by law with the statutory authority to access State Bureau of Investigation criminal history files for purposes of non criminal justice licensing or employment, a non criminal justice governmental agency performing a non criminal justice function, a governmental agency performing data processing/information services for a criminal justice agency, or a private contractor pursuant to a specific agreement with a criminal justice agency or a non criminal justice agency previously described.~~
- (36) ~~"Non criminal Justice Information" means information that does not directly pertain to the necessary operation of a law enforcement/criminal justice agency.~~
- (37) ~~"Official Record Holder" means the eligible agency that maintains the master documentation and all investigative supplements of the hot file entry.~~
- (38) ~~"Operator Identifier" means a unique identifier assigned by DCI to all certified operators which is used for gaining access to the DCI network and for the identification of certified operators.~~
- (39) ~~"Ordinance" means a rule or law promulgated by a governmental authority especially one adopted and enforced by a municipality or other local authority.~~
- (40) ~~"ORI" means originating routing identifier, which is a unique alpha numeric identifier assigned by NCIC to each authorized criminal justice agency, identifying that agency in all computer transactions.~~
- (41) ~~"Private Agency" means any agency that has contracted with a government agency to provide services necessary to the administration of criminal justice.~~
- (42) ~~"Re certification" means renewal of an operator's initial certification every 24 months.~~
- (43) ~~"Right to know" means for the right of an individual to inspect his or her own record or for other purposes as set forth by statute or court order.~~
- (44) ~~"Secondary Dissemination" means the transfer of CCH/CHRI information to anyone legally entitled to receive such information who is outside the initial user agency.~~
- (45) ~~"Servicing Agreement" means an agreement between a terminal agency and a non terminal agency to provide DCI terminal services.~~
- (46) ~~"State" means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico and any territory or possession of the United States.~~
- (47) ~~"Statute" means a law enacted by a state's legislative branch of government.~~
- (48) ~~"Switched Message" means messages that may be used by DCI terminal personnel to exchange official information between law enforcement/criminal justice agencies within North Carolina.~~
- (49) ~~"Terminal" means a video screen with a typewriter keyboard used by DCI to accomplish message switching, DMV inquiries, functional messages, and DCI, NCIC, NLETS on line file transactions.~~
- (50) ~~"Terminal Agency" means any agency that has obtained a DCI terminal.~~
- (51) ~~"UCK" means a Uniform Crime Reporting program to collect a summary of criminal offense and arrest information.~~
- (52) ~~"User Agreement" means an agreement between a terminal agency and DCI whereby the agency agrees to meet and fulfill all DCI rules.~~

Authority G.S. 114-10; 114-10.1.

12 NCAC 04E .0105 FORMS

- (a) ~~DCI maintains and supplies a variety of forms for the gathering of statistical information, the orderly housing of records, and participation in the fingerprinting process. Forms maintained and supplied by DCI are as follows:~~
- (1) ~~Uniform Crime Reporting (UCR), and Incident Base (I Base). This is a series of forms used to collect local criminal offense and arrest information for statistical analysis and publication;~~
 - (2) ~~Internal Records Keeping System (IRKS). These forms are specifically designed to provide a basic system of documenting criminal investigation and arrest activity;~~
 - (3) ~~Jail Records Keeping System (JRKS). This is a system of forms designed to enable agencies to adequately account for jail detainees and their belongings;~~
 - (4) ~~Fingerprint Cards. These forms are provided to allow agencies to submit fingerprint cards~~

on individuals processed through the criminal justice system to the SBI pursuant to statute.

(b) ~~These forms with the exception of fingerprint cards, are furnished by DCI to agencies participating in the UCR and I-Base programs and may be obtained by sending a completed preformatted screen over the DCI terminal or by contacting the Administrative Office of DCI listed in Rule .0101 Paragraph (c) of this Section.~~

(c) ~~Fingerprint cards and forms may be obtained by sending a completed preformatted screen over the DCI terminal or by mailing a completed order form to the address indicated on the form ordered.~~

Authority G.S. 114-10; 114-10.1.

12 NCAC 04E .0106 MANUALS

(a) ~~DCI furnishes manuals relating to statistical information and record keeping. These manuals are provided upon request to any criminal justice agency and are also available for inspection at the Administrative Office of DCI listed in Rule .0101 Paragraph (c) of this Section. These manuals are listed as follows:~~

- (1) ~~Uniform Crime Reporting. The UCR Manual (published and provided by the FBI) describes how to accumulate and submit information collected through the Uniform Crime Reporting Program; and~~
- (2) ~~Incident Base. The Incident Base Manual provides descriptions of UCR classification and scoring procedures, descriptions of Incident Base submission requirements, a listing of all codes used in Incident Base reporting, and examples of forms and their completion requirements.~~

(b) ~~DCI has a terminal operators' manual available for inspection by the public during normal working hours only at DCI's Administrative Offices as listed in Rule .0101 Paragraph (c) of this Section.~~

(c) ~~DCI also maintains an on-line manual system. Information contained in the on-line manuals can be accessed from each DCI terminal. The information which can be obtained is limited to those functions which have been authorized for that terminal.~~

Authority G.S. 114-10; 114-10.1.

SECTION .0200 - REQUIREMENTS FOR ACCESS

12 NCAC 04E .0201 ELIGIBILITY FOR FULL OR LIMITED ACCESS TO THE DCI NETWORK

(a) ~~Eligibility for a full access DCI terminal or a computer interface with DCI is restricted to agencies which have obtained an NCIC full access ORI and have complied with Rule .0202 of this Section.~~

(b) ~~Eligibility for a limited access DCI terminal or computer interface with DCI is restricted to agencies which have obtained an NCIC or NLETS assigned limited access ORI and have complied with Rule .0202 of this Section.~~

(c) ~~Any agency in this state desiring an ORI shall make a written request to the SBI Assistant Director for DCI. Accompanying the written request shall be a copy of the state or~~

~~local law which establishes such agency and describes the agency's functions and authority. The SBI Assistant Director for DCI shall, on the basis of his findings, obtain an FBI/NCIC ORI or an NLETS assigned ORI. If the request is denied by the FBI and/or NLETS, the Assistant Director for DCI shall provide written findings to the requesting agency outlining the necessary elements to obtain an ORI.~~

Authority G.S. 114-10; 114-10.1.

12 NCAC 04E .0202 MANAGEMENT CONTROL REQUIREMENTS

~~Each direct access DCI terminal, computer interface with the DCI, and those personnel who operate the terminal must be under the direct and immediate management control of a criminal justice agency, criminal justice board or an NCIC/DCI approved non-criminal justice agency. The degree of management control shall be such that the agency head, board or approved agency has the authority to:~~

- (1) ~~set policies and priorities concerning the use and operation of terminals or computers accessing DCI;~~
- (2) ~~hire, supervise, suspend or dismiss those personnel who will be connected with the operation or use of the terminal or computers accessing DCI;~~
- (3) ~~restrict unauthorized personnel from access or use of equipment accessing DCI; and~~
- (4) ~~assure compliance with all rules and regulations of DCI in the operation of equipment or use of all information received.~~

Authority G.S. 114-10; 114-10.1.

12 NCAC 04E .0203 NON-TERMINAL ACCESS

(a) ~~A non terminal criminal justice agency may gain access to the DCI network through a criminal justice agency which has direct access to the network. The servicing agency (agency providing access) shall enter into a Servicing Agreement with the non terminal agency (agency receiving service) as described in Rule .0303 of this Subchapter.~~

(b) ~~Any servicing agency which fails to enforce penalties that are placed upon the non terminal agency will be in violation of this Rule and subject to the provisions of Subchapter 4G Rule .0102 (c) of this Chapter.~~

(c) ~~A private agency may gain access to the DCI network pursuant to a specific agreement with the terminal agency to provide identified services authorized by the agreement.~~

(d) ~~The agreement shall:~~

- (1) ~~authorize access to specific data;~~
- (2) ~~limit the use of data to purposes for which given;~~
- (3) ~~insure the security and confidentiality of the data consistent with these procedures and;~~
- (4) ~~provide sanctions for violation thereof.~~

(e) ~~Access shall only be granted if the terminal agency agrees.~~

(f) ~~Any dissemination of criminal history record information by a terminal agency to a private agency without an agreement will constitute a violation of this Rule and will be subject to the~~

provisions of Subchapter 4G Rule .0102 Paragraph (k) of this Chapter.

Authority G.S. 114-10; 114-10.1.

12 NCAC 04E .0204 SBI TASK FORCE MANAGEMENT CONTROL

(a) ~~When the SBI Director grants approval for the Bureau to participate in and supervise a joint criminal justice agency task force, those authorized staff assigned to the task force shall be temporarily considered under SBI management control for NCIC/DCI access and certification purposes provided the SBI supervisor responsible for the task force insures that:~~

- ~~(1) Each person assigned to the task force shall be under the direct and immediate management control of any agency qualifying for full access under the provisions of Subchapter 4E Rule .0201(a) of this Chapter;~~
- ~~(2) Each person shall be properly identified in DCI certification records as to the SBI district responsible for him, and the local agency having management control over him pursuant to Subparagraph (a)(1) of this Rule;~~
- ~~(3) The responsible SBI supervisor shall treat all task force staff as SBI employees in all matters pertaining to these Rules; and~~
- ~~(4) The responsible SBI supervisor shall immediately notify DCI in writing of the termination of any task force member upon such member's departure from the task force.~~

~~(b) Any in service certification obtained while a member of a task force shall be terminated upon notification of such member's departure.~~

Authority G.S. 114-10; 114-10.1.

SECTION .0300 - STANDARDS AND AGREEMENTS

12 NCAC 04E .0301 USER AGREEMENT

~~(a) Each eligible agency under Rule .0201 of this Subchapter requesting a DCI terminal shall sign a User Agreement certifying that the agency head has read and understands the requirements for security within DCI, and that the agency head will uphold the agreement and abide by these procedures.~~

~~(b) A current copy of the User Agreement may be reviewed at 407 North Blount Street, Raleigh, North Carolina or in the DCI Manual.~~

~~(c) Each eligible agency under Rule .0201 of this Subchapter with an interface to DCI's computer shall sign a User Agreement as stated in Paragraph (a) of this Rule. An interface agency shall require all agencies connected through their computer to DCI to sign a User Agreement and notify those agencies of their responsibilities to comply with all DCI regulations. A copy of all such agreements shall be provided to DCI.~~

~~(d) DCI shall be notified by the interface agency of any cancellation of services to connected agencies.~~

Authority G.S. 114-10; 114-10.1.

12 NCAC 04E .0302 USER ACCESS FEE AGREEMENT

~~(a) The governing bodies of each jurisdiction having a DCI terminal or an interface to DCI shall enter into an agreement with DCI agreeing to assume user costs established by DCI beginning on the day of installation. This fee is to recover a part of the cost of data processing services.~~

~~(b) DCI maintains four types of user access fee agreements:~~

- ~~(1) municipal access fee agreement;~~
- ~~(2) county access fee agreement;~~
- ~~(3) state purchase order; and~~
- ~~(4) federal purchase order.~~

~~(c) Failure to pay the user access fee within the prescribed time may result in the termination of services. Termination of service shall be preceded by a late notice allowing sufficient time to make payment.~~

Authority G.S. 114-10; 114-10.1.

12 NCAC 04E .0303 SERVICING AGREEMENT

~~(a) Any authorized agency pursuant to Rule .0201 of this Subchapter with direct access to DCI's computer which provides access to a non terminal agency shall enter into a written Servicing Agreement with the serviced agency. The agreement shall include but not be limited to the following information:~~

- ~~(1) the necessity for valid and accurate information being submitted for entry into DCI;~~
- ~~(2) the necessity for documentation to substantiate data entered into DCI;~~
- ~~(3) the necessity of adopting timely measures for entering, correcting or canceling data in DCI;~~
- ~~(4) DCI validation requirements;~~
- ~~(5) the importance of confidentiality of information provided by DCI;~~
- ~~(6) liabilities;~~
- ~~(7) the ability to confirm a hit 24 hours a day;~~
- ~~(8) the necessity of using the ORI of the official record holder in record entries and updates; and~~
- ~~(9) the necessity of using the ORI of the initial user when making inquiries.~~

~~(b) DCI will provide a sample Servicing Agreement to any agency entering into said agreement.~~

~~(c) The Servicing Agreement must be signed by the servicing agency and the non terminal agency, must be notarized, and a copy must be forwarded to DCI.~~

~~(d) DCI shall be notified of any cancellations or changes made in servicing agreements.~~

Authority G.S. 114-10; 114-10.1.

12 NCAC 04E .0304 MANAGEMENT CONTROL AGREEMENT

~~(a) A written Management Control Agreement shall be entered into between the law enforcement management control agency or board and the communications center when management control will be under a criminal justice board. The agreement shall state that the Board is composed of law~~

enforcement/criminal justice agency heads and that requirements pursuant to Rule .0202 of this Subchapter are in effect.

(b) ~~DCI will provide a sample of the Management Control Agreement to requesting agencies.~~

Authority G.S. 114-10; 114-10.1.

12 NCAC 04E .0305 DISCLOSURE AGREEMENT

(a) ~~A written Disclosure Agreement shall be entered into between DCI and any individual or agency seeking access to DCI maintained criminal justice information for purposes of research.~~

(b) ~~The Disclosure Agreement shall state that each participant and employee of every program of research with authorized access to computerized information is aware of the issues of privacy, the limitations regarding the use of accessed information, and that he agrees to abide by DCI's regulations concerning these issues pursuant to Subchapter 4F Rule .0407 of this Chapter.~~

Authority G.S. 114-10; 114-10.1.

SECTION .0400 - OPERATION OF DCI TERMINAL

12 NCAC 04E .0401 DCI TERMINAL OPERATOR

(a) ~~A DCI Terminal operator is a person who has been certified through the DCI certification process as stated in Rule .0402 of this Section.~~

(b) ~~An individual is eligible to attend certification class and become a DCI terminal operator only if employed by and under the management control of an agency as described in Rule .0201 of this Subchapter and only after the individual has had a fingerprint criminal records search completed or a computerized criminal history records search conducted, and filed with the employing agency indicating that the individual is not convicted of a prohibiting criminal offense.~~

(c) ~~The employing agency shall cause a background investigation to be conducted on all employees assigned as DCI operators. Such investigation shall include a state and national fingerprint search for a criminal record. Any individual who has been convicted of a felony or in the judgment of the agency head or the SBI Assistant Director for DCI, has been convicted of a misdemeanor involving fraud, misrepresentation, or deceit shall not be eligible to become certified as a DCI terminal operator or is subject to revocation of operator certification by DCI, in accordance with the periods of suspension set out in 12 NCAC 4E .0404.~~

(d) ~~An employee assigned as a DCI operator and who currently holds valid certification as a sworn law enforcement officer with the powers of arrest through either the North Carolina Criminal Justice Education and Training Standards Commission or the North Carolina Sheriff's Education and Training Standards Commission shall not be subject to the criminal history record and background search provisions of 12 NCAC 4E .0401(b) and (e).~~

Authority G.S. 114-10; 114-10.1.

12 NCAC 04E .0402 CERTIFICATION AND RECERTIFICATION OF DCI OPERATORS

(a) ~~Authorized agency personnel who are assigned the duty of operating a DCI terminal or who operate a terminal accessing DCI via an approved interface shall be certified within 120 days from employment or assignment to terminal operation duties. Certification is to be awarded based on achieving a test score of 80% or greater. Recertification is required every 24 months and can be obtained any time 90 days prior to expiration. Certification and recertification is available by one of the following methods:~~

(1) ~~"General Certification" will be provided by DCI which certifies and recertifies an operator in the broad uses and capabilities available on the DCI network. The initial certification of an operator will be awarded upon attendance and successful completion of the Introduction of DCI Network class. A General Certification student may also take on or more additional modules offered by DCI which teach the specific functions of the Network applicable to their job duties. An operator will only be authorized to perform those functions in which they have been trained and certified. Recertification requires the passing of at least the materials dealing with the "Introduction of DCI Network." Successful recertification can be accomplished by attending General Certification as described above or by enrolling on a "testing only" day until expiration of the current certification period. Failure of any module other than Introduction of DCI Network after the current certification period will require the student to attend the respective class and test except as provided in Paragraph (d) of this Rule. An agency head may require an individual to successfully complete all or certain specified modules prior to receiving certification or recertification.~~

(2) ~~"Specialized Certification" certifies and re-certifies an operator through a specialized training program provided by employing agency or a host interface agency that provides computer access to DCI. Approval for a "Specialized Certification Program" will be based upon special training needs that are not met by the "General Certification Program" or the cost effectiveness for both the user agency and DCI. Agencies wanting to adopt a specialized program must submit a written proposal to DCI outlining the program to be provided to its personnel. The proposal must be submitted in standard format as required by DCI which includes: types of participants, course contents, implementation methods, instructional methods, and program coordinator duties. DCI personnel will review the proposal and provide a written response of approval or denial. If the proposal is denied,~~

the agency may request an appeal hearing before the Advisory Policy Board. If the proposal is approved, the program coordinator must submit training documentation to DCI for approval to meet DCI/NCIC training standards and policies. The instructor for each approved "Specialized Certification Program" must have successfully completed the North Carolina Law Enforcement Instructor Certification Course and must maintain an active DCI "General Certification" which includes all modules being offered in the "Specialized Certification Program". Recertification can be obtained by challenging and passing the approved "Specialized Certification Test" or by attending and passing classes as specified in the agencies approved "Specialized Certification Program".

(b) Enrollment will be necessary for student attendance to any training or testing class for DCI operators. Enrollment will be requested and approved by the agency head or where applicable a communications supervisor of an authorized agency as defined in Rules .0201 and .0202 of this Subchapter and personnel must meet the management control requirements outlined in Section .0200 of this Subchapter. DCI will maintain enrollment for all "General Certification" classes and the administering agency will maintain enrollment for each "Special Certification" program. Enrollment shall be done on a form or such automated method provided by DCI. The enrollment procedure for "Special Certification" will be defined within the approved plan and be responsive to the students needs which it serves. The enrollment procedure for General Certification or Recertification are:

- (1) A search of the training or testing class files shall be performed by the enrolling agency to determine whether a class has any vacancies.
- (2) If there is a vacancy, the enrollment will be entered into the class enrollment file in a manner prescribed by DCI.
- (3) The enrolling agency must insure the student has been accepted in class prior to sending them to class.
- (4) When classes become full, DCI is to assist agencies enroll their personnel by establishing waiting lists, identifying alternative classes or if the demand warrants, establish and additional class.
- (5) All Enrollments must be accepted by the deadline as established by DCI at least two work days prior to the training or test class.
- (6) A copy of each enrollment must be signed by the Agency Head, or applicable communication's supervisor, and maintained on file for two years by the enrolling agency. This document is subject to inspection by representatives of the Division at reasonable times.

(c) New personnel hired or personnel newly assigned to duties of a terminal operator shall receive an indoctrination and hands-

on training on the basic functions and terminology of the DCI system by their own agency prior to attending certification class. Such personnel may operate a terminal accessing DCI while obtaining indoctrination if such personnel are directly supervised by a certified operator and are within the 120 day training period.

(d) Any individual who's certification has expired may be allowed to retest as a recertification student up to 90 days after their expiration. The individual will not be able to operate the terminal during the time between expiration and passing the recertification test(s). Any individual who's certification has expired more than 90 days will be required to attend and successfully complete training classes.

(e) Any agency which allows an individual to operate a terminal accessing DCI who is not certified or who is not within the 120 day training period and directly supervised by a certified operator will be in violation of this Rule and subject to the provisions of 12 NCAC 4G .0102(b) of this Chapter.

(f) Any agency personnel using a certified operator's identifier other than their own to gain access to DCI and violating any rule in this Chapter for the purpose of concealing their identity will be in violation of this Rule and subject to the provisions of 12 NCAC 4G .0102(c) of this Chapter.

(g) When a DCI certified operator leaves the employment of their agency, the Agency Head will notify DCI within 24 hours. This notification is to allow DCI to immediately remove that operator's identification in the network until such time as they are employed by another authorized agency.

Authority G.S. 114-10; 114-10.1.

12 NCAC 04E .0403 SUSPENSION AND REVOCATION OF OPERATOR CERTIFICATION

(a) DCI may suspend or revoke an operator's certification for willfully or repeatedly violating the rules of this Chapter in accordance with Subchapter 4G.

(b) DCI may revoke an operator's certification based upon a request from the operator's agency head. Sufficient evidence showing cause for revocation shall be documented by the employer and submitted to the SBI Assistant Director for DCI.

(c) Upon suspension or revocation of an operator's certification by the Assistant Director of DCI, written notice of the revocation or suspension shall be sent by certified mail, return receipt requested to the operator and to his agency head. The notice shall inform the parties of their appeal rights as provided in Paragraph (d) of this Rule and shall also contain the bases for the revocation or suspension.

(d) An operator whose certification has been revoked or suspended may request an informal hearing before the Advisory Policy Board or may appeal directly to OAH by filing a petition for a contested case. A request for an informal hearing must be in writing and submitted to the SBI Assistant Director for DCI within 15 days from the date of notification of revocation or suspension. A petition for a contested case must be filed with OAH within 60 days in accordance with G.S. 150B 23(f). An operator requesting an informal hearing may have his certification reinstated until the results of the informal hearing are known. DCI shall notify the operator and his agency head of the results of the informal hearing within two weeks following

the hearing and inform the parties of their rights of appeal under G.S. 150B-23.

~~(e) Any operator who has his certification revoked and not reinstated by the Advisory Policy Board, or by the Office of Administrative Hearings shall not be eligible to obtain DCI certification for a period of one year from revocation. The individual must meet the requirements of Rule .0402 of this Section prior to obtaining certification.~~

~~(f) DCI maintained operator records, compiled as a result of audits including probationary, suspension, or revocation status, will be made available to employing law enforcement/criminal justice agencies upon request.~~

Authority G.S. 114-10; 114-10.1; 150B-3(b); 150B-23(f).

12 NCAC 04E .0404 PERIOD OF SUSPENSION

~~A conviction of a felony shall render an applicant or certified DCI operator permanently ineligible to hold such certification. A conviction of a misdemeanor involving fraud, misrepresentation, or deceit shall render an applicant ineligible to become certified as a DCI terminal operator when such conviction is within 10 years of the operator's date of request for DCI certification. Operators convicted of such a misdemeanor while holding certification shall be ineligible to maintain such certification for a period of 10 years following such conviction. An applicant or certified DCI terminal operator shall be permanently ineligible to hold such certification upon their conviction of three or more misdemeanors involving fraud, misrepresentation, or deceit regardless of the date of conviction.~~

Authority G.S. 114-10; 114-10.1.

12 NCAC 04E .0405 MINIMUM STANDARDS FOR DCI TERMINAL OPERATORS

~~(a) Prior to receiving certification as a DCI operator, and as a condition for maintaining certification as a DCI operator, such applicant or operator shall be a citizen of the United States.~~

~~(b) The applicant or certified operator shall be at least 18 years of age.~~

~~(c) Consistent with Rule .0401 and .0404 of this Section, no applicant for certification as a DCI operator shall be eligible for certification while the applicant is subject to pending or outstanding criminal charges which, if adjudicated, would disqualify the applicant.~~

Authority G.S. 114-10; 114-10.1.

SUBCHAPTER 04F - SECURITY AND PRIVACY

SECTION .0100 - SECURITY AT LOCAL SITES

12 NCAC 04F .0101 SECURITY OF DCI EQUIPMENT

~~(a) Agency heads who have management control of the DCI terminal shall institute controls for maintaining the sensitivity and confidentiality of all information provided by or through DCI. These controls will include, but are not limited to, the following:~~

- ~~(1) the DCI terminal and printer shall be located in a secure area accessible only to authorized personnel;~~
- ~~(2) the DCI terminal operator's manual and changes thereto shall be located in a secure area accessible only by authorized personnel; and~~
- ~~(3) the DCI terminal equipment must be safeguarded from damage by excessive dirt, employee misuse, fire, floods and power failure.~~

~~If any damage occurs, it will be reported to the DCI computer center by telephone, or by switch message to the DCI central site. Users will be liable for payment for repairs resulting from negligence, abuse or misuse.~~

~~(b) Failure to maintain a secure site will be a violation of this Rule and subject to the provisions of Subchapter 4G Rule .0102(a) of this Chapter.~~

Authority G.S. 114-10; 114-10.1.

12 NCAC 04F .0102 OFFICIAL USE OF DCI INFORMATION

~~(a) The DCI Communications Network is for appropriate criminal justice and law enforcement purposes only. All traffic generated over the system shall be made in the performance of the employee's or agency's official duties as they relate to the administration of criminal justice.~~

~~(b) An inappropriate message is one which contains information that is unnecessary, excessive or abusive in nature. Some examples of inappropriate messages are requests for checks on wanted persons when such information can be found in the wanted person file, messages which give inadequate descriptions thereby preventing appropriate action from being taken, messages which provide lengthy lists of property stolen which should be entered into the DCI/NCIC hot files, or any messages which recruit personnel.~~

~~(c) Non-criminal justice information is any message of a personal nature or a subject matter totally unrelated to the administration of criminal justice.~~

~~(d) The transmission of non-criminal justice information over the DCI network is a violation of this Rule and subject to the provisions of Subchapter 4G Rule .0102(d) of this Chapter.~~

Authority G.S. 114-10; 114-10.1.

SECTION .0200 - DCI/NCIC HOT FILES

12 NCAC 04F .0201 DOCUMENTATION AND ACCURACY

~~(a) Law enforcement and criminal justice agencies have the capability to enter stolen/recovered property and wanted/missing persons into the DCI/NCIC hot files. Any record entered into the hot files must be documented. The documentation required is:~~

- ~~(1) a theft report of items of stolen property;~~
- ~~(2) an active warrant for the entry of wanted persons;~~

- (3) ~~a missing person report and, if a juvenile, a written statement from a parent, spouse, family member, or legal guardian verifying the date of birth and confirming that a person is missing; or~~
- (4) ~~a medical examiner's report for an unidentified dead person entry.~~

(b) ~~All DCI/NCIC hot file entries must be complete and accurately reflect the information contained in the agency's investigative documentation at the point of initial entry or modification. This process must be checked by a second party who will initial and date a copy of the record indicating accuracy has been determined.~~

Authority G.S. 114-10; 114-10.1.

12 NCAC 04F .0202 VALIDATIONS

- (a) ~~DCI/NCIC requires that law enforcement and criminal justice agencies validate all record entries, with the exception of articles, made into the hot files. This process ensures that each hot file record is complete, accurate and up to date.~~
- (b) ~~Validation is accomplished by reviewing the original entry and current supporting documents. In addition to this review, the stolen vehicle, stolen boat, wanted person and missing person files require consultation with any appropriate complainant, victim, prosecutor, court, motor vehicle registry files or other appropriate source or individual pursuant to the procedure in the DCI on line manual.~~
- (c) ~~Any records containing inaccurate data shall be modified and records which are no longer current or, cannot be substantiated by a source document, shall be removed from the hot files.~~
- (d) ~~Any agency which does not properly validate its records and notify DCI of the completion of its validation, pursuant to the procedure in the DCI on line manual, will have their records cancelled for that month. The agency head will be notified by mail of the cancellation. An agency may re-enter the cancelled records once the records have been validated.~~

Authority G.S. 114-10; 114-10.1.

12 NCAC 04F .0203 HIT CONFIRMATION

- (a) ~~Any agency entering record information into the DCI/NCIC hot files, or which has a servicing agency enter record information for its agency, is required to provide hit confirmation 24 hours a day. Hit confirmation of DCI/NCIC records means that an agency receiving a positive DCI/NCIC response from an inquiry must communicate with the official record holder to confirm the following before taking a person or property into custody:~~
 - (1) ~~take reasonable steps to ensure that the person or property inquired upon is the same as the person or property identified in the record;~~
 - (2) ~~take reasonable steps to ensure that the warrant, missing person report, or theft report is still outstanding; and~~
 - (3) ~~obtain a decision regarding the extradition of a wanted person, information regarding the return of the missing person to the appropriate~~

~~authorities, or information regarding the return of stolen property to its rightful owner.~~

(b) ~~The official record holder must respond within ten minutes of receiving a hit confirmation request with the desired information or a notice of the specific amount of time necessary to confirm or reject the record.~~

(c) ~~DCI may cancel an agency's record from the DCI/NCIC hot files for failure to respond to a hit confirmation request within ten minutes.~~

Authority G.S. 114-10; 114-10.1.

SECTION .0300 - SUBMISSION OF DATA FOR CRIMINAL HISTORY RECORDS

12 NCAC 04F .0301 ARREST FINGERPRINT CARD

(a) ~~Agencies must submit an SBI and an FBI fingerprint card on every individual charged with the commission of a felony. The fingerprint cards must contain the following information on the arrestee in order to be processed by the SBI and FBI:~~

- (1) ~~ORI number and address of arresting agency;~~
- (2) ~~complete name;~~
- (3) ~~date of birth;~~
- (4) ~~race;~~
- (5) ~~sex;~~
- (6) ~~date of arrest;~~
- (7) ~~criminal charges; and~~
- (8) ~~a set of rolled inked fingerprint impressions, including palm prints on the SBI fingerprint card.~~

~~Any fingerprint cards received by DCI which do not meet these requirements will be returned to the submitting agency to be corrected and resubmitted.~~

(b) ~~The arrest information contained on the arrest fingerprint card is added to the NC CCH files. After processing through the SBI files, the FBI criminal fingerprint card is forwarded to the FBI for processing.~~

(c) ~~Criminal fingerprint cards may be submitted in the following ways:~~

- (1) ~~first class mail addressed to:~~

~~North Carolina State Bureau of Investigation
Division of Criminal Information
407 North Blount Street
Raleigh, North Carolina 27601 1073
Attention: Identification Section;~~
- (2) ~~deliver in person:~~

~~North Carolina State Bureau of Investigation
Identification Section
Building 16A
3320 Old Garner Road
Raleigh, North Carolina 27626 0500; and~~
- (3) ~~inter agency state courier service mail pickup located at each county seat addressed to the address in Subparagraph (c)(1) of this Rule.~~

Authority G.S. 15A-502; 15A-1383.

12 NCAC 04F .0302 FINAL DISPOSITION INFORMATION

~~(a) Final disposition information shall be submitted to the SBI by the Clerk of Court, or the Administrative Office of the Courts. The agency which submitted the arrest fingerprint card must include the following information on the final disposition report before it can be processed by the Clerk of Court:~~

- ~~(1) ORI number and address of arresting agency;~~
- ~~(2) complete name;~~
- ~~(3) date of birth;~~
- ~~(4) race;~~
- ~~(5) sex;~~
- ~~(6) date of arrest;~~
- ~~(7) all offenses charged against the defendant;~~
- ~~(8) officer's name;~~
- ~~(9) officer's title; and~~
- ~~(10) date form filled out.~~

~~Any final disposition information received by DCI which does not meet these requirements will be returned to the appropriate agency to be corrected and resubmitted.~~

~~(b) The final disposition information is added to the CCH files.~~

~~(c) Final disposition information may be submitted pursuant to the procedure listed in Rule .0301 Paragraph (c) of this Section.~~

Authority G.S. 15A-1381; 15A-1382; 15A-1383; 114-10; 114-10.1.

12 NCAC 04F .0303 PRISON FINGERPRINT CARD

~~(a) Incarceration information shall be submitted to the SBI by the NC Department of Correction (DOC) on all subjects admitted to prison. Two fingerprint cards must be submitted and contain the following information in order to be processed by the SBI and FBI:~~

- ~~(1) ORI number;~~
- ~~(2) complete name;~~
- ~~(3) date of birth;~~
- ~~(4) race;~~
- ~~(5) sex;~~
- ~~(6) date of admission;~~
- ~~(7) charges convicted of;~~
- ~~(8) DOC number;~~
- ~~(9) sentence information; and~~
- ~~(10) a set of rolled inked fingerprint impressions, including palm prints on the SBI fingerprint cards.~~

~~Any incarceration information received by DCI which does not meet these requirements will be returned to DOC to be corrected and resubmitted.~~

~~(b) The incarceration information contained on the prison fingerprint card is added to the NC CCH files. After processing through the SBI files, the FBI criminal card is forwarded to the FBI for processing.~~

~~(c) Incarceration information may be submitted pursuant to the procedure listed in Rule .0301 Paragraph (c) of this Section.~~

Authority G.S. 15A-502; 15A-1383; 114-10; 114-10.1.

SECTION .0400 - COMPUTERIZED CRIMINAL HISTORY ACCESS AND USE REQUIREMENTS

12 NCAC 04F .0401 DISSEMINATION OF CCH RECORDS

~~(a) Except as provided by Rules .0402, .0404, .0406, of this Section criminal history record information obtained from or through DCI, NCIC, or NLETS shall not be disseminated to anyone outside of those agencies eligible under Subchapter 4E Rule .0201(a) of this Chapter. Any agency assigned a limited access ORI shall not obtain criminal history record information. Any agency requesting criminal history record information which has not received an ORI pursuant to Subchapter 4E Rule .0201(a) of this Chapter should be denied access and referred to the SBI Assistant Director for DCI.~~

~~(b) Criminal history record information is available to eligible agency personnel only on a "need-to-know" or "right-to-know" basis as defined in Subchapter 4E Rule .0104 of this Chapter.~~

~~(c) The use or dissemination of computerized criminal history for unauthorized purposes will be in violation of this Rule and subject to the provisions of Subchapter 4G Rule .0102(k) and (l) of this Chapter.~~

~~(d) DCI shall maintain an automated log of CCH/CHRI inquiries for a period of not less than 1 year from the date of inquiry. The automated log will contain the following information as supplied by the operator on the inquiry screen and will be made available on line to the inquiring agency;~~

- ~~(1) date of inquiry;~~
- ~~(2) name of record subject;~~
- ~~(3) state identification number (SID) or FBI number of the record subject;~~
- ~~(4) message key used to obtain information;~~
- ~~(5) purpose code;~~
- ~~(6) operators initials;~~
- ~~(7) (Attention field) name of person and agency requesting information who is the initial user of the record, and if applicable;~~
- ~~(8) (Attention 2 field) name of person and agency requesting information who is outside of the initial user agency.~~

~~(e) Criminal justice agencies making secondary disseminations of CCH/CHRI obtained through DCI shall maintain a log of the dissemination in a case file or other appropriate medium. This log must identify the name of the recipient and their agency.~~

~~(f) It shall be the duty of each criminal justice agency obtaining criminal history record information through DCI to conduct a monthly audit of their automated CCH log as provided by DCI.~~

- ~~(1) This audit should include but is not limited to a review for unauthorized inquiries and disseminations, improper use of agency ORI's, agency names, and purpose codes.~~
- ~~(2) Printouts of the DCI automated CCH log must be signed or initialed by a designated representative and dated indicating a monthly review has occurred. These logs must be maintained on file for 1 year from the date of the inquiry.~~
- ~~(3) Any misuse or possible violations of DCI policy must be reported to DCI.~~

~~(g) Printouts of DCI automated CCH logs and any secondary dissemination logs shall be available for audit or inspection by the SBI Assistant Director for DCI or his designate at such time~~

as they may require as provided in 12 NCAC 4F .0801 of this Subchapter.

~~(h) Agencies that fail to comply with the provisions of 12 NCAC 4F .0401(d) will be in violation and subject to the sanctions of 12 NCAC 4G .0102(n). Agencies that fail to comply with the provisions of Subchapter 4F .0401 (e) and/or (f) will be in violation and subject to the sanctions of 12 NCAC 4G .0102(m).~~

~~(i) Direct or indirect access agencies responding to an out of state request for criminal history record information through NLETS shall only respond with criminal history record information received within their jurisdiction and maintained in their files. Out of state agencies requesting a state wide criminal record check should be directed to use the state automated file.~~

Authority G.S. 114-10; 114-10.1.

12 NCAC 04F .0402 ACCESSING OF CCH RECORDS

~~(a) Any accessing of or inquiry into the CCH records must be made with the proper message key only and must be for the intended transaction or purpose for which the message key is designed.~~

~~(b) Any accessing of or inquiry into the III using an improper message key resulting in a record being routed to a terminal and displayed on the screen shall be a violation of this Rule and subject to the provisions of Subchapter 4G Rule .0102(i) of this Chapter.~~

~~(c) Any dissemination by a certified operator for an unauthorized purpose or to an unauthorized requestor shall be a violation of this Rule and subject to the provisions of Subchapter 4G Rule .0102(K) of this Chapter.~~

Authority G.S. 114-10; 114-10.1.

12 NCAC 04F .0403 USE OF CCH FOR CRIMINAL JUSTICE EMPLOYMENT

~~(a) DCI processes criminal justice applicant fingerprint cards required pursuant to statute.~~

~~(b) Agencies must submit two applicant fingerprint cards on each individual containing the following information in order to be processed by the SBI and FBI:~~

- ~~(1) complete name;~~
- ~~(2) date of birth;~~
- ~~(3) race;~~
- ~~(4) sex;~~
- ~~(5) position applied for;~~
- ~~(6) hiring agency; and~~
- ~~(7) a set of rolled inked fingerprint impressions.~~

~~Any fingerprint cards received by DCI which do not meet these requirements will be returned to the submitting agency to be corrected and resubmitted.~~

~~(c) All criminal justice applicant fingerprint cards and the resulting record response are returned to the appropriate agencies and are not maintained by DCI.~~

Authority G.S. 114-10; 114-10.1; 114-16; 114-19.

12 NCAC 04F .0404 INDIVIDUAL'S RIGHT TO REVIEW

~~(a) An individual may obtain a copy of his or her own criminal history record by submitting a written request to the North Carolina State Bureau of Investigation, Division of Criminal Information, Identification Section, 407 North Blount Street, Raleigh, North Carolina 27601-1073. The written request must be accompanied by a certified check or money order in the amount of fourteen dollars (\$14.00) payable to the North Carolina Department of Justice, and must contain proof of identity to include:~~

- ~~(1) complete name and address;~~
- ~~(2) race;~~
- ~~(3) sex;~~
- ~~(4) date of birth;~~
- ~~(5) social security number; and~~
- ~~(6) a set of rolled inked fingerprint impressions.~~

~~This procedure guarantees positive identification and insures that the individual receives a copy of his or her own record as currently maintained in the SBI Identification file including CCH and AFIS.~~

~~(b) The accuracy and completeness of an individual's record may be challenged by submitting the written exceptions form available from the DCI.~~

~~(c) Upon receipt of the written exceptions form, the Identification Section Supervisor shall initiate an internal record audit of the challenger's record to determine its accuracy. If any inaccuracies or omissions are discovered, the Identification Section will make appropriate additions, deletions or alterations to the record. Notice of any changes made will be given to the challenger, and to any agency to which the inaccurate or incomplete information has been disseminated. The challenger shall be informed in writing of the results of the audit.~~

~~(d) If the audit fails to disclose any inaccuracies, or if the challenger wishes to contest the results of the audit, he is entitled to an administrative hearing pursuant to G.S. 150B-23.~~

Authority G.S. 114-10; 114-10.1; 114-19.1.

12 NCAC 04F .0405 CCH LICENSING AND NON-CRIMINAL JUSTICE EMPLOYMENT PURPOSES

~~(a) Criminal justice agencies authorized under Subchapter 4E Rule .0201 of this Chapter which issue licenses or approve non-criminal justice employment and want to use computerized criminal history information maintained by DCI for licensing, permit, and non criminal justice employment purposes shall submit to the SBI Assistant Director for DCI a written request listing the types of licenses, permits, and employment for which they desire to use computerized criminal history information. A copy of the local ordinance(s) and/or a reference to the North Carolina General Statute(s) giving authority to issue a particular permit or license must be included in the written request.~~

- ~~(1) Authorization to use computerized criminal history information for licensing, permit, or employment purposes may be given only after the SBI Assistant Director for DCI and the North Carolina Attorney General's Office have evaluated and granted authorization based upon the authority of the North Carolina~~

~~General Statutes and/or local ordinance pertaining to the issuance of that particular license or permit for employment;~~

~~(2) Upon authorization, a written notice will be submitted to the requesting agency authorizing that agency to use computerized criminal history information maintained by DCI for specified licensing permit or employment purposes;~~

~~(3) After notice of authorization has been given, the agency's terminal, if applicable, will receive the capability to use the purpose code "E" in the purpose field of the computerized criminal history inquiries for employment/licensing. Once an agency has received this capability, it shall be required to use the purpose code "E", the proper two character code, and an abbreviation of the ultimate recipient of the records name. A log of all primary and any secondary dissemination must also be kept for one year on all positive responses received from this type of inquiry.~~

~~(b) Criminal justice agencies may also gain access by submission of non criminal justice applicant fingerprint cards. Approval must be obtained pursuant to the procedure in Paragraph (a) of this Rule and a Fee for Service Agreement must be signed prior to the release of criminal history information. Two applicant fingerprint cards must be submitted on each individual accompanied by a check or money order in the amount of fourteen dollars (\$14.00) if the agency has not signed the DCI Billing Agreement. The fingerprint cards must contain the following information on the applicant in order to be processed by the SBI and FBI: complete name, date of birth, race, sex, reason fingerprinted to include the N.C.G.S., position applied for, the licensing/employing agency, and a set of rolled inked fingerprint impressions. The fingerprint cards shall be returned to the agency denoting a prior record or with a no record response.~~

~~(c) Requests from non criminal justice agencies or individuals to use criminal history information maintained by DCI for licensing and employment purposes shall be treated as a fee for service request pursuant to G.S. 114-19.1 or any other applicable statute. All such requests shall be submitted in writing on forms approved by the Attorney General to the SBI Assistant Director for DCI who shall recommend approval or disapproval as appropriate. The Assistant Director may consult with the Advisory Policy Board if he deems it necessary prior to making a final recommendation to the Department of Justice.~~

~~(1) Upon being approved, the requesting agency shall submit its requests to the Division of Criminal Information, attention: Identification Section, 407 North Blount Street, Raleigh, North Carolina 27601-1073. Each request shall include sufficient documentation to establish and verify identity such as complete name, race, sex, date of birth, and social security number. Each request shall include a reasonable fee of fourteen dollars (\$14.00)~~

~~established for such requests in the form of a certified cashier's check or money order; and~~

~~(2) Criminal history information accessible by authorization of this Section shall be North Carolina criminal history information only.~~

Authority G.S. 114-10; 114-10.1; 114-19.1.

12 NCAC 04F .0406 RESTRICTIVE USE OF CCH FOR EMPLOYMENT PURPOSES

~~(a) Use of computerized criminal history information maintained by the DCI for licensing permits or non criminal justice employment purposes shall only be authorized for those criminal justice and non criminal justice agencies who have complied with Rule .0405 of this Section.~~

~~(b) The following requirements and restrictions shall be applicable to all agencies who have received approval to use computerized criminal history information for licensing, permits, or non criminal justice employment purposes. Each such agency shall be responsible for their full and prompt implementation:~~

~~(1) in no case shall computerized criminal history information obtained be used or disseminated for any other purpose;~~

~~(2) in no case shall computerized criminal history information obtained be released to or reviewed by anyone other than the agencies authorized by the SBI Assistant Director for DCI;~~

~~(3) the only data in the computerized criminal history files which can be used in an agency's determination of issuing or denying a license, permit or employment are those crimes stipulated in the referenced ordinance or statutory authority as grounds for disqualification. All criminal history arrest information held by DCI will be released regardless of disposition status. Each agency shall be responsible for reviewing each statutory authority and knowing what data can and cannot be used for grounds in denying or issuing a particular license or permit for employment;~~

~~(4) Prior to denial of a license, permit, or employment due to data contained in a computerized criminal history record, a fingerprint card of the applicant shall be submitted to the SBI, DCI Identification Section for verification that the record belongs to the applicant;~~

~~(5) If the information in the record is used to disqualify an applicant, the official making the determination of suitability for licensing or employment shall provide the applicant the opportunity to complete, or challenge the accuracy of the information contained in the record. The applicant must be afforded a reasonable time to correct, complete or to decline to correct or complete the information. An applicant should not be presumed to be~~

guilty of any charge/arrest for which there is no final disposition stated on the record or otherwise determined. Applicants wishing to correct, complete or otherwise challenge a record must avail themselves of the procedure set forth in Rule .0404 Paragraph (c) of this Section. Improper use of CCH data in denial or revocation of a license or permit is a violation of this Rule and subject to the provisions of Subchapter 4G Rule .0102(j) of this Chapter.

(c) A "no hit" on a computerized criminal history inquiry does not necessarily mean that the individual does not have a record. If the requesting agency desires a more complete check on an applicant, a fingerprint card of the applicant should be submitted to DCI.

Authority G.S. 114-10; 114-10.1; 114-19.1.

12 NCAC 04F .0407 RESEARCH USE AND ACCESS OF CCH RECORDS

(a) Researchers who wish to use criminal justice information maintained by DCI shall first submit to the SBI Assistant Director for DCI a completed research design that guarantees adequate protection of security and privacy. Authorization to use computerized criminal history records may be given after the SBI Assistant Director for DCI has approved the research design.

(b) Prior to making a decision whether or not to authorize a particular researcher access to CCH, the SBI Assistant Director for DCI may consult with the DCI Advisory Policy Board.

(c) In making a determination, the Assistant Director and the Advisory Policy Board must insure that an individual's right to privacy will not be violated by the research program, that the program is calculated to prevent injury or embarrassment to any individual, that the results outweigh any disadvantages that are created for the North Carolina criminal justice system if the research information is provided, that the criminal justice community benefit from the research and use, and that the requestor be responsible for cost.

(d) For purposes of this Section, a researcher shall be defined as a non criminal justice/private agency or a criminal justice agency wishing to access criminal history data for a statistical purpose.

Authority G.S. 114-10; 114-10.1; 114-19.1.

12 NCAC 04F .0408 LIMITATION REQUIREMENTS

Research designs must preserve the anonymity of all subjects. The following requirements shall be applicable to all such programs of research and each criminal justice agency and/or researcher shall be responsible for their full and prompt implementation:

- (1) In no case shall computerized criminal history records furnished for purposes of any program of research be used to the detriment of the person(s) to whom such information relates.
- (2) In no case may computerized criminal history records furnished for purposes of any program

of research be used for any other purpose; nor may such information be used for any program of research other than that authorized by the SBI Assistant Director for DCI.

(3) Each researcher or anyone having access to the computerized criminal history shall, prior to having such access, sign a Disclosure Agreement with the SBI Assistant Director for DCI incorporating the requirements of Subchapter 4E Rule .0305 of this Chapter.

(4) In every case the authorization for access to computerized criminal history records shall assure that the criminal justice agency and the SBI Assistant Director for DCI has full and complete rights to monitor the program of research to assure compliance with this Regulation. Such monitoring rights shall include the right of DCI staff and the DCI Advisory Policy Board to audit and review such monitoring activities and also to pursue their own monitoring activities.

(5) Each program of research shall preserve the right of DCI and the criminal justice agency involved to examine and verify the data generated as a result of the program, and, if a material error or omission is found to have occurred, to order that the data not be released for any purpose unless corrected to the satisfaction of the agency and DCI.

Authority G.S. 114-10; 114-10.1; 114-19.1.

SECTION .0500 - REMOVAL OF CRIMINAL HISTORY RECORD INFORMATION

12 NCAC 04F .0501 EXPUNGEMENTS

(a) Criminal history record information may be expunged from NC CCH files when the petitioner follows the guidelines outlined in the NC General Statutes.

(b) Upon the receipt of a valid court ordered expungement, the Identification Section of DCI will expunge the appropriate CHRI as directed by the court order. The court order will be forwarded to the FBI for processing and all agencies which have inquired on the record within the past 90 days will be advised of the court order.

(c) The person seeking the expungement shall pay a fee of fourteen dollars (\$14.00).

Authority G.S. 15A-145; 15A-146; 90-96; 90-113.14; 114.10; 114-10.1.

12 NCAC 04F .0502 PURGES

(a) DCI will purge criminal history record information on deceased subjects upon the receipt of two sets of post mortem fingerprints. Deceased records are retained at DCI for one year and then are transferred to the State Records Center and retained there for five years.

(b) DCI will also purge criminal history record information when an individual attains the age of 80 years. Once purged,

these records are retained for one year and then transferred to the State Records Center and retained there for five years.

Authority G.S. 114-10; 114-10.1.

SECTION .0600 - AUTOMATED FINGERPRINT IDENTIFICATION SYSTEM

12 NCAC 04F .0601 AUTOMATED FINGERPRINT IDENTIFICATION SYSTEM

(a) ~~Agencies which meet the requirements of 12 NCAC 4E .0201(a) may access the SBI's Automated Fingerprint Identification System for criminal justice purposes.~~

(b) ~~Direct access may be obtained by submitting a letter of request to the SBI Assistant Director for DCI.~~

(c) ~~The acronym used for the SBI's Automated Fingerprint Identification System shall be the AFIS.~~

Authority G.S. 15A-502; 114-10; 114-10.1; 114-16.

12 NCAC 04F .0602 ELIGIBILITY FOR FULL OR LIMITED ACCESS TO THE AFIS NETWORK

Any request for an AFIS terminal and access must be approved by the SBI/DCI Advisory Policy Board.

Authority G.S. 114-10; 114-10.1.

12 NCAC 04F .0603 AFIS AGREEMENT

(a) ~~Each eligible agency under Rule .0602 of this Section requesting an AFIS terminal shall sign an AFIS Agreement certifying that the agency head has read, and understands the requirements for security within DCI, and that the agency head will uphold the agreement, and abide by the standards and guidelines outlined in the AFIS Agreement.~~

(b) ~~A current and signed copy of the AFIS Agreement for each agency may be reviewed at 407 North Blount Street, Raleigh, North Carolina.~~

(c) ~~Upon determination that a violation of the AFIS Agreement has occurred, requirements outlined in 12 NCAC 4G .0201 must be followed.~~

Authority G.S. 15A-502; 114-10; 114-10.1; 114-16.

12 NCAC 04F .0604 AVAILABLE DATA

(a) The following data is available and may be used to make comparisons and obtain CCH data:

- (1) fingerprint classification;
- (2) fingerprint minutiae;
- (3) fingerprint images; and
- (4) state identification number.

(b) ~~When the state identification number is used to obtain CCH data, dissemination requirements outlined in 12 NCAC 4F .0401(c) and (d) must be followed.~~

Authority G.S. 15A-502; 114-10; 114-10.1; 114-16.

SECTION .0700 - DRIVER HISTORY

12 NCAC 04F .0701 DISSEMINATION OF DRIVER HISTORY INFORMATION

(a) ~~Driver history information obtained from or through DCI shall not be disseminated to anyone outside those agencies eligible under Subchapter 4E Rule .0201(a) of this Chapter unless obtained for the following purposes:~~

- (1) ~~in the decision of issuing permits or licenses if statutory authority stipulates the non-issuance or denial of a permit or license to an individual who is a habitual violator of traffic laws or who has committed certain traffic offenses and those licensing purposes have been authorized by DCI and the Attorney General's Office;~~
- (2) ~~by governmental agencies to evaluate perspective or current employees for positions involving the operation of public owned vehicles; or~~
- (3) ~~by a defendant's attorney of record in accordance with G.S. 15A-141.~~

(b) ~~The dissemination of driver history information to an unauthorized requestor by a certified operator will be a violation of this Rule and subject to the provisions of Subchapter 4G Rule .0102(f) of this Chapter.~~

(c) ~~Each direct access agency disseminating driver history information to a non criminal justice agency for any of the purposes listed in Paragraph (a) of this Rule shall maintain a log of dissemination for one year containing the following information:~~

- (1) ~~date of inquiry for obtaining driver's history;~~
- (2) ~~name of terminal operator;~~
- (3) ~~name of record subject;~~
- (4) ~~driver's license number;~~
- (5) ~~name of individual and agency requesting or receiving information; and~~
- (6) ~~purpose of inquiry.~~

(d) ~~Driver history records obtained for any purpose listed in Paragraph (a) of this Rule shall be used for only that official internal purpose and shall not be redisseminated or released for any other purpose.~~

(e) ~~Driver history information obtained from or through DCI shall not be released to the individual of the record. If an individual wishes to review or challenge his own driving record, he should contact the Division of Motor Vehicles in Raleigh, North Carolina.~~

(f) ~~Any unauthorized use of driver's history by authorized agency personnel other than a certified operator is a violation of this Rule and subject to the provisions of Subchapter 4G Rule .0102(g) of this Chapter.~~

(g) ~~Agencies failing to maintain (failure is defined as more than 10 percent deficient) a log of dissemination on driver's histories obtained through DCI for the purposes and time limits outlined herein shall be in violation of this Rule and subject to the provisions of Subchapter 4G Rule .0102(h) of this Chapter.~~

Authority G.S. 114-10; 114-10.1.

SECTION .0800 - AUDITS

12 NCAC 04F .0801 AUDITS

(a) ~~DCI must biennially audit criminal justice information entered, modified, cancelled, cleared and disseminated by DCI terminal users. Agencies subject to audit include all agencies which have direct or indirect access to information obtained through DCI.~~

(b) ~~DCI shall send designated representative(s) to selected law enforcement and criminal justice agency sites to audit:~~

- ~~(1) criminal history dissemination logs;~~
- ~~(2) driver history dissemination logs;~~
- ~~(3) security safeguards and procedures adopted for the filing, dissemination, or destruction of criminal history records;~~
- ~~(4) secure location and access of DCI terminals;~~
- ~~(5) documentation establishing the accuracy and validity of records entered into DCI/NCIC wanted, missing person, and property files; and~~
- ~~(6) fingerprint submissions of arrestees.~~

~~(c) The audits will be conducted to ensure that the agencies are complying with DCI's regulations, as well as federal and state statutes on security and privacy of criminal history record information.~~

~~(d) DCI may, at its discretion, conduct audits of Incident Base agencies to insure compliance with applicable rules, regulations, and acceptable reporting standards.~~

Authority G.S. 114-10; 114-10.1.

SUBCHAPTER 04G - PENALTIES AND ADMINISTRATIVE HEARINGS

SECTION .0100 - DEFINITIONS AND PENALTY PROVISIONS

12 NCAC 04G .0101 DEFINITIONS

The following definitions shall apply throughout Chapter 4 of this Title:

- (1) ~~Agency Penalties:~~
 - (a) ~~"Warning" means a letter of warning mailed to the agency head setting forth the administrative procedure that has been violated. It will also state what penalty will be imposed if the agency is found in violation again within one year from the date of the audit report.~~
 - (b) ~~"Reprimand" means a letter of reprimand will be mailed to the agency head setting forth the administrative procedure that has been violated and the number of times this administrative procedure has been violated. It will also state what penalty will be imposed if the agency is found in violation again within one year from the date of the audit report. A copy of this reprimand letter shall be forwarded to~~

~~the head of the governmental body that the agency serves, i.e., city manager, county manager.~~

- ~~(c) "Limited Operational Time" means the amount of operational time will be proportionate to the number of certified operators.~~
- ~~(d) "Probation" means an agency will be placed in a probationary status for a period of one year from the date of the audit report. The agency will be subject to a re audit after 90 days from the date of the report. A re audit does not clear the probationary status.~~
- ~~(e) "Suspended Services" means an agency's direct access to the SBI/DCI computer system will be suspended after the Advisory Policy Board's finding of fault and the agency head must then appear before the Advisory Policy Board to respond to the cited violation. This suspension may be limited to certain files or may include a complete suspension of access, depending on the administrative procedure violated. The agency will be subject to a re audit after 90 days of reinstatement of limited or full access. Further violations of the same regulation, within one year from the date of the suspension, or failure to appear before the Advisory Policy Board to respond to the cited violation will be grounds to cancel the User Agreement with the agency.~~

(2) ~~Individual Penalties:~~

- ~~(a) "Warning" means a letter of warning will be mailed to the certified operator with a copy of each warning letter to the agency head. This warning letter shall set forth the administrative procedure that has been violated and it will also state what penalty will be imposed if the operator is found in violation again within one year from the date of the audit report.~~
- ~~(b) "Probation" means an operator's certification will be placed in a probationary status for a period of one year from the date of the audit report. The agency will be subject to a re audit after 90 days from the date of the audit report. A copy of the probationary letter will be mailed to the operator's agency head and to the operator.~~
- ~~(c) "Suspend Certification" means the operator will not be permitted to~~

operate the DCI terminal for a period of 90 days. A copy of the suspension letter will be mailed to the operator's agency head and to the operator. The agency will be subject to a re-audit after 90 days of reinstatement of an operator's certification.

- (d) ~~"Revoke" means the operator's certification will be revoked for one year or as otherwise provided in the rules.~~

Authority G.S. 114-10; 114-10.1.

12 NCAC 04G .0102 PENALTY PROVISIONS

(a) ~~Insecure location of DCI terminal pursuant to 12 NCAC 4F .0101 shall result in the following penalties:~~

- (1) ~~First Offense Agency Penalty (Warning) with conditions that the terminal be secured within 48 hours;~~
- (2) ~~Second Offense Agency Penalty (Reprimand) with conditions that the SBI Assistant Director for DCI and the agency head must establish an agreed time period within which the terminal can be secured and;~~
- (3) ~~Third Offense Agency Penalty (Suspension) resulting in suspended access to computerized criminal history and drivers history data until the terminal is secured.~~

(b) ~~Uncertified (at any level) operator pursuant to 12 NCAC 4E .0402 shall result in the following penalties:~~

- (1) ~~First Offense Agency Penalty (Reprimand);~~
- (2) ~~Second Offense Agency Penalty (Probation) and limited operational time;~~
- (3) ~~Third Offense Agency Penalty (Suspend Services) with full service removed for six months from the date of the hearing and probation extended for one year from date of reinstatement and;~~
- (4) ~~Fourth Offense Agency Penalty (Suspend Services) resulting in the removal of the terminal.~~

(c) ~~Unauthorized use of a DCI certified operator identifier pursuant to 12 NCAC 4E .0402 shall result in the following penalty. If the certified operator accesses a level of DCI for which they are not certified but it is for an authorized criminal justice purpose the penalty is:~~

- (1) ~~First Offense Individual Penalty (Warning);~~
- (2) ~~Second Offense Individual Penalty (Probation) and Agency Penalty (Warning) if on the same operator;~~
- (3) ~~Third Offense Individual Penalty (Suspended Certification) and Agency Penalty (Reprimand) if on the same operator as a second offense; and~~
- (4) ~~Fourth Offense Individual Penalty (Revocation) and Agency Penalty (Probation) if on the same operator as a third offense.~~

~~If the certified operator accesses a level of DCI for which they are not certified but for unauthorized criminal justice purposes the penalty shall be an Individual Penalty (Revocation) and/or the seeking of criminal prosecution under any applicable state or federal law for unauthorized access to a computer system.~~

~~(d) Transmission of non criminal justice related information over a DCI terminal pursuant to 12 NCAC 4F .0102 shall result in the following penalties:~~

- (1) ~~First Offense Individual Penalty (Warning);~~
- (2) ~~Second Offense Individual Penalty (Probation) and Agency Penalty (Warning) if on same operator;~~
- (3) ~~Third Offense Individual Penalty (Suspended Certification) and Agency Penalty (Reprimand) if on the same operator as a second offense and;~~
- (4) ~~Fourth Offense Individual Penalty (Revocation) and Agency Penalty (Probation) if on the same operator as a third offense.~~

~~(e) Failure by the original servicing agency (agency with direct access) to comply with the penalties that are placed upon the non terminal (indirect access) agency pursuant to 12 NCAC 4E .0203 shall result in the following penalty:~~

~~First and Subsequent Offenses The servicing agency (agency providing direct access) will receive the same penalty that should have been imposed upon the non-terminal (indirect access) agency.~~

~~(f) Dissemination of driver's history by a certified operator to an unauthorized requestor pursuant to 12 NCAC 4F .0701 shall result in the following penalties:~~

- (1) ~~First Offense Individual Penalty (Probation);~~
- (2) ~~Second Offense Individual Penalty (Suspension) and Agency Penalty (Warning) and;~~
- (3) ~~Third Offense Individual Penalty (Revocation).~~

~~(g) Unauthorized use of driver's history by authorized personnel other than a certified operator pursuant to 12 NCAC 4F .0701 shall result in the following penalties:~~

- (1) ~~First Offense Agency Penalty (Warning) with the agency submitting a written response to the SBI/DCI of a plan and date by which departmental training is complete to prevent further violations of this Rule;~~
- (2) ~~Second Offense Agency Penalty (Reprimand) and;~~
- (3) ~~Third Offense Agency Penalty (Suspension) of driver's history for six months.~~

~~(h) Failure (if entire agency is more than 10 percent deficient) to maintain a log of dissemination on "positive" driver's histories obtained through DCI for a period of one year from the date the record was received pursuant to 12 NCAC 4F .0701 shall result in the following penalties:~~

- (1) ~~First Offense Individual Penalty (Warning) to each operator that contributed with a re-audit after 90 days;~~
- (2) ~~Second Offense Individual Penalty (Probation) and Agency Penalty (Warning);~~

- ~~(3) Third Offense Individual Penalty (Suspension of Certification) and Agency Penalty (Reprimand) and;~~
- ~~(4) Fourth Offense Individual Penalty (Revocation) and Agency Penalty (Probation).~~

~~(i) Failure to utilize the proper CCH message key in accessing III whether or not resulting in an unauthorized dissemination pursuant to 12 NCAC 4F .0401, .0402, .0404, .0405, and .0407 shall result in the following penalties:~~

- ~~(1) First Offense Individual Penalty (Warning) with condition of agency re audit after 90 days;~~
- ~~(2) Second Offense Individual Penalty (Probation) with the agency submitting a written response to the SBI/DCI of a plan and date by which training is complete to prevent further violations of this Rule;~~
- ~~(3) Third Offense Individual Penalty (Suspension of Certification) and Agency Penalty (Reprimand) and;~~
- ~~(4) Fourth Offense Individual Penalty (Revocation).~~

~~(j) Improper use of CCH data in denial or revocation of a license or permit pursuant to 12 NCAC 4F .0406 shall result in the following penalties:~~

- ~~(1) First Offense Agency Penalty (Reprimand);~~
- ~~(2) Second Offense Agency Penalty (Probation);~~
- ~~(3) Third Offense Agency Penalty (Suspension of Services) with access suspended to computerized criminal history non criminal justice purposes for a period of six months and;~~
- ~~(4) Fourth Offense Agency Penalty (Suspension of Services) with access suspended to computerized criminal history non criminal justice purposes for one year. After one year of suspension the agency must seek reinstatement by appearing before the Advisory Policy Board.~~

~~(k) Dissemination of CCH by a certified operator for an unauthorized purpose or to an unauthorized requestor pursuant to 12 NCAC 4E .0203; 4F .0401, .0404, .0405, and .0407 shall result in the following penalties:~~

- ~~(1) First Offense Individual Penalty (Probation);~~
- ~~(2) Second Offense Individual Penalty (Suspension of Certification) and Agency Penalty (Warning) and;~~
- ~~(3) Third Offense Individual Penalty (Revocation).~~

~~(l) Unauthorized use or dissemination of CCH by authorized personnel other than the certified operator pursuant to 12 NCAC 4F .0401, .0404, .0405, and .0407 shall result in the following penalties:~~

- ~~(1) First Offense Agency Penalty (Reprimand) with the agency submitting a written response to the SBI/DCI of a plan and date by which training is complete to prevent further violations of this Rule with a re audit to be conducted 90 days after training is complete;~~

- ~~(2) Second Offense Agency Penalty (Suspension) of CCH services for a period of 90 days and;~~
- ~~(3) Third Offense Agency Penalty (Suspension) of CCH services for a period of six months.~~

~~(m) Failure to maintain and/or audit the DCI automated CCH log or a log of secondary dissemination pursuant to 12 NCAC 4F .0401 (e) or (f) shall result in the following penalties:~~

- ~~(1) First Offense Agency Penalty (Warning);~~
- ~~(2) Second Offense Agency Penalty (Reprimand);~~
- ~~(3) Third Offense Agency Penalty (Probation);~~
- ~~(4) Fourth Offense Agency Penalty (Suspension of Service).~~

~~(n) Failure of the operator to properly fill out a CCH/CHRI inquiry screen pursuant to 12 NCAC 4F .0401 shall result in the following penalties:~~

- ~~(1) First Offense Individual Penalty (Warning) to each operator that contributed with condition of and provisions authorizing an agency re audit after 90 days;~~
- ~~(2) Second Offense Individual Penalty (Probation) with the condition that the agency submit a written response to the SBI/DCI of a plan and date by which training is complete to prevent further violations of this Rule;~~
- ~~(3) Third Offense Individual Penalty (Suspension of Certification) and an Agency Penalty (Reprimand) and; Fourth Offense Individual Penalty (Revocation).~~

~~(o) Failure of the agency maintaining management control over the certified operator to notify SBI/DCI of the employee's resignation or termination of employment pursuant to 12 NCAC 4E .0402(g):~~

- ~~(1) First Offense Agency Penalty (Warning) with condition of agency reaudit after 90 days;~~
- ~~(2) Second Offense Agency Penalty (Reprimand) with condition of agency reaudit after 90 days;~~
- ~~(3) Third Offense Agency Penalty (Probation) and;~~
- ~~(4) Fourth Offense Agency Penalty (Suspended Service).~~

Authority G.S. 114-10; 114-10.1.

SECTION .0200 - APPEALS

12 NCAC 04G .0201 NOTICE OF VIOLATION

~~(a) Upon determination that a violation of these procedures has occurred, written notice of the violation shall be sent by certified mail, return receipt requested to the offending agency or employee. The notice shall inform the party of his appeal rights as provided in Paragraph (b) of this Rule and shall also contain the citation of the specific administrative rule alleged to have been violated.~~

~~(b) An operator, or an agency found to be in violation of these Rules may request an informal hearing before the Advisory Policy Board or may appeal directly to OAH by filing a petition~~

~~for a contested case. A request for an informal hearing must be in writing and submitted to the SBI Assistant Director for DCI within 15 days from the date of notification of violation. A petition for a contested case must be filed with OAH within 60 days in accordance with G.S. 150B-23(f). DCI shall notify the offending agency or employee of the results of the informal hearing within two weeks following the hearing and inform the parties of their rights of appeal under G.S. 150B-23.~~

Authority G.S. 114-10; 114-10.1; 150B-3(b); 150B-23(f).

SECTION .0300 - INFORMAL HEARINGS

21 NCAC 04G .0301 INFORMAL HEARING PROCEDURE

~~(a) Upon request made in accordance with Rule .0403(d) of Subchapter 4E or Rule .0201(b) of this Subchapter, the DCI Advisory Policy Board shall conduct an informal hearing pursuant to the G.S. 150B-22.~~

~~(b) Any agency or individual appearing before the Advisory Policy Board for a hearing may utilize the services of an attorney as their spokesman.~~

~~(c) The DCI Advisory Board shall consider the positions of the parties and make a recommendation to the SBI Assistant Director for DCI.~~

~~(d) This Assistant Director of DCI shall notify the parties of his decision within two weeks following the informal hearing and provide the parties of their further appeal rights in accordance with G.S. 150B-23.~~

Authority G.S. 114-10; 114-10.1; 150B-3(b); 150B-23(f).

TITLE 21 – OCCUPATIONAL LICENSING BOARDS AND COMMISSIONS

CHAPTER 02 – BOARD OF ARCHITECTURE

Notice is hereby given in accordance with G.S. 150B-21.2 that NC Board of Architecture intends to amend the rules cited as 21 NCAC 02 .0107-.0108, .0202, .0214, and .0302-.0303.

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

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

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

Proposed Effective Date: July 1, 2014

Public Hearing:

Date: April 11, 2014

Time: 9:30 a.m.

Location: 127 W. Hargett Street, #304, Raleigh, NC 27601

Reason for Proposed Action:

21 NCAC 02 .0107 – To inform that board forms are available on the website.

21 NCAC 02 .0108 – To clarify that board fees are non-refundable and inform that other publications and services are found on the board website.

21 NCAC 02 .0202 – To inform that rules are available on the board website and clean up language to clarify.

21 NCAC 02 .0214 – To add audit language to the rule to facilitate online renewals.

21 NCAC 02 .0302 – To streamline the exam application process as being done on a national level.

21 NCAC 02 .0303 – To remove outdated and confusing language and streamline reciprocity process.

Comments may be submitted to: Cathe Evans, Executive Director, 127 W. Hargett Street, #304, Raleigh, NC 27601; email cathe@ncbarch.org

Comment period ends: May 16, 2014

Procedure for Subjecting a Proposed Rule to Legislative Review:

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

Fiscal impact (check all that apply).

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

SECTION .0100 – GENERAL PROVISIONS

21 NCAC 02 .0107 FORMS

Any forms referred to or required by these rules are available on the Board web site. ~~upon request made in person or by writing to the Board.~~

Authority G.S. 83A-6.

21 NCAC 02 .0108 FEES

Fees required by the Board, are payable in advance and are set forth below:

Initial Registration Application by Exam

Residents and Non-Residents	\$ 50.00
Firm	\$ 75.00
Application to take the Architectural Registration Exam	\$ 50.00
Annual license renewal	
Individual	\$ 50.00
Firm	\$100.00
Late renewal Penalty	\$ 50.00
Reciprocal registration	\$150.00
Individual or Firm Reinstatement shall be the fee as set forth G.S. 83A-11 and G.S. 55B-10.	
<u>All fees paid to the Board are non-refundable. Other publications and services provided by the Board are available on the Board web site, at cost from the Board office.</u>	

Authority G.S. 83A-4; 83A-11.

SECTION .0200 – PRACTICE OF ARCHITECTURE

21 NCAC 02 .0202 APPLICABILITY OF BOARD RULES

The Executive Director shall ~~mail~~ make available on the Board web site a copy of Chapter 83A of the North Carolina General Statutes and the rules of the Board adopted hereunder to newly licensed individuals ~~each licensed architect in and out of the state to whom a new license has been issued~~, by virtue of having successfully completed the prescribed examination and having otherwise met the Board's requirements for registration. Rules adopted and published by the Board under the provisions of Chapter 83A and Chapter 150B shall be binding upon every individual holding a license from the Board, and upon all professional corporations legally authorized to offer or to perform architectural services in this state. All licensees of the Board are charged with having knowledge of the existence of the Board rules and shall be deemed to be familiar with their several provisions and to understand them. Each licensed person and entity shall affirm in their renewals that they have read the current architectural laws and rules.

Authority G.S. 83A-6.

21 NCAC 02 .0214 FIRM PRACTICE OF ARCHITECTURE

(a) Prior to offering and rendering architectural services as set forth in G.S. 83A and 21 NCAC 02 .0204(a), all firms must submit an application for firm registration and be granted registration by the Board. Application for firm registration to practice of architecture within the State of North Carolina shall be made upon forms provided by the Board and include the required application fee. Certificates for firm practice may be issued only under the provisions of the, G.S. 55B, except as provided in Subsection (b) of this Rule and G.S 57C.

(b) Architectural Corporations Under G.S. 55, the Business Corporation Act. Applications for certificate of registration as exempt from the Professional Corporation Act under the provisions of G.S. 55B-15 shall be made upon forms provided by the Board. Completed applications must be accompanied by the corporate application fee. To be eligible as an exempt

corporation under the provisions of G.S. 55B-15, the following conditions must exist:

- (1) The corporation must have been incorporated prior to June 5, 1969 as a business corporation;
 - (2) Prior to and since June 5, 1969, the corporation must have been a bona fide architectural or architectural-engineering firm with services limited to the practice of architecture or architecture-engineering and such services as may be ancillary thereto within the State of North Carolina; and
 - (3) The corporation must have applied to be an exempt corporation before October 1, 1979.
- (c) Renewal of Certificate. Firm registration must be renewed on or before December 31st each year. If the Board has not received the annual renewal fee and completed application on or before December 31st each year, the firm license shall expire and be delinquent. No less than 30 days prior to the renewal date, the Board shall send a notice of renewal to each registered firm. The firm must designate an officer to complete the renewal documentation required by the Board. The Board shall not accept incomplete renewal documentation. Renewal documentation must be accompanied by the renewal fee. If the accompanying draft or check in the amount of the renewal fee is dishonored by the firm's drawee bank for any reason, the Board shall suspend the firm registration until the renewal fees and returned check charges are paid. When the annual renewal has been complete according to the provision of G.S. 83A-11, the Executive Director shall approve renewal for the firm registration for the current renewal year. The Board may randomly audit the compliance of firm registrations and require proof in the form of corporate records maintained pursuant to G.S. 55B. Such records must be maintained for a period of seven years after the renewal is submitted. Renewal fees are non-refundable.
- (d) Failure to Renew and Reinstatement. Within one year of the expiration the firm license may be renewed at any time, upon the return of the completed renewal documents, the annual renewal fee and the late renewal fees. After one year from the date of expiration for non-payment of the annual renewal fee the licensee shall seek reinstatement, as allowed by G.S. 83A-11. The Board may reinstate the firms' certificate of registration, as allowed by G.S. 83A-11.
- (e) Seal. Each registered corporation shall adopt a seal pursuant to 21 NCAC 02 .0206(a)(3).
- (f) Approval of Name. In addition to the requirements and limitations of G.S. 55 and 55B, the firm name used by an architectural corporation shall conform with Rule .0205 and be approved by the Board before being used. This Rule shall not prohibit the continued use of any firm name adopted in conformity with the General Statutes of North Carolina and Board Rules in effect at the date of such adoption.

Authority G.S. 55B-5; 55B-10; 55B-15; 83A-6; 83A-8.

SECTION .0300 – EXAMINATION PROCEDURES

21 NCAC 02 .0302 EXAMINATION

(a) Licensure Examination. All applicants for architectural registration in North Carolina by examination shall pass the Architectural Registration Examination (ARE), prepared by the National Council of Architectural Registration Boards (NCARB). Provided, applicants who have never been registered in any NCARB recognized jurisdiction may transfer credits for portions of the examination previously passed in another jurisdiction if at the time of initial approval to take the exam in said jurisdiction they otherwise qualified for taking the exam under the rules in this Chapter. The qualifications necessary for eligibility to take the ARE are as follows:

- (1) be of good moral character as defined in G.S. 83A-1(5);
- (2) be at least 18 years of age;
- (3) the professional education qualification is the NAAB (National Architectural Accrediting Board) accredited professional degree in architecture;
- (4) all applicants who apply for architectural registration by exam are required ~~to follow to be enrolled in~~ the Intern Development Program (IDP) through NCARB or a program approved as equivalent by the North Carolina Board of Architecture. ~~Architecture in order to satisfy the requirements of this Section.~~
- (5) The Board shall grant eligibility to take the exam, to those individuals who have obtained the required NAAB accredited ~~degree, degree~~ and have enrolled in the NCARB IDP. ~~IDP and have had verified by NCARB at least 2000 training units of the IDP as approved by NCARB.~~ Upon successful completion of all sections of the ARE, ARE fulfillment of the practical training requirement and fulfillment of all remaining IDP requirements an individual may submit the application and fee for licensure by exam and may then be granted a license to practice architecture. G.S. 83A-7(a)(1)a. shall be deemed satisfied through completion of the requirements set forth in Subparagraphs (a)(1) though (a)(5) of this Rule.

(b) Retention of credit for purposes of licensure by examination in North Carolina.

- (1) Passing scores received after July 1, 2006 on any part of the ARE remain valid for a period of time established by the exam provider, NCARB.
- (2) As of July 1, 2011, passing scores received on any part of the ARE prior to July 1, 1996 are invalid.
- (3) As of July 1, 2014, passing scores received on any part of the ARE after July 1, 1996 and prior to July 1, 2006 are invalid.

(c) Practical training means practical experience and diversified training as defined by the Intern Development Program through the NCARB. However, the Board may judge each case on its own merits.

(d) Personal interview. During the application process, the applicant may be interviewed by the Board members. The purpose of the interview is to augment the evidence submitted in an application with regard to qualifications required in Subparagraph (a)(1) of this Rule.

(e) The ARE shall be graded in accordance with the methods and procedures recommended by NCARB. An exam candidate must receive a passing grade in each division of the Architectural Registration Exam.

(f) A person currently employed under the responsible control of an architect, who holds a Professional Degree from a NAAB accredited program, and who is enrolled in and maintains good standing or has successfully completed a National Council of Architectural Registration Boards Record in the Intern Development Program (IDP) may use the title "Architectural Intern" or "Intern Architect" in conjunction with his/her current employment.

Authority G.S. 83A-1; 83A-6; 83A-7.

21 NCAC 02 .0303 LICENSURE BY RECIPROCITY

~~(a)~~ An individual who holds a current license in good standing from a National Council of Architecture Registration Boards (NCARB) recognized jurisdiction and a Certified Council Certificate (also known as "Blue Cover") issued by NCARB may qualify for licensure by reciprocity. Upon receipt of a certified record from NCARB and the Board application for licensure by reciprocity and fee, the Board may issue a license to an applicant as provided in G.S. 83A-7(b). Revocation of the certificate by NCARB shall automatically suspend the architect's license to practice in North Carolina until such time as the certificate is reinstated by NCARB.

~~(b) Licensure by Direct Reciprocity with another NCARB recognized jurisdiction. The Board may grant a reciprocal license to an individual who submits a non-certified NCARB record (also known as the "Buff Cover") or other verified evidence that he/she meets the following requirements:~~

- ~~(1) the applicant has been continuously licensed in good standing in another jurisdiction; and~~
- ~~(2) the applicant otherwise met the requirements for a certified NCARB record or North Carolina license in effect at the time of his/her original licensure as an architect.~~

The Board may interview with the applicant to satisfy the Board, or its designee that the applicant has had sufficient recent architectural practice experience to be able to competently practice architecture in this state.

Authority G.S. 83A-6; 83A-7.

CHAPTER 16 – BOARD OF DENTAL EXAMINERS

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC State Board of Dental Examiners intends to adopt the rule cited as 21 NCAC 16D .0106; amend the rules cited as 21 NCAC 16D .0104; 16E .0103, .0104; and repeal the rule cited as 21 NCAC 16D .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):
www.ncdentalboard.org

Proposed Effective Date: July 1, 2014

Public Hearing:

Date: April 10, 2014

Time: 6:30 p.m.

Location: 507 Airport Blvd., Suite 105, Morrisville, NC 27650

Reason for Proposed Action:

21 NCAC 16D .0203 – This rule is proposed for repeal as unnecessary because the Board is entitled to subpoena records from provisional licensees pursuant G.S. 90-27.

21 NCAC 16D .0104 – This rule is proposed for amendment to make the application process for provisional dental license applicants the same as that for dental license applicants.

21 NCAC 16D .0106 – This rule is proposed for adoption to clarify that the act of applying for a provisional license constitutes consent for the Board to investigate the applicant.

21 NCAC 16E .0103 – This rule is proposed for amendment to make the application process for provisional hygiene license applicants the same as that for dental hygiene license applicants.

21 NCAC 16E .0104 – This rule is proposed for amendment to improve the grammatical structure of the rule.

Comments may be submitted to: Bobby D. White, Chief Operations Officer, 507 Airport Blvd., Suite 105, Morrisville, NC 27660

Comment period ends: June 10, 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

SUBCHAPTER 16D – PROVISIONAL LICENSURE: DENTISTS

SECTION .0100 – GENERAL PROVISIONS

21 NCAC 16D .0103 PATIENT RECORDS

~~A provisional licensee may, during the period of his provisional licensure, be required to furnish to the Board records of patients treated by him.~~

Authority G.S. 90-29.3.

21 NCAC 16D .0104 APPLICATION

(a) All applications for provisional licensure shall be made on the forms furnished submitted upon forms provided by the Board at www.ncdentalboard.org Board, and no application shall be deemed complete which does not set forth all the information required relative to the applicant. Incomplete applications will be returned to the applicant. Any applicant who changes his address shall notify the Board office within 10 business days. Applicants shall ensure that official transcripts of undergraduate college and dental school credits are sent in a sealed envelope to the Board office. and all information requested shall be provided.

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

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

~~(b)(d)~~ All applicants shall submit to the Board a signed release form, form and completed Fingerprint Record Card, Card and such other form(s) required to perform a criminal history check at the time of the application. The form and card are available from the Board office.

(e) All applicants must include a statement disclosing and explaining periods, within the last 10 years, of any voluntary or involuntary commitment to any hospital or treatment facility, observation, assessment, or treatment for substance abuse, with verification demonstrating that the applicant has complied with all provisions and terms of any drug treatment program, or impaired dentists or other impaired professionals program.

Authority G.S. 90-29.3; 90-41(a).

21 NCAC 16D .0106 CONSENT FOR BOARD INVESTIGATION

In making application, the applicant authorizes the Board to verify the information contained in the application and to seek such further information pertinent to the applicant's qualifications or character as the Board may deem proper. The applicant consents that his character and reputation may be inquired into, and waives any right he may have to recover damages against the Board, any member thereof or its agents, or

any person who answers a Board inquiry in good faith and without malicious intent.

Authority G.S.90-29.3.

**SUBCHAPTER 16E – PROVISIONAL LICENSURE:
DENTAL HYGIENIST**

21 NCAC 16E .0103 APPLICATION

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

(b) The one hundred fifty dollar (\$150.00) nonrefundable application fee shall accompany the application.

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

~~(b)(d)~~ (d) All applicants shall submit to the Board a signed release form, completed Fingerprint Record Card, and such other form(s) required to perform a criminal history check at the time of the application. The form and card are available from the Board office.

Authority G.S. 90-226; 90-229(a).

21 NCAC 16E .0104 EXAMINATION

As a condition precedent to issuing a provisional license, the Board may require an applicant to demonstrate professional competency by appearing ~~appear~~ before the Board for oral examination, written examination(s), clinical evaluation or any combination thereof ~~and satisfy the Board as to the applicant's professional competency. thereof.~~

Authority G.S. 90-226.

**CHAPTER 37 – BOARD OF EXAMINERS FOR NURSING
HOME ADMINISTRATORS**

Notice is hereby given in accordance with G.S. 150B-21.2 that NC State Board of Examiners for Nursing Home Administrators intends to amend the rules cited as 21 NCAC 37B .0101; 37D .0202, .0402, .0703; 37E .0102; 37F .0102; 37G .0102, .0201; and 37H .0102.

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

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

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

Proposed Effective Date: *July 1, 2014*

Public Hearing:

Date: *May 7, 2014*

Time: *10:00 a.m.*

Location: *3733 National Drive, Suite 110, Raleigh, NC 27612*

Reason for Proposed Action: *The proposed amendments are to update the NC State Board of Examiners for Nursing Home Administrator contact information as well as to clarify application processes. The Board is self-sustaining; therefore, a fee increase is needed to ensure the fiscal integrity of the Board. Fees have not been increased since 2004.*

Comments may be submitted to: *Jane Baker, 3733 National Drive, Suite 110, Raleigh, NC 27612; phone (919) 571-4164; email ncbenha@mindspring.com*

Comment period ends: *May 16, 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

SUBCHAPTER 37B – DEPARTMENTAL RULES

SECTION .0100 – GENERAL PROVISIONS

21 NCAC 37B .0101 AUTHORITY: NAME & LOCATION OF BOARD

The "North Carolina State Board of Examiners for Nursing Home Administrators," subsequently herein referred to as the "Board" is established and authorized by G.S. 90, Article 20. The Board's physical location and mailing address is: 3733 National Drive, Suite 228, 110, Raleigh, North Carolina 27612. The Board's website address is www.ncbenha.org.

Authority G.S. 90-277.

SUBCHAPTER 37D – NEW LICENSES

SECTION .0200 – APPLICATION FOR LICENSE

21 NCAC 37D .0202 INITIAL LICENSURE FEE

~~The applicant shall send to the Board, prior to licensure, Prior to licensure, the applicant shall send~~ an initial licensure ~~non-refundable~~ fee of ~~four hundred twenty five dollars (\$425.00)~~ five hundred dollars (\$500.00) when the applicant has successfully passed the examinations as required by the Board under Sections .0600 and .0700 of this Subchapter.

Authority G.S. 90-280.

SECTION .0400 – ADMINISTRATOR-IN-TRAINING

21 NCAC 37D .0402 APPLICATION TO BECOME ADMINISTRATOR-IN-TRAINING

(a) The applicant shall submit to the Board an application, which shall contain such information as name, education, employment history, questions pertaining to moral character, ~~and any other information the Board may require to process an application according to these Rules;~~ criminal history, and an affidavit stating that the applicant if granted a license, shall obey the laws of the state and the rules of the Board, and shall maintain the honor and dignity of the profession.

(b) The applicant shall submit a ~~background resume indicating the areas in which he is competent or lacking;~~ resume.

(c) The applicant shall submit ~~three~~ reference forms (one employer and two character) as ~~required and defined by set forth in Rule .0203 of this Subchapter.~~

- (1) Employer Reference Form includes the address of employment and duties assigned;
- (2) Character Reference Form includes how this individual knows the applicant and whether the applicant is capable to supervise the care of residents of a skilled facility. No character reference shall be from a relative of the applicant.

(d) The applicant shall supply a certified copy of each college transcript indicating the courses completed and hours earned, specifying whether semester or quarter hours. The applicant shall supply documentation of his or her supervisory experience in a nursing home if ~~he the applicant~~ is utilizing the experience substitute for the education requirement as allowed by G.S. 90-278(1)b.

(e) The applicant and the preceptor shall appear before the Board for a personal interview.

(f) The preceptor shall submit to the Board three weeks prior to the personal interview:

- (1) Facility Survey Form; Form stating the facility license number, address and the number of beds;
- (2) Letter accepting individual as an AIT;
- (3) Preceptor Disclosure Form stating number of years as an administrator and number of AITs precepted;
- ~~(3)(4)~~ An individualized curriculum—Curriculum Outline for the AIT program that provides the AIT with on the job experience in the subject areas as outlined in Rule .0605 of this Subchapter, each department. A basic outline shall include each department and the information that will be covered including the recommended number of weeks in the program as outlined on the AIT Curriculum Request and Rationale Form;
- ~~(4)(5)~~ Based AIT Curriculum Request and Rationale Form shall be based on the education or and experience of the AIT applicant, applicant, the The preceptor shall be responsible for providing a rationale for any all subject area areas with in which the recommended number of weeks for the AIT is less than the number of weeks provided on the Form; AIT; and
- ~~(5)(6)~~ Map to facility or directions. Directions to the facility.

(g) The owner ~~of the facility~~ or governing board of the facility shall submit to the Board three weeks prior to the personal interview, a letter of approval for the AIT applicant to train in their facility.

(h) A non-refundable processing fee of one hundred fifty dollars (\$150.00) two hundred fifty dollars (\$250.00) shall be submitted with the application.

(i) An AIT applicant shall maintain at all times a current ~~residence~~ residential mailing address with the Board office.

Authority G.S. 90-278; 90-280; 90-285; 90-288.01.

SECTION .0700 – STATE EXAM

21 NCAC 37D .0703 STATE EXAMINATION ADMINISTRATION

(a) The State Examination shall be administered on dates to be determined and published by the ~~Board,~~ Board on the State Examination Application form. It may also be offered ~~on different dates to reciprocity applicants and to AIT applicants who have passed the National Examination but have previously failed the State Examination.~~ Examination on different dates who show good cause such as unavailability due to illness, inclement weather, employment, survey, etc.

(b) An applicant shall pay a non-refundable processing fee of seventy five dollars (\$75.00) one hundred fifty dollars (\$150.00) each time ~~he the applicant~~ takes the State Examination.

(c) To sit for the State Examination, the applicant shall submit a Test Confidentiality and Attestation Form which is a release form stating to keep test questions confidential. This form is

provided by the Board on the website and in the information package.

(d) An applicant shall sit for and pass the State Exam within one year of the date of completion of the AIT program.

Authority G.S. 90-280; 90-285.

SUBCHAPTER 37E – RECIPROCITY/ENDORSEMENT

SECTION .0100 – APPLICATION

21 NCAC 37E .0102 APPLICATION CONTENTS

An applicant for reciprocity/endorsement shall submit the following items which ~~must~~ shall be received by the Board three weeks prior to the ~~personal interview; next scheduled Board Meeting which is posted on the Board's website;~~

- (1) ~~a completed application;~~
- (2) ~~background resume;~~
- (3) ~~certified college transcript(s);~~
- (4) ~~three reference forms (one of which shall be from an employer) from individuals not related to the applicant who shall certify the good moral character of the applicant as defined in 21 NCAC 37D .0203; reference forms (one employer and two character) as set forth in 21 NCAC 37D .0203;~~
 - (a) Employer Reference Form includes the address of employment and duties assigned.
 - (b) Character Reference Form includes how this individual knows the applicant and whether the applicant is capable to supervise the care of residents of a skilled facility. No character reference shall be from a relative of the applicant.
- (5) licensing questionnaire(s) which is provided on the Board's website from every state where the applicant has held a license; and
- (6) a two hundred dollars (\$200.00) application fee non-refundable processing fee of two hundred fifty dollars (\$250.00); and
- (7) submission of fingerprint card, necessary forms and required fee for criminal background check.

Authority G.S. 90-280; 90-285; 90-287; 90-288.01.

SUBCHAPTER 37F – TEMPORARY LICENSES

SECTION .0100 – TEMPORARY LICENSE REQUIREMENTS

21 NCAC 37F .0102 ISSUANCE OF TEMPORARY LICENSE

(a) An applicant for a temporary license shall ~~request, in writing, a temporary license package from the Board; submit the following items; provide a letter from the owner or regional manager requesting the issue of such license for the facility,~~

~~stating the circumstances necessitating the issuance of a temporary license, and submit a completed application package including of a two hundred dollar (\$200.00) fee.~~

- (1) completed application;
- (2) resume;
- (3) reference forms (one employer and two character) as set forth in 21 NCAC 37D .0203;
 - (A) Employer Reference Form includes the address of employment and duties assigned;
 - (B) Character Reference Form includes how this individual knows the applicant and whether the applicant is capable to supervise the care of residents of a skilled facility. No character reference shall be from a relative of the applicant;
- (4) letter from the owner or regional manager requesting the issuance of a Temporary License for the facility stating the circumstances necessitating the issuance of the license; and
- (5) processing fee of three hundred dollars (\$300.00).

(b) After an applicant is issued a temporary license he or she shall submit a fingerprint card, necessary forms and required fee for a criminal background check and successfully pass the state examination as administered by the Board ~~at the next scheduled testing period at the next exam date~~ to retain the temporary license.

(c) A temporary license may be ~~renewed~~ extended at the discretion of the Board ~~for an additional period not to exceed a total of six months subject to~~ in accordance with the requirements of 21 NCAC 37F .0101(d); this Subchapter.

(d) A temporary license shall be issued to the ~~licensee applicant to permit him~~ applicant to practice only in the nursing home to which ~~he~~ the applicant is assigned on the date of issuance.

(e) If the Board ~~renews~~ extends the temporary license, no further fee shall be required.

Authority G.S. 90-278; 90-280; 90-285; 90-288.01.

SUBCHAPTER 37G – RENEWAL, INACTIVE, RESTORATION AND REINSTATEMENT, DUPLICATE

SECTION .0100 – RENEWAL REQUIREMENTS

21 NCAC 37G .0102 RENEWAL FEE

Upon making application for a new certificate of registration a licensee shall pay a biennial licensure fee of ~~four hundred twenty five dollars (\$425.00);~~ five hundred dollars (\$500.00).

Authority G.S. 90-280; 90-285; 90-286.

SECTION .0200 – INACTIVE LICENSES

21 NCAC 37G .0201 INACTIVE REQUIREMENTS

(a) ~~An inactive list of administrators who are not practicing in this state shall be maintained by the Board.~~ An administrator

who desires to be placed on the inactive status list shall make a written request on the biennial renewal form provided by the Board and submit a ~~fifty dollar (\$50.00)~~ non-refundable inactive fee of one hundred dollars (\$100.00) per year fee to the Board. ~~Inactive status shall only be granted on a prospective basis.~~

(b) A request to be placed on the inactive status list shall be submitted to the Board no later than 30 days after expiration of the license under ~~21 NCAC 37G .0101(a)~~. Rule .0101(a) of this Subchapter. Failure to submit the request and payment of the fee within this time shall result in automatic expiration of the license retroactive to the expiration date.

(c) An administrator may remain on the inactive list for a period not to exceed four years provided ~~he the licensee~~ pays a fifty dollar (\$50.00) fee an inactive fee of one hundred dollars (\$100.00) in advance for each additional year.

Authority G.S. 90-280; 90-285.

SUBCHAPTER 37H – CONTINUING EDUCATION

SECTION .0100 – CONTINUING EDUCATION REQUIREMENTS

21 NCAC 37H .0102 CONTINUING EDUCATION PROGRAMS OF STUDY

(a) The Board shall certify and administer courses in continuing education for the professional development of nursing home administrators and to enable persons to meet the requirements of the Rules in this Chapter. The licensee shall keep a record of his or her continuing education hours. Certified courses, including those sponsored by the Board, an accredited university, college or community college, associations, professional societies, or organizations shall:

- (1) contain a minimum of one classroom hour of academic work and not more than eight classroom hours within a 24-hour period; and
- (2) include instruction in the following general subject areas or their equivalents:
 - (A) Resident Care and Quality of Life;
 - (B) Human Resources;
 - (C) Finance;
 - (D) Physical Environment and Atmosphere; or
 - (E) Leadership and Management.

(b) In lieu of certifying each course offered by a provider, the Board may certify the course provider for an annual fee not to exceed ~~two thousand dollars (\$2,000.00)~~ four thousand dollars (\$4,000). The annual fee is based on the number of courses offered in the prior year. ~~(so long as the~~ The course provider submits shall submit a list of courses offered for credit and agrees to comply with the requirements of Paragraph (a) of this ~~Rule).~~ Rule. Providers will be reviewed annually.

(c) Certified courses not administered by the Board shall:

- (1) be submitted to the Board for approval at least 30 days prior to the presentation of the program;
- (2) be accompanied with a processing fee to cover the cost of reviewing and maintaining records

associated with the continuing education program. The fee schedule is as follows:

- (A) Any course submitted for review, up to and including ~~five~~ six hours, shall be accompanied by a non-refundable fee of seventy five dollars (\$75.00) one hundred dollars (\$100.00); and
- (B) ~~Courses~~ Any course submitted for review ~~of at least is greater than~~ is greater than six hours, ~~and up to and including nine hours shall be accompanied by a fee of ninety dollars (\$90.00); the sponsor shall pay ten dollars (\$10.00) for each additional hour.~~
- ~~(C) Courses submitted for review of 10 hours or more shall be accompanied by a fee of one hundred dollars (\$100.00).~~

~~(3) be approved for a period of one year from the date of initial presentation.~~

~~(d) Courses from an accredited university or community college shall meet all requirements as outlined in Paragraphs (a) and (b) of this Rule. A licensee submitting such courses for continuing education credit shall submit a copy of the final grade for said course work. Continuing education credit hours granted by the Board shall be the same as those granted by the institution. Courses will be approved for a period of one year from the date of initial presentation.~~

~~(e) Credit may be earned for participating in teleconferenced course only if there is a third party representative of the course sponsor or the Board present to verify the licensee's attendance throughout the course. Board approval for distance learning programs that are cd, dvd, videotape, printed material or web-based, tests are required before and after the session. For every credit hour claimed, the course shall include five pre test questions and five post test questions. Pre and post test questions may be the same.~~

~~(f) Up to ten (10) hours of credit may be earned for participation in correspondence courses, only if, Continuing education credit for licensees may include up to 10 hours for participation in distance learning courses only if:~~

- (1) ~~the correspondence distance learning~~ the approved distance learning course is approved by the Board or the National Association of Boards of Examiners of Long Term Care Administrators ~~(NAB); (NAB).~~ The NAB is a certifying association of continuing education across the nation; and
- (2) the approved course planner sends to the Board a verification of the individual's completion of the ~~correspondence distance learning~~ course.

~~(g) The Board shall charge a registration fee covering the cost of continuing education courses it sponsors, not to exceed two hundred fifty dollars (\$250.00).~~ five hundred dollars (\$500.00).

Authority G.S. 12-3.1(c)(3); 90-278; 90-280; 90-285; 90-286.

CHAPTER 46 – BOARD OF PHARMACY

SECTION .2400 – DISPENSING IN HEALTH DEPARTMENT

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Board of Pharmacy intends to amend the rules cited as 21 NCAC 46 .2401 and .2403.

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.ncbop.org/lawandrules.htm

Proposed Effective Date: August 1, 2014

Public Hearing:

Date: June 17, 2014

Time: 9:00 a.m.

Location: NC Board of Pharmacy, 6015 Farrington Road, Suite 201, Chapel Hill, NC 27517

Reason for Proposed Action: Revisions required by Session Law 2013-23 and the Acting State Health Director's addition of naloxone to the recommended formulary of drugs to be dispensed by registered nurses in local health department clinics.

Comments may be submitted to: Jay Campbell, 6015 Farrington Road, Suite 201, Chapel Hill, NC 27517; fax (919) 246-1056; email jcampbell@ncbop.org

Comment period ends: 9:00 a.m., June 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

21 NCAC 46 .2401 MEDICATION IN HEALTH DEPARTMENTS

A registered nurse employed by a local health department may dispense prescription drugs or devices under the following conditions:

- (1) Drugs or devices may be dispensed only to health department ~~patients;~~ patients, with the exception of opioid antagonists, which may be dispensed either to health department patients or to others as permitted by G.S. 90-106.2;
- (2) No drugs or devices may be dispensed except at health department clinics;
- (3) The health department shall secure the services of a pharmacist-manager who shall be responsible for developing and supervising a system of control and accountability of all drugs dispensed from the health department;
- (4) Only the general categories of drugs or devices listed in Rule .2403 may be dispensed by a health department registered nurse;
- (5) All drugs or devices dispensed pursuant to G.S. 90-85.34A and these rules shall be packaged in suitable safety-closure containers, where appropriate, and shall be properly labelled (including necessary auxiliary labels) so as to provide information necessary for use and all other information required by state and federal law;
- (6) A suitable and perpetual record of drugs or devices dispensed shall be maintained in the health department. The pharmacist-manager shall verify the accuracy of the records at least weekly, and where health department personnel dispense to 30 or more patients in a 24-hour period per dispensing site, the pharmacist-manager shall verify the accuracy of the records within 24 hours after dispensing occurs;
- (7) The duties of the pharmacist-manager set out in Paragraphs (1) through (6) in this Rule may be delegated to a pharmacist licensed by the Board. The pharmacist-manager shall remain personally responsible for compliance with all statutes, rules, and regulations governing the practice of pharmacy and dispensing of drugs.

Authority G.S. 90-85.6; 90-85.34A; 90-106.2.

21 NCAC 46 .2403 DRUGS AND DEVICES TO BE DISPENSED

(a) Pursuant to the provisions of G.S. 90-85.34A(a)(3), prescription drugs and devices included in the following general categories may be dispensed by registered nurses in local health department clinics when prescribed for the indicated conditions:

- (1) Anti-tuberculosis drugs, as defined by the latest edition of Drug Facts and Comparisons,

as published by Facts and Comparison Div., J.B. Lippincott Co., or as recommended by the Tuberculosis Control Branch of the North Carolina Division of Health Services, when used for the treatment and control of tuberculosis;

- (2) Anti-infective agents used in the control of sexually-transmitted diseases as recommended by the United States Centers for Disease Control;
- (3) Natural or synthetic hormones and contraceptive devices when used for the prevention of pregnancy;
- (4) Topical preparations for the treatment of lice, scabies, impetigo, diaper rash, vaginitis, and related skin conditions; ~~and~~
- (5) Vitamin and mineral supplements; and ~~supplements.~~
- (6) Opioid antagonists prescribed pursuant to G.S. 90-106.2.

(b) Regardless of the provisions set out in this Rule, no drug defined as a controlled substance by the United States Controlled Substances Act, 21 U.S. Code 801 through 904, or regulations enacted pursuant to that Act, 21 CFR 1300 through 1308, or by the North Carolina Controlled Substances Act, G.S. 90-86 through 90-113.8, may be dispensed by registered nurses pursuant to G.S. 90-85.34A.

Authority G.S. 90-85.6; 90-85.34A; 90-106.2.

CHAPTER 53 – BOARD OF LICENSED PROFESSIONAL COUNSELORS

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Board of Licensed Professional Counselors intends to adopt the rule cited as 21 NCAC 53 .0310-.0311, .0901-.0902 and amend the rules cited as 21 NCAC 53 .0102, .0204-.0206, .0208-.0212, .0301-.0302, .0304-.0305, .0307-.0308, .0403, .0501, .0503, .0601-.0604, .0701-.0702, .0801.

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.ncblpc.org

Proposed Effective Date: July 1, 2014

Public Hearing:

Date: May 12, 2014

Time: 12:00 p.m. – 2:00 p.m.

Location: NC Board of Licensed Professional Counselors, 111 West Main Street, Suite 100, Garner, NC 27529

Reason for Proposed Action: To update and clarify rules based on October 1, 2009 statute changes.

Comments may be submitted to: Beth Holder, P.O. Box 1369, Garner, NC 27529; phone (919) 661-0820; fax (919) 779-5642; email bholder@caphill.com

Comment period ends: May 16, 2014

Procedure for Subjecting a Proposed Rule to Legislative Review:

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

Fiscal impact (check all that apply).

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

SECTION .0100 – GENERAL INFORMATION

21 NCAC 53 .0102 PROFESSIONAL ETHICS

~~The Board of Licensed Professional Counselors has adopted the Code of Ethics and Standards of Practice promulgated by the American Counseling Association, effective 2005, including the guidelines for the practice of online counseling adopted in October 1999 and any subsequent revisions of or amendments to the Code of Ethics and Standards published by the American Counseling Association and they are hereby incorporated by reference. Copies of the Code of Ethics and Standards are available free of charge from the American Counseling Association, online at www.counseling.org. In addition, the Board has adopted the Approved Clinical Supervisor (ACS) Code of Ethics promulgated by the Center for Credentialing and Education, effective 2008, and any subsequent revisions of or amendments to the Code of Ethics by the Center for Credentialing and Education and they are hereby incorporated by reference. Copies of the Approved Clinical Supervisor (ACS) Code of Ethics are available free of charge from the Center for Credentialing and Education online at www.cce-global.org.~~

(a) The Board of Licensed Professional Counselors has adopted the American Counseling Association (ACA) Code of Ethics including subsequent amendments and editions. A free copy

may be obtained from the American Counseling Association online at www.counseling.org.

(b) In addition, the Board has adopted the Approved Clinical Supervisor (ACS) Code of Ethics promulgated by the Center for Credentialing and Education including subsequent amendments and editions. A free copy may be obtained from the Center for Credentialing and Education online at www.cce-global.org.

Authority G.S. 90-334(h).

SECTION .0200 – DEFINITIONS AND CLARIFICATION OF TERMS

21 NCAC 53 .0204 PROFESSIONAL DISCLOSURE STATEMENT REQUIREMENTS FOR LPCA AND LPC

A ~~professional disclosure statement~~ Professional Disclosure Statement is a printed document that includes the following information:

- (1) name of ~~licensee~~; licensee or applicant;
- (2) the ~~licensee's~~ licensee's or applicant's highest relevant degree, year degree received, discipline of degree (e.g., counseling, school counseling), and name of institution granting the degree;
- (3) names and numbers of all relevant credentials (licenses, certificates, registrations);
- (4) number of years of counseling experience;
- (5) description of services offered and clientele (populations) served;
- (6) length of sessions, specific fee or range of fees charged per session (if no fee is charged, a statement to that effect), and methods of payments for services, including information about ~~billing/insurance~~ billing or insurance reimbursement;
- (7) an explanation of confidentiality, including responsibilities and ~~exceptions~~; exceptions (e.g., child or elder abuse, court order);
- (8) a statement of procedure for registering complaints, including the ~~full name and address~~ full name, address, and telephone number of the Board; ~~and~~
- (9) signature and date spaces for both the client and licensee; licensee; and
- (10) level of licensure and whether the licensee is under supervision. If under supervision, include name of supervisor.

A current copy of this statement shall be provided to each client prior to the performance of professional counseling services. An updated ~~professional disclosure statement~~ Professional Disclosure Statement shall be submitted at the time of renewal to the Board's office at 111 West Main Street, Suite 100, Garner, North Carolina 27529. The counselor shall retain a file copy of the Professional Disclosure Statement signed by each client.

Authority G.S. 90-334; 90-334(h); 90-343.

21 NCAC 53 .0205 COUNSELING EXPERIENCE

~~Counseling [counseling services as defined in G.S. 90-330(a)(3)] experience applicable to the experience requirement for licensure consists of a minimum of 3000 hours of supervised professional practice after the graduate degree in counseling or counseling related field has been conferred. At least 2000 hours of the supervised professional practice hours must consist of direct counseling experience. The counseling experience required by G.S. 90-336(c)(2) shall include a minimum of 2000 hours of supervised professional practice hours of direct counseling experience. Direct counseling experience consists of live contact with individuals, groups, and or families through counseling as defined in G.S. 90-330(a)(3)a through and b. To be applicable, experience~~ Experience shall be gained at a rate of ~~not less than eight hours per week but~~ no more than 40 hours per week. At least 100 hours of clinical supervision, as defined in Rule .0210 and Rule .0211 of this Section, shall be documented during the minimum of 3000 hours of supervised professional practice, as defined in Rule .0208 of this Section. No less than three-quarters of the hours of clinical supervision shall be individual clinical supervision.

Authority G.S. 90-330(a)(3); 90-334(h),(i); 90-336(c).

21 NCAC 53 .0206 GRADUATE COUNSELING EXPERIENCE

A practicum and an internship must be completed as two separate courses (three semester or five quarter hours each) as part of the graduate course of study with at least 17 hours of graduate counseling supervision, as defined in Rule .0210 and Rule .0211 of this Section. ~~The supervision~~ Supervised graduate counseling shall be verified by a university faculty member on forms provided by the Board and shall consist of a minimum of 300 hours of ~~supervised~~ graduate counseling experience at a rate of not less than one hour of clinical supervision per 40 hours of graduate counseling experience, as defined by Rule .0701(a)(2)(b) of this Chapter. At least 60 percent of this ~~supervised~~ counseling experience shall be direct graduate counseling experience as defined in Rule .0205 of this Section.

Authority 90-332.1(a)(3); 90-334(h),(i); 90-336(b)(1).

21 NCAC 53 .0208 SUPERVISED PROFESSIONAL PRACTICE

Supervised professional practice ~~consists of~~ means counseling experience under the supervision of a qualified clinical supervisor, as defined in Rule .0209 of this Section, ~~including and includes~~ a minimum of one hour of individual or two hours of group clinical supervision per 40 hours of supervised professional counseling practice. Individual clinical supervision hours do not count towards the 40 hours of supervised professional practice. At least three-quarters of the hours of clinical supervision shall be individual. Persons who have met all licensure requirements except the supervised professional practice who wish to counsel as supervised counselors in supervised professional settings, as defined in Rule .0207 of the Section, shall apply to become a ~~Licensed Professional Counselor Associate~~ licensed professional counselor associate as defined in ~~Section .0700~~ Rule .0701 of this Chapter. The focus

of a supervision session shall be on raw data from clinical work which is made available to the supervisor through such means as ~~direct (live)~~ live observation, co-therapy, audio and video recordings, and live supervision. Written materials and self-reports by the supervised counselor may supplement the supervision process but shall not be the sole basis of any supervision session.

Authority 90-334(h),(i); 90-336(c)(2).

21 NCAC 53 .0209 QUALIFIED CLINICAL SUPERVISOR

(a) A qualified clinical supervisor is:

- (1) A licensed professional counselor with ~~at least the following: a master's degree as defined in G.S. 90-336(b)(1) who has an active and unrestricted license, the equivalent of three semester graduate credits in clinical supervision from a regionally accredited institution of higher education as documented by an official transcript or 45 contact hours of continuing education as defined by Rule .0603(c) in this Chapter, in clinical supervision, and a minimum of five years of post graduate counseling experience with a minimum of two years post licensure experience, or~~
 - (A) a master's degree as defined in G.S. 90-336(b)(1);
 - (B) an ~~active and unrestricted license, independent license that is not under supervision;~~
 - (C) the equivalent of three semester graduate credits in clinical supervision from a regionally accredited institution of higher education as documented by an official transcript or 45 contact hours of continuing education in clinical supervision as defined by Rule .0603(c) in this ~~Chapter, Chapter; in clinical supervision;~~ and
 - (D) a minimum of five years of post-graduate counseling experience with a minimum of two years post licensure ~~experience, experience;~~
- (2) ~~Other equivalently~~ An equivalently and actively licensed and experienced mental health professional, professional as defined in Paragraph (c) of this Rule.

(b) As of July 1, ~~2014, 2017,~~ all qualified clinical supervisors must hold the credential of ~~Licensed Professional Counselor Supervisor or be another equivalently licensed and experienced mental health professional. licensed professional counselor supervisor or be a licensed professional counselor, or an equivalently and actively licensed mental health professional, as defined in Paragraph (c) of this Rule. All supervision arrangements for which a Verification of Arrangement for~~

~~Clinical Supervision were approved by the Board prior to October 1, 2009 shall be honored by the Board.~~

~~(c) Supervisors who received Board approval to provide clinical supervision for any applicant prior to October 1, 2009 have until the following deadlines to complete the educational requirements listed:~~

- ~~(1) December 31, 2010 to acquire the equivalent of one semester graduate credit in clinical supervision from a regionally accredited institution of higher education as documented by an official transcript or 15 contact hours of continuing education, as defined by Rule .0603(c) in this Chapter, in clinical supervision;~~
- ~~(2) December 31, 2011 to acquire the equivalent of two semester graduate credits in clinical supervision from a regionally accredited institution of higher education as documented by an official transcript or 30 contact hours of continuing education, as defined by Rule .0603(c) in this Chapter, in clinical supervision;~~
- ~~(3) December 31, 2012 to acquire the equivalent of three semester graduate credits in clinical supervision from a regionally accredited institution of higher education as documented by an official transcript or 45 contact hours of continuing education, as defined by Rule .0603(c) in this Chapter, in clinical supervision;~~

~~(d) Equivalently licensed and experienced means that the mental health professional has:~~

(c) Equivalently licensed and experienced and actively licensed means that the mental health professional shall have:

- (1) at least a master's degree as defined in G.S. 90-336(b)(1);
- (2) an ~~active and unrestricted license; independent license that is not under supervision and is in good standing with the respective licensing board;~~
- (3) the equivalent of three semester graduate credits in clinical supervision from a regionally accredited institution of higher education as documented by an official transcript or 45 contact hours of continuing education in clinical supervision, as defined by Rule .0603(c) in this ~~Section, in clinical supervision; and this Chapter;~~
- (4) a minimum of five years post-graduate counseling experience, with a minimum of two years post licensure ~~experience, experience;~~ and
- (5) A minimum of 10 contact hours of continuing education in professional knowledge and competency in the field of counseling supervision completed every two years and submitted to the Board.

Authority G.S. 90-330(a)(4); 90-334(h),(i); 90-336(d).

21 NCAC 53 .0210 INDIVIDUAL CLINICAL SUPERVISION

Individual clinical supervision ~~consists of~~ means face-to-face supervision, as defined in Rule .0212 of this Section, of one or two supervisees ~~with~~ and a qualified clinical supervisor, as defined in Rule .0209 of this Section, ~~at a rate of for a period not less than one hour of clinical supervision, supervision per session, as defined in Rule .0208 of this Section, per 40 hours of supervised professional practice, as defined in Rule .0205 of this Section. Face-to-face hours with the qualified clinical supervisor do not count toward the 40 hours of supervised professional practice.~~

Authority G.S. 90-334(h); G.S. 90-334(i); 90-336(c)(2).

21 NCAC 53 .0211 GROUP CLINICAL SUPERVISION

Group clinical supervision ~~consists of~~ means face-to-face ~~scheduled supervision~~ supervision, as defined in Rule .0212 of this Section between groups of supervisees, not to exceed 12 supervisees per group, and a qualified clinical ~~supervisor~~ supervisor, as defined in Rule .0209 of this ~~Section~~ Section, for a period ~~of not less than one and one-half hours~~ two hours of clinical supervision per ~~session, per 40 hours of supervised professional practice, as defined in Rule .0208 of this Section~~ per session. Section.

Authority G.S. 90-334(h); 90-334(i); 90-336(c)(2).

21 NCAC 53 .0212 FACE TO FACE SUPERVISION DEFINED

~~For the purposes of this Chapter, face-to-face~~ Face-to-face clinical supervision means supervision that is live, interactive, and visual. Video supervision is permitted as long as the session is synchronous ~~(real-time)~~ and involves verbal and visual interaction during the ~~supervision as defined in Rule .0209 of this Section.~~ supervision. All supervision, whether live or audio and video recordings must be done in a confidential manner in accordance with the ACA Code of Ethics as set forth in Rule .0102 of this Chapter.

Authority G.S. 90-334(h).

SECTION .0300 – HOW TO OBTAIN LICENSURE

21 NCAC 53 .0301 APPLICATIONS

~~Applications and forms shall be obtained from and returned to the Administrator of the Board.~~ Applications shall be submitted only on forms obtained from the Board's office at the address set forth in Rule .0204 of this Chapter or website, www.ncblpc.org. Applications may be submitted electronically or mailed in paper format to the Board's office as set forth in Rule .0204 of this Chapter.

Authority G.S. 90-334; 90-336(a).

21 NCAC 53 .0302 TRANSCRIPTS

The applicant must have official transcripts sent from ~~institutions,~~ institutions, either electronically or in paper format,

where graduate credit was earned. If the transcript course titles are ambiguous or do not convey the pertinent content of the courses, the ~~board~~ Board shall require additional documentation from the ~~applicant.~~ applicant, such as a course description or syllabi from the same time period that the applicant was enrolled.

Authority G.S. 90-334; 90-336.

21 NCAC 53 .0304 APPLICANTS LICENSED IN OTHER STATES

If ~~a candidate~~ an applicant is licensed to practice counseling by a Board in another state, the applicant must apply for licensure with the North Carolina ~~Board.~~ Board and shall meet the following requirements: ~~The Board shall consider the application in accordance with the provisions of G.S. 90-336 and G.S. 90-337.~~

- (1) shall have a minimum of five years full time counseling experience, or eight years part time counseling experience, or a combination of full time and part time counseling experience equivalent to five years full time counseling experience, within 10 years directly prior to application;
- (2) shall have a minimum of 2500 hours of direct client contact;
- (3) shall have an active independent license that does not require supervision, in good standing as a licensed professional counselor in another state for a minimum of two years directly prior to application; and
- (4) shall comply with all other applicable rules for licensure as a licensed professional counselor.

Authority G.S. 90-334; 90-337; 1993 S.L. c. 514, s. 5.

21 NCAC 53 .0305 EXAMINATION

The National ~~Counseling~~ Counselor Examination (NCE), the National Clinical Mental Health Counselor Examination (NCMHCE), or the ~~Counselor~~ Certified Rehabilitation ~~Certification~~ Counselor Examination (CRC) may be taken to complete the examination requirement for ~~Licensed Professional Counselor Associate (LPCA)~~ licensed professional counselor associate and ~~Licensed Professional Counselor (LPC)~~ licensed professional counselor licensure. The Board shall accept examinations administered by other state counselor licensing boards and professional counselor credentialing associations if the Board determines that such examinations are equivalent to the NCE, NCMHCE, or CRC relative to content and minimum satisfactory performance levels for counselors. ~~Beginning July 1, 2014~~ The completion of a no fail jurisprudence exam, as selected by the Board, is required for ~~LPC~~ licensure application at each level (LPCA, LPC, LPCS) (licensed professional counselor associate, license professional counselor, and licensed professional counselor supervisor) and for each consecutive renewal period. Applicants and renewing ~~LPCs~~ licensees shall submit documentation of completion of the no fail jurisprudence exam, taken within six months prior to application ~~for licensure.~~

to the Board for licensure or within six months prior to the date of expiration of the license.

Authority G.S. 90-334(g),(h); 90-336(b)(3); 90-337.

21 NCAC 53 .0307 RETAKING OF EXAMINATION

Applicants who do not pass the ~~examination~~ examinations as set forth in Rule .0305 of this Section may retake it at the next regularly scheduled examination date upon registering and paying the required examination fee- fee to the National Board of Certified Counselors or to the Commission on Rehabilitation Counselor Certification. Applicants who fail the examination a second time during an application period shall ~~be denied licensure; such applicants may reapply for licensure.~~ have their application denied and such applicants may reapply for licensure and shall be subject to the requirements at the time of reapplication.

Authority G.S. 90-334(g),(h),(j).

21 NCAC 53 .0308 RECEIPT OF APPLICATION

(a) The ~~active~~ application period of applications received by the Board is no more than two years from date of receipt. If all requirements for an application have not been met by this date, the application shall be denied by the Board. The applicant may reapply for ~~licensure.~~ licensure and shall be subject to the requirements at the time of reapplication.

(b) Change of Address. It shall be the responsibility of an applicant to inform the Board of any change in his or her mailing address. Updated address information shall be forwarded to the Board's office at the address set forth in Rule .0204 of this Chapter in writing within 60 days after any such change.

(c) Change of Name. It shall be the responsibility of an applicant to inform the Board of any change in his or her name. A name change form shall be completed and include any required legal documentation, such as a marriage certificate, divorce decree, or court order. A name change shall be forwarded to the Board's office at the address set forth in Rule .0204 of this Chapter in writing within 60 days after any such change.

Authority G.S. 90-334(h); 90-336(a).

21 NCAC 53 .0310 FOREIGN DEGREE APPLICANTS

(a) Applicants applying for licensure on the basis of a foreign degree shall provide documentation, in addition to all other documents required for licensure, that establishes the following:

- (1) the existence of the degree granting institution;
- (2) the authenticity of the degree, transcripts, and any supporting documents;
- (3) the equivalence of the degree in terms of level of training, content of curriculum, and course credits; and
- (4) the equivalence of any post-graduate supervised experience obtained in the foreign country.

(b) Documentation shall be in the form of a course-by-course evaluation of credentials submitted directly to the Board from an

evaluation service that is a member of the National Association of Credentials Evaluation Services, Inc.

(c) Except as described in Paragraph (b) of this Rule, only official documents shall be submitted in support of the application and shall be received directly from the institution or individual involved.

(d) When an official document cannot be provided directly by the institution or individual involved, an original document possessed by the applicant may be reviewed and copied by a Board member or designee.

(e) Any document that is in a language other than English shall be accompanied by a translation with notarized verification of the translation's accuracy and completeness. This translation shall be completed by an individual, other than the applicant, who is approved by the Board and demonstrates no conflict of interest. Such individuals include college or university language faculty, a translation service, or an American consul.

Authority G.S. 90-334.

21 NCAC 53 .0311 REQUIREMENTS FOR CANDIDATE FOR LICENSURE PENDING STATUS

(a) Applicants for licensure may be listed as a "Candidate for Licensure Pending" (CFL-P) if the application is missing one or more of the following requirements:

- (1) official exam score from the examining board;
- (2) official transcript from a regionally accredited higher education institution; or
- (3) Professional Disclosure Statement for the level that they are applying.

(b) For the applicant to be listed as a CFL-P, the applicant must provide the following documentation:

- (1) a receipt showing the request and payment to the examining board for an official exam score to be sent to the Board; or
- (2) a receipt showing the request and payment to the educational institution for an official transcript to be sent to the Board.

(c) The CFL-P allows the applicant's file to be reviewed at the next regularly scheduled Board meeting for approval so that a license may be issued upon receipt of the missing documents. The CFL-P status is effective for a maximum of 60 days from the date of approval. If the missing documents are not received within the 60 days, the CFL-P shall revert back to an application in review and must be presented at the next scheduled Board meeting upon receipt of missing documents.

Authority G.S. 90-334.

SECTION .0400 - DISCIPLINARY PROCEDURES

21 NCAC 53 .0403 ALLEGED VIOLATIONS

All complaints of alleged violations shall be ~~in writing~~ submitted electronically or in paper format on forms provided by the Board to the Board's office at the address set forth in Rule .0204 of this Chapter and shall be signed by the ~~complainant(s).~~ complainant(s), unless submitted anonymously. Complaints of violations of Article 24 G.S. 90, ~~Article 24~~, the ACA Code of Ethics, or the Center for Credentialing and Education's

Approved Clinical Supervisor (ACS) Code of Ethics shall ~~be~~ include:

- (1) the complainant's ~~signature~~; signature, unless submitted anonymously;
- (2) ~~include~~ the complainant's address and telephone number; ~~date and location of the alleged violation(s)~~; number, unless submitted anonymously;
- (3) date and location of the alleged violation(s);
- ~~(3)(4)~~ (4) a description of the incident(s); and
- ~~(4)(5)~~ (5) signed ~~releases~~; releases, unless submitted anonymously.

~~Complaints shall be submitted either in electronic or paper format on forms provided by the Board.~~

Authority G.S. 90-334; 90-340.

SECTION .0500 - FEES

21 NCAC 53 .0501 APPLICATION FEE

~~Each applicant shall pay a fee for processing each~~ The initial application fees are as follows:

- (1) ~~Licensed Professional Counselor Associate Application~~ licensed professional counselor associate application \$100.00; two hundred dollars (\$200.00);
- (2) ~~Licensed Professional Counselor Application~~ licensed professional counselor application \$100.00; two hundred dollars (\$200.00); and
- (3) ~~Licensed Professional Counselor Supervisor Application~~ licensed professional counselor supervisor application \$100.00; two hundred dollars (\$200.00).

Authority G.S. 90-334.

21 NCAC 53 .0503 RENEWAL AND OTHER FEES

~~(a) The biennial renewal fee of one two hundred dollars (\$100.00) (\$200.00) is due and payable by June 20 of the renewal year. Checks shall be made payable to the North Carolina Board of Licensed Professional Counselors. Failure to pay the biennial renewal fee within the time stated shall automatically suspend the right of any licensee to practice while delinquent. suspended. Such lapsed expired A suspended licensure may be renewed within a period of one year after expiration upon payment non-payment of the renewal fee fee, plus a late renewal fee of twenty five seventy-five dollars (\$25.00), provided all requirements are met. (\$75.00).~~

~~(b) The cost of a returned check is actual cost.~~

~~(c) The registration fee for a Certificate of Registration for a professional corporation or limited liability company is fifty dollars (\$50.00);~~

~~(d) The renewal fee for a professional corporation or limited liability company is twenty-five dollars (\$25.00); and~~

~~(e) The late renewal fee for a professional corporation or limited liability company is ten dollars (\$10.00).~~

~~(f) The cost of copies of public records shall be the "actual cost," as defined in G.S. 432-6(b); 132-6.2(b) provided on the~~

Board website, and mailing cost, if applicable. There shall be no charge if the request is for 10 pages or less.

Authority G.S.55B-10; 55B-11; 90-334; 90-339; 132-6.2(b).

SECTION .0600 - RENEWAL OF LICENSE

21 NCAC 53 .0601 RENEWAL PERIOD

Newly issued licenses shall be effective upon the date of issuance by the Board and shall expire on the second June 30 thereafter. The renewal period for a newly issued ~~license~~, therefore, license may be less than two years. Following the first renewal of a newly issued license, the renewal period shall be two years and shall run from July 1 in the first year through June 30 in the second year. A licensee whose license has been suspended shall not practice until the license is renewed.

Authority G.S. 90-334(h); 90-339.

21 NCAC 53 .0602 RENEWAL FOR LICENSURE FORM; ADDRESS CHANGE; NAME CHANGE

~~Requests for license renewal shall be submitted on the original Request for Continuing Education Activities Requests forms provided by the Board. All requested information and supporting documentation shall be provided and the forms shall be signed and dated.~~

(a) License renewal information shall be submitted either electronically or mailed in paper format to the Board's office as set forth in Rule .0204 of this Chapter on the Renewal for Licensure forms available on the Board's website www.ncblpb.org. The licensee shall provide general contact information, licensure or credentials, and all continuing counselor education for the past two years. All requested information shall be provided and the forms shall be signed and dated. Documents that shall be included with the renewal form are the following:

- (1) certificate of completion of the jurisprudence examination (for the level of license that is being renewed);
- (2) the ethics attestation statement;
- (3) an updated Professional Disclosure Statement;
- and
- (4) payment of renewal fee.

(b) Change of Address. It shall be the responsibility of the licensee to inform the Board of any change in his or her mailing address. Updated address information shall be forwarded to the Board's office as set forth in Rule .0204 of this Chapter in writing within 60 days after any such change.

(c) Change of Name. It shall be the responsibility of the licensee to inform the Board of any change in his or her name. A name change form shall be completed and include any legal documentation, such as a marriage certificate, divorce decree, or court order. A name change shall be forwarded to the Board's office as set forth in Rule .0204 of this Chapter in writing within 60 days after any such change.

Authority G.S. 90-334(g); 90-336(a); 90-339(b).

21 NCAC 53 .0603 CONTINUING EDUCATION

(a) Continuing education is required for the renewal of licenses to ensure that ~~Licensed Professional Counselor Associates, Licensed Professional Counselors, and Licensed Professional Counselor Supervisors~~ licensed professional counselor associates, licensed professional counselors, and licensed professional counselor supervisors maintain their professional knowledge and competency in the field of counseling. Continuing education activities appropriate for the purpose of license renewal are those that are directed toward professionals in the mental health field and that focus on increasing knowledge and skills in the practice of counseling in one or more of the following content areas:

- (1) counseling theory;
- (2) human growth and development;
- (3) social and cultural foundations;
- (4) the helping relationship;
- (5) group dynamics;
- (6) lifestyle and career development;
- (7) appraisal of individuals;
- (8) diagnosis and treatment planning;
- (9) research and evaluation;
- (10) professional counseling orientation; and
- (11) ethics.

(b) Forty contact hours of continuing counselor education, including a minimum of three contact hours of ethics, ~~are required. shall be completed~~ within the two-year license renewal period. However, in the cases of newly issued licenses in which the initial renewal ~~periods are~~ period is less than two full years, 30 contact hours, including a minimum of three contact hours of ethics, ~~are required. shall be completed~~. Contact hours are defined as the number of actual clock hours spent in direct participation in a structured education format as a learner. Typically, one Continuing Education Unit (CEU) is equivalent to 10 contact hours. In a college or university graduate course, one semester hour of credit is equivalent to 15 contact hours and one quarter hour of credit is equivalent to 10 contact hours.

(c) Continuing counselor education ~~training~~ provided by one of the following national organizations, their ~~affiliates~~ affiliates, or by a vendor approved by one of the following organizations shall be ~~approved. accepted by the Board for renewal purposes:~~

- (1) ~~American Counseling Association; American Association of State Counseling Boards (aascb.org);~~
- (2) ~~American Association of State Boards of Counseling; American Counseling Association (counseling.org);~~
- (3) ~~National Board for Certified Counselors; Commission on Rehabilitation Counselor Certification (crrccertification.com); and~~
- (4) ~~Commission on Rehabilitation Counselor Certification; National Board for Certified Counselors (nbcc.org).~~

(d) Continuing counselor education ~~training~~ provided by one of the following national organizations, their affiliate or by a vendor approved by one of the following organizations shall be approved for no more than 15 contact hours for any given renewal period as defined in Rule .0601 of this same ~~Chapter. Chapter:~~

- (1) ~~American Association of Christian Counselors; Counselors (www.aacc.net);~~
- (2) ~~National Association of Pastoral Counselors; American Association of Marriage and Family Therapy (www.aamft.org);~~
- (3) ~~National Rehabilitation Association; American Psychological Association (www.apa.org);~~
- (4) ~~National Association of Alcoholism & Drug Abuse Counselors; Employee Assistance Certification Commission (www.eapassn.org);~~
- (5) ~~National Association of Social Workers; International Employee Assistance Professional Association of Employee Assistance Professionals in Education (www.iaepe.org);~~
- (6) ~~American Association of Marriage and Family Therapy; National Area Health Education Center Organization (www.nationalahec.org);~~
- (7) ~~Employee Assistance Certification Commission; National Association for Pastoral Counseling and Psychotherapy (www.napcp.ie);~~
- (8) ~~American Psychological Association; and National Association of Social Workers (www.socialworkers.org);~~
- (9) ~~International Employee Assistance Professional Association; National Rehabilitation Association (www.nationalrehab.org); and~~
- (10) ~~National Area Health Education Center Organization; National Association of Alcoholism & Drug Abuse Counselors The Association for Addiction Professionals (www.naadac.org).~~

(e) Evidence of completion of continuing counselor education ~~training~~ shall consist of a certificate of attendance ~~and completion~~ signed by the responsible officer of a continuing counselor education provider, and shall include date(s) of attendance, number of contact hours, name of attendee, ~~and name of course. course, and approved provider name or number.~~ Licensees shall maintain such information for seven years following course completion, however, a licensee is only required to submit such information if audited by the Board. On the Renewal for Licensure Form a licensee shall attest to having completed the required continuing counselor education within the current renewal cycle.

(f) The Board may conduct a random audit of a percentage of its licensees' continuing counselor education documentation for each renewal cycle and licensees shall submit the requested information upon request of the Board. Failure to submit the required documentation may result in disciplinary action by the Board.

~~(f)(g)~~ Continuing counselor education activities also acceptable for renewal of licensure are as follows:

- (1) Contact hours shall be awarded for academic credit ~~granted~~ gained during a renewal period from a regionally accredited institution of higher education for work done in a counseling or counseling related subject. A

copy of a transcript or grade report is the required documentation. Documentation must contain the following information:

- (A) date(s) of attendance;
- (B) number of ~~semester~~ semester or quarter hours earned;
- (C) name of attendee; and
- (D) name or number of course.

Contact hours are as defined in Paragraph (b) of this Rule. Completion dates must fall within the renewal period, as defined in G.S. 90-339.

- (2) Contact hours shall be awarded for ~~Publication~~ publication activities ~~used for contact hours~~ are limited to articles written by the licensee and published in peer reviewed journals, editing of a chapter in a book based on counseling or counseling related material, or authoring or co-authoring a published book on counseling or counseling related material. Publication dates must fall within the renewal period, as defined in G.S. 90-339. Required documentation is a copy of the cover page of the article(s) or ~~book,~~ book; copy of the copyright page denoting date of publication; or for a chapter in an edited book, a copy of the table of contents listing the chapter is also required. ~~Ten 10~~ contact hours shall be approved for each publication ~~activity,~~ activity, and only 10. The maximum contact hours allowed ~~per any given~~ during a renewal period ~~period is 10, as defined in G.S. 90-339, is 10.~~ Contact hours awarded for publication activities shall not be applied to the three contact hour requirement for ethics.

- (3) Contact hours shall be awarded for academic credit granted during a renewal period from a regionally accredited institution of higher education for work done toward the completion of a dissertation. Required documentation is a copy of a transcript or grade report showing credit earned during the renewal period. The maximum contact hours allowed ~~per any given~~ during a renewal period, ~~as defined in G.S. 90-339, period~~ is 10. Contact hours are as defined in Paragraph (b) of this Rule. Completion dates must fall within the renewal period, as defined in G.S. 90-339. Contact hours awarded for dissertation shall not be applied to the three contact hour requirement for ethics.

- (4) Contact hours shall be awarded for ~~clinical supervision,~~ supervised professional practice, as defined by Rule .0208 of this Chapter, ~~which that~~ was received by the licensee during the renewal period. Contact hours shall not be granted for clinical supervision provided by the licensee to others. The maximum contact hours ~~awarded~~ allowed during a renewal period for clinical supervision is 10. Contact

hours are defined as the number of actual clock hours spent in direct, clinical supervision. Required documentation is a letter from the qualified clinical supervisor, as defined by Rule .0209 of this Chapter, who provided the clinical supervision received, verifying a licensee's participation in the activity. The letter shall confirm the dates of the activity, the number of participation hours, and the position or title and credential of the provider. Dates of activity must fall within the renewal ~~period,~~ period, as defined in G.S. 90-339. Contact hours awarded for clinical supervision shall not be applied to the three contact hour requirement for ethics. Supervision quarterly reports as set forth in Rule .0702 of this Chapter may be submitted as supporting documentation.

- (5) Contact hours shall be awarded for the following leadership positions:

- (A) ~~Officer~~ officer of state, regional, or national counseling organization;
- (B) editor or editorial board member of a professional counseling journal;
- (C) member of a state, regional, or national counseling committee producing a written product; ~~and or~~
- (D) chair of a major state, regional or national counseling conference or convention.

The leadership position must be occupied for a minimum of six months and dates must fall within the renewal ~~period,~~ period, as defined in G.S. 90-339. The required documentation is a letter of confirmation of the leadership position, the nature of the position or service rendered, and the signature of an officer of the organization. ~~Ten 10~~ contact hours shall be approved ~~for each leadership position held.~~ The maximum held, and only 10 contact hours are allowed ~~per any given~~ during a renewal period, ~~period, as defined in G.S. 90-339, is 10.~~ Contact hours awarded for leadership shall not be applied to the three contact hour requirement for ethics.

- (6) Contact hours shall be awarded for hours obtained in activities or workshops for which the licensee was a presenter. The dates of activities presented must fall within the renewal period, ~~as defined in G.S. 90-339,~~ and focus on one or more of the approved content areas as set forth in Paragraph (a) of this Rule. The maximum contact hours awarded for presenting professional ~~activities/workshops~~ activities or workshops is five. The required documentation is ~~a~~ an official letter of confirmation from the organization for which the licensee presented and shall contain the following information:

- (A) date(s) of presentation;
- (B) name of presentation; and
- (C) ~~and~~ length of presentation.

Contact hours are defined as the number of actual clock hours spent in presenting. Contact hours awarded for presenting shall not be applied to the three contact hour requirement for ethics.

~~(g)~~(h) If documentation for continuing counselor education is not identifiable as dealing with counseling, the Board shall request a written description of the continuing counselor education and how it applies to the professional practice of counseling. If the Board determines that the training education is not appropriate, the ~~individual licensee~~ shall be given ~~90~~ 45 days from the date of notification to replace the hours not approved. Those hours shall be considered replacement hours and shall not be applied to the next renewal period.

~~(h)~~(i) ~~Licensed Professional Counselor Supervisors~~ Licensed professional counselor supervisors must meet all of the continuing counselor education requirements outlined in ~~Paragraphs~~ Paragraphs (a) through ~~(g)~~ (h) of this Rule and in addition as part of those requirements, must provide documentation of a minimum of 10 contact hours of continuing counselor education ~~training~~ related to professional knowledge and competency in the field of counseling supervision. Continuing counselor education ~~trainings~~ appropriate for the purpose of ~~supervision—credential~~ licensed professional counselor supervisor renewal ~~are those that are~~ is education directed toward professionals in the mental health field, field which that focus on increasing knowledge and skills in the practice of counseling supervision, and that are completed during the renewal ~~period~~ period, as defined in G.S. 90-339.

Authority G.S. 90-334(g),(h); 90-339(b).

21 NCAC 53 .0604 FAILURE TO SECURE SUFFICIENT CONTINUING EDUCATION/RENEWAL OF LICENSE

~~Licensed Professional Counselor Associates, Licensed Professional Counselors, and Licensed Professional Counselor Supervisors~~ Licensed professional counselor associates, licensed professional counselors, and licensed professional counselor supervisors who fail to document sufficient continuing counselor education ~~activities~~ to renew their licenses by the expiration date of June 30 shall be notified in writing by the Board ~~Office~~ of the ~~deficiencies and deficiencies, that their license is expired~~ expired, and they cannot that the licensee shall not practice until it is renewed. ~~Licensed Professional Counselor Associates, Licensed Professional Counselors, and Licensed Professional Counselor Supervisors~~ Licensed professional counselor associates, licensed professional counselors, and licensed professional counselor supervisors who are unable to provide documentation of sufficient continuing counselor education ~~activities~~ to renew their licenses have the following options:

- (1) Within one year of ~~expiration~~ expiration, the LPCAs LPC or LPCS licensed professional counselor associate, licensed professional counselor, and licensed professional counselor supervisor must complete the required hours of

continuing counselor education and an additional 20 hours of continuing counselor education for the purpose of renewal of ~~their~~ lapsed the expired license. ~~All continuing~~ Continuing counselor education acquired during this additional time period for the purpose of renewal of ~~a lapsed an expired~~ license shall not be utilized for future renewal purposes. Once these requirements have been met, the license shall be ~~reinstated~~ renewed and the licensee may resume practice.

- (2) Request an extension in writing ~~to~~ from the Board. Requests shall be received by the ~~board~~ Board no later than ~~June~~ May 1st of the year of expiration. An extension shall be granted for:

- (a) military deployment;
- (b) major illness lasting longer than three months of self, partner or child; or
- (c) death of partner or child.

Extensions shall be granted for a period of up to one year. If the extension is approved, ~~all~~ continuing counselor education acquired during the extension shall not be utilized for future renewal purposes. Once these requirements have been met, the license shall be ~~reinstated~~ renewed.

Failure to complete one of the above listed options ~~within one year after the license's expiration date~~ means that a license shall be reissued only upon a new application ~~as for an original license and all current licensure requirements applied shall apply~~ to the new application.

Authority G.S. 90-334(g),(h); 90-339.

SECTION .0700 – LICENSED PROFESSIONAL COUNSELOR ASSOCIATE

21 NCAC 53 .0701 LICENSED PROFESSIONAL COUNSELOR ASSOCIATE

~~(a) A license as a Licensed Professional Counselor Associate (LPCA)~~ licensed professional counselor associate shall be granted by the Board to persons preparing for the practice of counseling ~~who; who have:~~

- (1) ~~has~~ completed graduate training as defined in G.S. 90-336(b)(1);
- (2) ~~has~~ completed a minimum of three semester hours or five quarter hours in each of the required coursework areas of study as follows:
 - ~~(A) Coursework in the counseling process in a multicultural society including the study of basic counseling theories and providing a general knowledge of theories, their principles, and techniques for application in counseling relationships. In addition, this coursework shall provide a broad understanding of philosophic bases of counseling processes, an orientation~~

to wellness and prevention as desired counseling goals, essential interviewing and counseling skills, and consultation theories and their application in various professional settings. The course shall also provide a systems perspective that provides an understanding of family and other systems theories and major models of family and related interventions. Finally, this coursework shall include crisis intervention and suicide prevention models, including the use of psychological first aid strategies.

(A) Coursework in Helping Relationships in Counseling. Studies in this area provide an understanding of counseling and consultation processes, including the following:

- (i) counseling and consultation theories, including both individual and systems perspectives as well as coverage of relevant research and factors considered in applications;
- (ii) basic interviewing, assessment, and counseling skills;
- (iii) counselor or consultant characteristics and behaviors that influence professional counseling relationships, including age, gender and ethnic differences; verbal and nonverbal behaviors; personal behaviors; personal characteristics, orientations, and skills;
- (iv) client or consultee characteristics and behaviors that influence professional counseling relationships, including age, gender, ethnic differences; verbal and nonverbal behaviors; and personal characteristics, orientations and skills; and
- (v) ethical considerations.

(B) Practicum and Internship experience provided in supervised graduate counseling experience in an university approved counseling setting for at minimum one semester duration and for academic credit in a regionally accredited program of study. This graduate counseling

experience shall be completed as defined in Rule .0206 of this Chapter.

(B) Coursework in Practicum and Internship. Practicum and internship experience should be provided in a supervised graduate counseling experience in a regionally accredited program of study counseling setting for a minimum one semester duration (three semester hours or five quarter hours) for each practicum and internship. This graduate counseling experience shall be completed as defined in Rule .0206 of this Chapter.

(C) Coursework in professional orientation and identity to the counseling profession providing an understanding of all aspects of functioning as a professional counselor, including a history of the counseling profession, various roles contemporary counselors have in our society, membership in professional counseling associations, self care strategies appropriate to the counselor role, ethical conduct, standards of preparation, credentialing processes, and counseling supervision models, practices, and processes. This coursework shall increase knowledge of the evolution of the counseling profession and the role it has played in setting standards, advocating for a professional identity, and promoting licensure and accreditation for the profession. Finally, this course shall include the counselors' roles and responsibilities as members of an interdisciplinary emergency management response team during a local, regional, or national crisis, disaster or other trauma causing event.

(C) Coursework in Professional Orientation to Counseling. Studies in this area provide an understanding of all aspects of professional functioning, including history, roles, organizational structures, ethics, standards and credentialing, including the following:

- (i) history of the counseling profession, including significant factors and events;
- (ii) professional roles and functions of counselors, including similarities and

- differences with other types of professionals;
- (iii) professional organizations (primarily ACA, its divisions, branches and affiliates), including membership benefits, activities, services to members, and current emphases;
- (iv) ethical standards of NBCC or ACA and related ethical and legal issues, and their applications to various professional activities (e.g., appraisal, group work);
- (v) professional counselor preparation standards, their evolution, and current applications;
- (vi) professional counselor credentialing, including counselor certification, licensure and accreditation practices and standards, and the effects of public policy on these issues; and
- (vii) public policy processes, including the role of the professional counselor advocating on behalf of the profession and its clientele; and
- (viii) ethical considerations.
- (D) ~~Coursework in human growth and development providing a broad understanding of human behavior, including and understanding of developmental crises, disability, psychopathology, and situational and environmental theories of individual and family development and transitions across the life span; theories of learning and of individual, cultural, couple, family, and community resilience; theories and etiology of addictions and addictive behaviors, including strategies for prevention, intervention, and treatment; and theories for facilitating optimal development and wellness over the life span. In addition, the coursework shall highlight the effects of crises, disasters, and other trauma-causing events on persons of all ages. Finally, the coursework shall include a general framework for understanding exceptional abilities~~
- ~~and strategies for differentiated interventions.~~
- (D) Coursework in Human Growth and Development Theories in Counseling. Studies in this area provide an understanding of the nature and needs of individuals at all developmental levels, relevant to counseling practice. These include the following:
- (i) theories of individual and family development, and transitions across the life span;
- (ii) theories of learning and personality development;
- (iii) human behavior, including an understanding of developmental crises, disability, addictive behavior, psychopathology and environmental factors as they affect both normal and abnormal behavior;
- (iv) counseling strategies for facilitating development over the life span; and
- (v) ethical considerations.
- (E) ~~Coursework in social and cultural foundations in counseling providing an understanding of theories of multicultural counseling, identity development, and social justice while examining multicultural and pluralistic trends, including characteristics and concerns within and among diverse groups nationally and internationally. In addition, the coursework shall emphasize the counselors' roles in developing cultural self-awareness; promoting cultural social justice; advocating and promoting conflict resolution; appreciating other culturally supported behaviors that promote optimal wellness and growth of the human spirit, mind, or body; and eliminating biases, prejudices, and processes of intentional and unintentional oppression and discrimination. This coursework shall include study of attitudes, beliefs, understandings, and acculturative experiences, including specific experiential learning activities designed to foster students' understanding of self and culturally diverse clients.~~

- (E) Coursework in Social and Cultural Foundations in Counseling. Studies in this area provide an understanding of issues and trends in a multicultural and diverse society that impact professional counselors and the counseling profession, including, the following:
- (i) multicultural and pluralistic trends, including characteristics and concerns of counseling individuals from diverse groups;
 - (ii) attitudes and behavior based on factors such as age, race, religious preferences, physical disability, sexual orientation, ethnicity and culture, family patterns, gender, socioeconomic status, and intellectual ability;
 - (iii) individual, family, and group counseling strategies with diverse populations; and
 - (iv) ethical considerations.
- (F) Coursework in group work including studies that provide a broad understanding of group development, dynamics, methods, and counseling theories. This coursework shall help students understand group leadership styles, basic and advanced group skills, and other aspects of group counseling and group consultation.
- (F) Coursework in Group Counseling Theories and Processes. Studies in this area provide an understanding of group development, dynamics and counseling theories; group counseling methods and skills; and other group work approaches, including the following:
- (i) principals of group dynamics, including group counseling components, developmental stage theories, and group members' roles and behaviors;
 - (ii) group leadership styles and approaches, including characteristics of various types of group leaders and leadership styles;
 - (iii) theories of group counseling, including commonalities, distinguishing
- characteristics, and pertinent research and literature;
- (iv) group counseling methods, including group counselor orientations and behaviors, ethical standards, appropriate selection criteria and methods of evaluation of effectiveness;
 - (v) approaches used for other types of group work in counseling, including task groups, support groups, and therapy groups; and
 - (vi) ethical considerations.
- (G) Coursework in career and vocational development and information including studies that provide a broad understanding of career development theories and decision-making models as well as career and educational occupational and labor market information resources. The coursework shall enhance student awareness of techniques, and resources, including those applicable to specific populations in a global economy. The coursework shall prepare students for career development program planning, organization, implementation, administration, and evaluation. The coursework shall increase the knowledge of the interrelationships among and between work, family, and other life roles and factors, including the role of multicultural issues in career development.
- (G) Coursework in Career Counseling and Lifestyle Development. Studies in this area provide an understanding of career counseling, development and related life factors, including the following:
- (i) career-counseling theories and decision-making process;
 - (ii) career, avocational, educational, and labor market information resources; visual and print media; and computer-based career information systems;
 - (iii) career-counseling program planning, organization, implementation, administration, and evaluation;

- (iv) interrelationships among work, family, and other life roles and factors, including multicultural and gender issues as related to career counseling;
- (v) career and educational placement counseling, follow-up, and evaluation;
- (vi) assessment instruments and techniques relevant to career counseling;
- (vii) computer-based career-development applications and strategies, including computer-assisted career-counseling systems;
- (viii) career-counseling processes, techniques and resources, including those applicable to specific populations; and
- (ix) ethical considerations.
- (H) ~~Coursework in appraisal including studies that provide a broad understanding of historical perspectives concerning the nature and meaning of assessment as well as basic concepts of standardized and non-standardized testing and other assessment techniques. This coursework shall develop a knowledge of statistical concepts, an understanding of validity and reliability; social and cultural factors related to the assessment and evaluation; and ethical strategies for selecting, administering, and interpreting assessment, evaluation instruments and techniques in counseling.~~
- (H) Coursework in Assessment in Counseling. Studies in this area provide an understanding of individual and group approaches to assessment and evaluation in counseling practice, including the following:
 - (i) theoretical and historical bases for assessment techniques in counseling;
 - (ii) validity, including evidence for establishing content, construct and empirical validity;
 - (iii) reliability, including methods of establishing stability, internal and equivalence reliability;
- (iv) appraisal methods, including environmental assessment, performance assessment, individual and group test and inventory methods, behavioral observations, and computer-managed and computer-assisted methods;
- (v) psychometric statistics, including types of assessment scores, measures of central tendency, indices of variability, standard errors, and correlations;
- (vi) age, gender, ethnicity, language, disability, and cultural factors related to the use of assessment and evaluation in counseling services;
- (vii) strategies for selecting, administering, interpreting and using assessment and evaluation instruments, and techniques in counseling; and
- (viii) ethical considerations.
- (I) ~~Coursework in research including studies that provide a broad understanding of the importance of research in advancing the counseling profession. Included in this coursework shall be study of research methodology, statistical methods, the use of research to inform evidence-based practice; and ethical and culturally relevant strategies for interpreting and reporting the results of research and program evaluation studies. In addition, the coursework shall provide principles, models, and applications of needs assessment, program evaluation, and the use of finding to effect program modifications;~~
- (I) Coursework in Research and Program Evaluation. Studies in this area provide an understanding of types of research methods, basic statistics, and ethical and legal consideration in research, including the following:
 - (i) basic types of research methods to include qualitative and quantitative research designs;
 - (ii) basic parametric and nonparametric statistics;
 - (iii) principles, practices, and applications of needs

assessment and program evaluation;

(iv) uses of computers for data management and analysis; and

(v) ethical and legal considerations.

(3) ~~has~~ passed an examination as defined in Rule .0305; and

(4) ~~has~~ submitted a complete application for ~~LPCA~~ licensed professional counselor associate.

(b) To prevent a lapse in licensure, ~~Licensed Professional Counselor Associates~~ licensed professional counselor associates who desire to become ~~Licensed Professional Counselors (LPC)~~ licensed professional counselors shall complete the application process for the ~~LPC~~ licensed professional counselor licensure no ~~less~~ later than 60 days prior to expiration of their ~~Licensed Professional Counselor Associate~~ licensed professional counselor associate license or upon completion of the supervised professional practice hours as set forth in Rule .0208 of this Chapter to allow for administrative processing and Board action.

Authority G.S. 90-334(h); 90-336(a); 90-336(b).

21 NCAC 53 .0702 SUPERVISED PRACTICE FOR LICENSED PROFESSIONAL COUNSELOR ASSOCIATE

A ~~Licensed Professional Counselor Associate~~ licensed professional counselor associate ~~may~~ shall not practice unless the following requirements have been met:

(1) The ~~Licensed Professional Counselor Associate~~ licensed professional counselor associate shall submit a completed supervision contract, on forms provided by the Board. A supervision contract form shall document:

- (a) the name of the qualified clinical supervisor;
- (b) contact information for the qualified clinical supervisor;
- (c) the modality of supervision to be provided, such as ~~direct (live)~~ live observation, co-therapy, audio and video recordings, and live supervision, as defined by Rule ~~.0208~~ .0208 of this Chapter;
- (d) the frequency of supervision; and
- (e) the name and physical location of the site where the proposed supervision ~~supervision will take place.~~

A separate supervision contract form shall be filed for each separate work setting.

(2) If receiving supervision from more than one supervisor, a separate supervision contract form shall be filed for each individual qualified clinical supervisor.

(3) A supervisor shall document, on forms provided by the Board, each quarter that supervision has occurred and shall file a final

report upon termination or completion of supervision.

(4) If not receiving supervision, the ~~Licensed Professional Counselor Associate~~ licensed professional counselor associate shall report such to the Board. A report shall be submitted to the Board within two weeks of termination of supervision and within two weeks of a change in the conditions specified in the supervision contract form on file with the Board.

(5) ~~An LPCA~~ A licensed professional counselor associate shall only provide counseling while under the supervision of a qualified clinical supervisor.

(6) A licensed professional counselor associate shall renew his or her license as a licensed professional counselor associate if the supervision requirements to become a licensed professional counselor have not been completed prior to the expiration of the license.

Authority G.S. 90-334(h); 90-336(c).

SECTION .0800 – LICENSED PROFESSIONAL COUNSELOR - SUPERVISOR

21 NCAC 53 .0801 LICENSED PROFESSIONAL COUNSELOR SUPERVISOR

(a) The credential of ~~Licensed Professional Counselor Supervisor (LPCS)~~ licensed professional counselor supervisor shall be granted by the Board to a ~~Licensed Professional Counselor~~ licensed professional counselor who ~~has~~ has satisfied the following requirements:

- (1) ~~an active and unrestricted LPC independent license that is not under supervision from the NC Board of Licensed Professional Counselors; as defined in G.S. 90-336(d)(4);~~
- (2) the equivalent of three semester graduate credits in clinical supervision training from a regionally accredited institution of higher education as documented by an official ~~transcript~~ transcript or 45 contact hours of continuing counselor education in clinical supervision;
- (3) ~~documented~~ required documentation of licensed professional counseling experience as defined in G.S. 90-336(d)(2)a, b, or c ~~on forms provided by the Board; 90-336(d)(2); and~~
- (4) ~~a completed~~ submitted a complete application for ~~Licensed Professional Counselor Supervisor~~ licensed professional counselor supervisor.

(b) The ~~LPCS~~ licensed professional counselor supervisor shall provide supervisees with a copy of a Professional Disclosure Statement specific to supervision that includes the following:

- (1) business address and telephone number of the LPCS; licensed professional counselor supervisor;
- (2) the listing of degrees, credentials, and licenses held by the LPCS; licensed professional counselor supervisor;
- (3) general areas of competence in mental health practice for which the LPCS licensed professional counselor supervisor can provide supervision (e.g., addictions counseling, school counseling, career counseling);
- (4) a statement documenting training in supervision and experience in providing supervision;
- (5) a general statement addressing the model of or approach to supervision, including role of the supervisor, objectives and goals of supervision, and modalities (e.g., tape review, live observation);
- (6) a description of the evaluation procedures used in the supervisory relationship;
- (7) a statement defining the limits and scope of confidentiality and privileged communication within the supervisory relationship;
- (8) a fee schedule, if applicable;
- (9) the emergency contact information for the LPCS; licensed professional counselor supervisor; and
- (10) a statement indicating that the LPCS licensed professional counselor supervisor follows the American Counseling Association's Code of Ethics and the Center for Credentialing and Education's Approved Clinical Supervisor (~~ACS~~) Code of ~~Ethics~~. Ethics as set forth in Rule .0102 of this Chapter.

(c) The supervisor shall provide written or electronically submitted reports, on forms provided by the Board, each quarter that supervision has occurred and shall file a final report upon termination or completion of ~~supervision~~, supervision, and The supervisor shall be available for consultation with the Board or its committees regarding the supervisee's competence for licensure.

(d) A supervision contract form, as provided by the Board, shall document:

- (1) the name of the qualified clinical supervisor;
- (2) contact information for the qualified clinical supervisor;
- (3) the modality of supervision to be provided, such as ~~direct (live)~~ live observation, co-therapy, audio and video recordings, and live supervision, as defined by Rule ~~.0208; .0208 of this Chapter~~;
- (4) the frequency of supervision; and
- (5) the name and physical location of the site where the proposed supervision. supervision will take place.

A separate supervision contract form shall be filed for each supervisee.

(e) The ~~LPCS; licensed professional counselor supervisor~~, in collaboration with the supervisee, shall maintain a log of clinical supervision hours that includes:

- (1) the date;
- (2) supervision start and stop times;
- (3) the modality of supervision to be provided, such as ~~direct (live)~~ live observation, co-therapy, audio and video recordings, and live supervision, as defined by Rule ~~.0208; .0208 of this Chapter~~; and
- (4) notes on recommendations or interventions used during the supervision.

The ~~LPCS~~licensed professional counselor supervisor ~~will~~ shall maintain copies of these logs for a minimum of seven years beyond termination or completion of supervision and will provide copies to the Board for inspection upon request.

Authority G.S. 90-334(h); 90-336(a); 90-336(d).

SECTION .0900 – REGISTRATION FOR A PROFESSIONAL ENTITY

21 NCAC 53 .0901 CERTIFICATE OF REGISTRATION FOR A PROFESSIONAL ENTITY

(a) The information required for an applicant to obtain a Certificate of Registration for a professional corporation or professional limited liability company organized to render professional counseling services shall consist of:

- (1) typed, or legibly printed, notarized application form;
- (2) proof of licensure as a licensed professional counselor or licensed professional counselor supervisor;
- (3) registration fee; and
- (4) a copy of the Articles of Incorporation or Articles of Organization.

(b) This Certificate of Registration shall remain effective until December 31 following the date of such registration.

Authority G.S. 55B-10; 57D-2-01(c); 90-334(h).

21 NCAC 53 .0902 RENEWAL OF CERTIFICATE OF REGISTRATION FOR A PROFESSIONAL ENTITY

A notification for renewal of professional corporation or professional limited liability company shall be sent to each registered entity a minimum of 60 days prior to the December 31 expiration date. The Board shall renew the certificate of registration upon receipt of the completed written renewal application of the holder and the renewal fee. Failure to renew by the due date shall result in notification to the Secretary of State's Office to suspend the Articles of Incorporation or Articles of Organization.

Authority G.S. 55B-11; 57D-2-01(c); 90-334(h).

TITLE 30 – STATE ETHICS COMMISSION

Notice is hereby given in accordance with G.S. 120C-101 that the State Ethics Commission intends to adopt the rules cited as 30 NCAC 10D .0101-.0105, .0201-.0204, .0301-.0303, .0401-.0407, .0501-.0502 and amend the rule cited as 30 NCAC 09B .0101.

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.ethicscommission.nc.gov

Proposed Effective Date: June 1, 2014

Public Hearing:

Date: May 9, 2014

Time: 10:00 a.m.

Location: Capehart Crocker House, Commission Meeting Room, 424 N. Blount Street, Raleigh, NC 27601

Reason for Proposed Action:

30 NCAC 09B .0101 – To change the composition of the preliminary inquiry and probable cause panels created under the State Ethics Act, G.S. 138A, by eliminating the Executive Director from such panels.

30 NCAC 10D .0101, .0102, .0103, .0104, .0105, .0201, .0202, .0203, .0204, .0301, .0302, .0303, .0401, .0402, .0403, .0404, .0405, .0406, .0407, .0501, .0502 – To establish and provide notice of lobbying law complaint procedures which execute the authority granted to the State Ethics Commission pursuant to the Lobbying Law, G.S. 120C.

Comments may be submitted to: Oral comments will be accepted at the scheduled public hearing. Written comments should be directed to Pam Cashwell, 1324 Mail Service Center, Raleigh, NC 27699-1324; fax (919) 716-1644; email pam.cashwell@doa.nc.gov. The written comment period begins March 17, 2014 and ends May 5, 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 by G.S. 150B-21.4

CHAPTER 09 – ETHICS COMPLAINTS

SUBCHAPTER 09B - PRELIMINARY INQUIRY AND PROBABLE CAUSE DETERMINATION

30 NCAC 09B .0101 INQUIRY AND PROBABLE CAUSE PANELS

(a) The preliminary inquiry and the determination of probable cause shall be made by a Commission panel of two Commission members, who shall not be of the same political party, ~~and the Executive Director.~~ party. The Chair shall appoint members of the panel to serve on a rotating basis. The Chair may appoint substitute panel members.

(b) After a preliminary inquiry, the Commission panel may dismiss a complaint if it ~~determines~~ determines the following:

- (1) that the ~~The~~ individual against whom the complaint was filed is not a covered person or legislative employee; or
- (2) that the ~~The~~ complaint did not allege facts sufficient to constitute a violation under G.S. 138A-12(b).

~~(c) Commission members who serve on a panel shall not participate in any other proceeding involving a complaint which was considered by the panel.~~

(c) If the Commission panel members cannot agree at the preliminary inquiry stage as to whether the complaint alleges facts sufficient to constitute a violation, the matter shall proceed to an investigation.

(d) If the Commission panel members disagree on the probable cause determination, the complaint shall proceed to the Commission for a determination with the panel members recusing themselves from voting.

Authority G.S. 138A-10(a)(2); 138A-10(a)(5); 138A-10(a)(6); 138A-10(a)(10); 138A-12.

SUBCHAPTER 10D – LOBBYING COMPLAINTS

SECTION .0100 – GENERAL

30 NCAC 10D .0101 SCOPE

The rules in this Subchapter execute the authority granted to the State Ethics Commission pursuant to the Lobbying Law, G.S. 120C of the North Carolina General Statutes regarding lobbying complaints.

Authority G.S. 120C-101(a); 120C-601.

30 NCAC 10D .0102 COMPLAINT REQUIREMENTS

(a) Complaints shall be initiated in one of the following ways:

- (1) a written complaint. A form is available on the Commission's website at www.ethicscommission.nc.gov or by contacting the Commission at (919) 715-2071. The form is not mandatory for a complaint to be valid and considered;
- (2) an oral complaint. Oral complaints shall be confirmed in writing by Commission staff;
- (3) a complaint based upon information through general notice. Commission staff or a member of the Commission may take general notice of available information, even if not formally provided to the Commission in the form of a complaint; or

- (4) referrals from a local, state or federal agency.
- (b) Complaints shall include the following information:
- (1) the name and other contact information for the complainant;
 - (2) the name of the lobbyist, lobbyist principal, or other individual(s) subject to the Lobbying Law (respondent) against whom the complaint is filed; and
 - (3) the allegations and the basis upon which the complainant believes the allegations to be true, including specific facts about a potential violation as set forth in G.S. 120C.

Authority G.S. 120C-101(a); 120C-601.

30 NCAC 10D .0103 ACKNOWLEDGMENT

Within 10 business days of receipt of a Lobbying Law complaint from a third party or a referral, the Commission shall provide written acknowledgment as to the receipt of the complaint to the complainant. The acknowledgment shall indicate that an investigation has not begun, shall direct the complainant to preserve any potentially relevant information, and shall include the confidentiality provisions of G.S. 120C-601(c).

Authority G.S. 120C-101(a); 120C-601.

30 NCAC 10D .0104 NOTICE TO THE COMPLAINANT OF REFERRAL

The Commission shall notify the complainant of a referral to the Secretary of State's Lobbying Compliance Division pursuant to G.S. 120C-601(a).

Authority G.S. 120C-101(a); 120C-601.

30 NCAC 10D .0105 PANEL COMPOSITION

The Commission panels referred to under this Subchapter shall be comprised of two Commission members, who shall not be of the same political party. The Chair shall appoint members of the panel to serve on a rotating basis. The Chair may appoint substitute panel members.

Authority G.S. 120C-101(a); 120C-601.

SECTION .0200 – PRELIMINARY INQUIRY

30 NCAC 10D .0201 GENERAL

- (a) A preliminary inquiry is conducted to determine whether the individual against whom the complaint is filed is subject to the Lobbying Law and whether the facts are sufficient to allege a violation of the Lobbying Law.
- (b) In preparing for a preliminary determination, Commission staff may take pre-investigative actions, including contacting the complainant to seek additional information, requesting the identity of the original source of the information, or contacting the source for further information. Any additional requested information shall be provided within no less than ten business days of the request.

Authority G.S. 120C-101(a); 120C-601.

30 NCAC 10D .0202 PRELIMINARY INQUIRY PROCEDURE

A preliminary inquiry decision shall be made by:

- (1) The full Commission if the complaint is received from one of the following:
 - (a) any member of the Commission;
 - (b) a duly constituted panel of the Commission; or
 - (c) Commission staff.
- (2) A Commission panel if the complaint is received from one of the following:
 - (a) a local, state or federal agency referral; or
 - (b) a third-party complainant.

Authority G.S. 120C-101(a); 120C-601.

30 NCAC 10D .0203 TIMING

The preliminary inquiry shall conclude within 30 business days of receipt of the complaint. This provision may be extended by the Chair when necessary to comply with Rule .0201(b) of this Subchapter.

Authority G.S. 120C-101(a); 120C-601.

30 NCAC 10D .0204 PRELIMINARY INQUIRY DECISIONS

(a) Upon completion of the preliminary inquiry, the following actions may be taken:

- (1) an investigation, if the information alleges a violation over which the Commission has jurisdiction under G.S. 120C.
- (2) decline or dismiss a complaint for the following reasons:
 - (A) the complaint is not within the Commission's jurisdiction and authority under G.S. 120C;
 - (B) the facts are insufficient to constitute a violation under any provisions within the Commission's jurisdiction under G.S. 120C;
 - (C) the complaint is determined to be frivolous; or
 - (D) the respondent and the conduct complained of are the same actions or conduct that have been the subject of a prior complaint.
- (3) refer to one of the following:
 - (A) the N.C. Secretary of State when a complaint relates to Article 2, 4, or 8 of G.S. 120C. The complainant shall be notified.
 - (B) other State, federal or local agencies or law enforcement authorities. The complainant shall be notified.
- (4) stay. If other agencies or authorities are conducting an investigation of the same actions or conduct, the Commission may stay its inquiry pending final resolution of the other

investigation. This provision does not prohibit the Secretary of State's Lobbying Compliance Division from exercising its investigative and enforcement authority for portions of a complaint subject to Article 2, 4, or 8.

(b) A panel decision to dismiss, decline, refer, or stay a complaint following a preliminary inquiry shall be considered by the Commission no later than its next regularly scheduled quarterly meeting. If the Commission rejects the panel's decision, the complaint shall be investigated.

(c) The following actions shall proceed without Commission approval upon a decision by the panel to investigate or if the panel members disagree on whether to investigate:

- (1) an investigation; and
- (2) a referral pursuant to Part (a)(3)(A) of this Rule.

(d) Upon receipt of a referral under Part (a)(3)(A) of this Rule, the Secretary of State may:

- (1) investigate; or
- (2) resume an investigation referred to the Commission pursuant to Article 6 of G.S. 120C.

Authority G.S. 120C-101(a); 120C-600; 120C-601.

SECTION .0300 – INVESTIGATION OF AN ACCEPTED COMPLAINT

30 NCAC 10D .0301 NOTICE OF INVESTIGATION TO RESPONDENT

Within 10 business days of a decision by the Commission or a panel to investigate, the Commission shall notify the respondent in writing of:

- (1) the general allegation(s);
- (2) the potential statutory violations;
- (3) the Commission's subpoena power;
- (4) that the respondent shall retain any relevant information, including documents, correspondence, notes, electronic communications, electronically stored information and emails; and
- (5) that respondent may respond within 30 calendar days after receiving the notice. The Executive Director may extend this deadline for up to 30 calendar days upon good cause shown.

Authority G.S. 120C-101(a); 120C-601.

30 NCAC 10D .0302 MIXED COMPLAINT INVESTIGATIONS

A mixed complaint is a complaint alleging one or more violations under Article 1, 3, 5, or 7 of G.S. 120C and one or more violations under Article 2, 4, or 8 of G.S. 120C. Commission staff shall investigate the portions of the complaint subject to Article 1, 3, 5 and 7 of G.S. 120C. Commission staff may investigate the portions of the complaint subject to Articles 2, 4, and 8 of Chapter 120C as incidental to making a determination on the Article 1, 3, 5, and 7 allegations.

Authority G.S. 120C-101(a); 120C-601.

30 NCAC 10D .0303 INVESTIGATIVE REPORT

Upon completion of the investigation, Commission staff shall prepare an investigative report that contains the following:

- (1) the allegations;
- (2) investigative facts and findings;
- (3) relevant statutory provisions;
- (4) disposition options;
- (5) if relevant, possible sanctions; and
- (6) any response from the respondent.

Authority G.S. 120C-101(a); 120C-601.

SECTION .0400 – COMPLAINT DISPOSITIONS

30 NCAC 10D .0401 PANEL REVIEW AND RECOMMENDATION

(a) For complaints initiated pursuant to Rule .0202(b) of this Subchapter, Commission staff shall present the investigative report to the same Commission panel that conducted the preliminary inquiry or a substitute panel appointed pursuant to Rule .0105 of this Subchapter.

(b) The Commission panel shall review the investigative report and shall take one or more of the following actions regarding the Article 1, 3, 5 and 7 allegations:

- (1) direct Commission staff to conduct further investigation or obtain additional information;
- (2) recommend that the Commission refer the lobbying complaint to another agency;
- (3) recommend that the Commission dismiss the lobbying complaint or specific allegations within the complaint for lack of a violation of Article 1, 3, 5, or 7 of G.S. 120C.
- (4) recommend that the Commission find a violation of Article 1, 3, 5 or 7 of G.S. 120C and that a specific sanction or sanctions should be imposed. A violation shall be shown to exist by a preponderance of the evidence.

(c) Recommendations shall be presented to the Commission no later than at the next regularly scheduled quarterly Commission meeting.

(d) If the panel members disagree on a decision under this Rule, the complaint shall go before the Commission for a decision with the panel members recusing themselves from voting.

Authority G.S. 120C-101(a); 120C-601.

30 NCAC 10D .0402 SETTLEMENT OF COMPLAINTS

(a) At any time, the respondent or his or her legal counsel may meet by mutual consent with the Commission staff to discuss the possibility of settlement of the complaint subject to Article 1, 3, 5, or 7 of G.S. 120C. Settlement of complaints subject to Article 2, 4, or 8 of G.S. 120C is within the Secretary of State's discretion. Resolution by settlement between the respondent and the Commission does not impact or impede the Secretary of State's authority to determine that violations of Article 2, 4, or 8

have occurred, to assess penalties for those violations and to refer to a District Attorney.

(b) If a panel finds that an alleged violation has occurred, Commission staff shall provide the respondent with the panel's recommended determination and offer to engage in settlement discussions. Any recommended determinations provided to the respondent to facilitate settlement discussions shall redact information regarding Article 2, 4 or 8 to the extent possible under the circumstances.

(c) Staff shall present any proposed settlement to the panel. The panel may accept, reject, or modify the terms of the proposed settlement. The panel shall make a final recommendation regarding the settlement to the Commission for approval. If the panel members disagree on acceptance of a proposed settlement, the complaint shall go before the Commission for a decision with the panel members recusing themselves from voting.

(d) Upon the Commission's approval of a settlement under Rule .0404(a)(1) of this Subchapter, the complaint shall be closed as to the complaints subject to Article 1, 3, 5, or 7, subject to re-opening by the Commission if the settlement agreement is breached.

(e) The Commission shall only provide written notice of a settlement to the complainant and the complainant shall not receive a copy of the settlement agreement.

Authority G.S. 120C-101(a); 120C-601.

30 NCAC 10D .0403 COMMISSION REVIEW

(a) For complaint investigations initiated pursuant to Rule .0202(a) of this Subchapter, Commission staff shall present the investigative report to the full Commission, and the Commission shall determine the appropriate action as set forth in Rule .0404 of this Subchapter.

(b) For complaint investigations initiated pursuant to Rule .0202(b) of this Subchapter, upon receipt of a recommendation from the panel, the Commission shall determine the appropriate action as set forth in Rule .0404 of this Subchapter with the panel members recusing themselves from voting.

Authority G.S. 120C-101(a); 120C-601.

30 NCAC 10D .0404 COMMISSION ACTIONS ON A COMPLAINT

The Commission may take one or more of the following actions regarding the Article 1, 3, 5, or 7 allegations:

- (1) accept, modify or reject any proposed settlement agreement.
 - (a) If accepted, the Commission shall notify the respondent of the Commission's decision.
 - (b) If modified, staff shall present the modifications to the respondent for approval.
 - (c) If rejected, the Commission shall proceed with any other action under Items (2)-(5) of this Rule.
- (2) direct Commission staff to conduct further investigation or obtain additional information;

(3) refer the complaint to another agency, and notify the respondent and the complainant of the referral.

(4) dismiss the complaint for lack of evidence if a violation of G.S. 120C is not established by a preponderance of the evidence. If dismissed, the Commission shall provide the following:

(a) Notice of Dismissal to respondent; and

(b) notice to the complainant that the complaint was dismissed because a violation was not established by a preponderance of the evidence. The complainant shall not receive a copy of the Notice of Dismissal.

(5) determine that a violation has occurred and proceed as appropriate under Rule .0501 of this Subchapter.

Authority G.S. 120C-101(a); 120C-601.

30 NCAC 10D .0405 MIXED COMPLAINT DETERMINATIONS

(a) In a mixed complaint, within 10 business days after determination by the Commission of the Article 1, 3, 5 and 7 portions of the complaint, Commission staff shall:

(1) send copies of the relevant investigative material, Notice of Dismissal, Finding of Violations, respondent's Notice of Referral, or other relevant documents to the Secretary of State's Lobbying Compliance Division for any appropriate actions with regard to the remaining allegations subject to Article 2, 4, or 8 of G.S. 120C, excluding attorney work-product or privileged items under current law;

(2) provide the Secretary of State's Lobbying Compliance Division with access to all investigative files in mixed complaint investigations, excluding attorney work-product or privileged items under current law;

(3) notify the respondent of the referral and their duty to retain any potentially relevant information, including documents, correspondence, notes, electronic communications, electronically stored information, and emails; and

(4) notify the complainant of the referral and direct them to retain any potentially relevant information, including documents, correspondence, notes, electronic communications, electronically stored information, and emails.

(b) Any Commission determinations provided to the respondent to facilitate settlement discussions shall redact information regarding Article 2, 4 or 8 to the extent possible under the circumstances.

Authority G.S. 120C-101(a); 120C-600; 120C-601.

30 NCAC 10D .0406 NOTIFICATION OF VIOLATION TO RESPONDENT

If the Commission finds that a violation has occurred, the respondent shall be notified of the following:

- (1) the Commission's decision;
- (2) any sanctions imposed pursuant to Rule .0501 of this Subchapter;
- (3) if it is a mixed complaint, the referral to the Secretary of State's Lobbying Compliance Division and the respondent's duty to retain any potentially relevant information, including documents, correspondence, notes, electronic communications, electronically stored information and emails;
- (4) the respondent's right to appeal the determination by filing a petition with the Office of Administrative Hearings and that the Commission's determination shall become final upon a failure to appeal within 60 days;
- (5) the respondent's opportunity to meet with Commission staff to discuss post-decision settlement; and
- (6) the requirement that pursuant to G.S. 120C-603(a), apparent violations of G.S. 120C shall be reported to the district attorney.

Authority G.S. 120C-101(a); 120C-601; 120C-603.

30 NCAC 10D .0407 NOTIFICATION OF VIOLATION TO COMPLAINANT

If the Commission determines that a violation occurred, Commission staff shall notify the complainant that an Order has been entered and, if relevant that a referral has been made to the Secretary of State under Rule .0405 of this Subchapter.

Authority G.S. 120C-101(a); 120C-601; 120C-603.

SECTION .0500 – SANCTION CRITERIA AND IMPOSITION OF SANCTIONS

30 NCAC 10D .0501 POTENTIAL SANCTIONS

Upon finding a violation and taking the criteria in Rule .0502 of this Subchapter into consideration, the Commission may:

- (1) issue a letter of warning;
- (2) impose a fine of up to five thousand dollars (\$5,000) per violation;
- (3) require a respondent to attend lobbying education as specified by the Commission; and

- (4) impose other sanctions as provided in Chapter 120C.

Authority G.S. 120C-101(a); 120C-601; 120C-602.

30 NCAC 10D .0502 SANCTION CRITERIA

The Commission may consider one or more of the following criteria in imposing sanctions:

- (1) the length of time the respondent has been engaged in lobbying for payment;
- (2) the length of time the respondent has been paying an individual to lobby on its behalf;
- (3) the length of time the respondent has been registered as a lobbyist or liaison personnel;
- (4) the length of time the respondent has been registered as a lobbyist principal;
- (5) the number of past violations of G.S. 120C by the respondent;
- (6) the number of times the respondent has received a warning letter;
- (7) whether the respondent knew or should have known that the conduct or activity was a violation of Article 1, 3, 5, or 7 of G.S. 120C;
- (8) the nature and number of violations in the complaint;
- (9) the duration of the violation;
- (10) whether the respondent attempted to correct the violation prior to a complaint being filed;
- (11) the result or effect of the violation;
- (12) whether the violation was inadvertent or intentional;
- (13) whether the respondent has received advice, informal or formal, from the Commission regarding the conduct or activity giving rise to the violation;
- (14) the scope of the lobbying activity concealed;
- (15) the amount of the resources expended to violate the law;
- (16) the amount of expenditures concealed; or
- (17) any other criteria that the Commission deems reasonable to assist with the determination of sanctions.

Authority G.S. 120C-101(a); 120C-601; 120C-602.

Note from the Codifier: The rules published in this Section of the NC Register are temporary rules reviewed and approved by the Rules Review Commission (RRC) and have been delivered to the Codifier of Rules for entry into the North Carolina Administrative Code. A temporary rule expires on the 270th day from publication in the Register unless the agency submits the permanent rule to the Rules Review Commission by the 270th day.

This section of the Register may also include, from time to time, a listing of temporary rules that have expired. See G.S. 150B-21.1 and 26 NCAC 02C .0500 for adoption and filing requirements.

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

Rule-making Agency: Department of Environment and Natural Resources

Rule Citation: 15A NCAC 28 .0302

Effective Date: February 28, 2014

Date Approved by the Rules Review Commission: February 20, 2014

Reason for Action: A recent change in federal or state budgetary policy. Effective date of change: July 26, 2013. A

recent federal regulation: Patient Protection and Affordable Care Act; Public Law 111-148, s. 4980H(c)(4)(A), et. seq., <http://www.gpo.gov/fdsys/pkg/PLAW-111publ148/pdf/PLAW-111publ148.pdf>. Effective date: Signed into law March 21, 2010, relevant provisions take effect January 1, 2014.

The result of the cut in appropriations during the last biennium coupled with the increased costs associated with transition of temporary employee positions to permanent status in response to pending implementation of the Patient Protection and Affordable Care Act (PPACA) necessitates an increase in the admission fees charged by the Aquariums. The current fee structure has been in place since January 2006. A temporary rule is necessary because the Aquariums need to raise fees before the beginning of the Aquariums' busy season on May 26, 2014 to fully fund implementation of the PPACA.

CHAPTER 28 – NORTH CAROLINA AQUARIUMS

SECTION .0300 – UNAUTHORIZED USE OF FACILITIES: FEES

15A NCAC 28 .0302 FEE SCHEDULE

(a) The following schedule of fees ~~is applicable to govern~~ governs admission to the North Carolina Aquariums:

(1) Roanoke Island:	
Adult, <u>ages</u> 13 and over	\$8.00 <u>\$10.95</u>
Senior, <u>ages</u> 62 and over	\$7.00 <u>\$ 9.95</u>
Child, <u>ages</u> 3 through 12	\$6.00 <u>\$ 8.95</u>
<u>Military</u>	<u>\$ 9.95</u>
(2) Fort Fisher:	
Adult, <u>ages</u> 13 and over	\$8.00 <u>\$10.95</u>
Senior, <u>ages</u> 62 and over	\$7.00 <u>\$ 9.95</u>
Child, <u>ages</u> 3 through 12	\$6.00 <u>\$ 8.95</u>
<u>Military</u>	<u>\$ 9.95</u>
(3) Pine Knoll Shores:	
Adult, <u>ages</u> 13 and over	\$8.00 <u>\$10.95</u>
Senior, <u>ages</u> 62 and over	\$7.00 <u>\$ 9.95</u>
Child, <u>ages</u> 3 through 12	\$6.00 <u>\$ 8.95</u>
<u>Military</u>	<u>\$ 9.95</u>

(b) Free admission to the North Carolina Aquariums on Roanoke Island, at Pine Knoll Shores and at Fort Fisher ~~is~~ shall be offered to the following groups:

- (1) Aquarium Society Members;
- (2) Preregistered North Carolina School groups;
- (3) Association of Zoos and Aquariums' reciprocals; and
- (4) Children under the age of three.

Free admission ~~is~~ shall be offered to everyone on the following days: Martin Luther King, Jr. holiday and Veteran's Day. ~~Day on November 11.~~

(c) The following schedule of fees ~~is applicable to govern~~ governs admission ~~for fishing~~ on the educational fishing piers of the North Carolina Aquariums:

(1) Daily Fishing Pass (Ages 13 and over)	\$12.00 (maximum 24 hour period, two rods maximum; \$ 2.00 for <u>each additional rod</u> each rod over two)
(2) Youth Fishing Pass (Ages 12 and under)	\$ 6.00 (maximum 24 hour period, two rods maximum; \$ 1.00 for <u>each additional rod</u> each rod over two)

TEMPORARY RULES

(3)	Pin Pin-Rig Fishing Rigs (live bait) bait fishing)	\$ 3.00 addition to fishing pass fee <u>per day</u>
(4)	Three-Day Fishing Pass (Ages 13 and over)	\$30.00 (any three days in a seven day period from date purchased, two rod maximum; \$2.00 per day for each additional rod)
(5)	Youth Three-Day Fishing Pass (Ages 12 and under)	\$15.00 (any three days in a seven day period from date purchased, two rod maximum; \$2.00 per day for each additional rod)
(6)	Seven-Day Fishing Pass (Ages 13 and over)	\$65.00 (any seven days in a one month period from date purchased, two rod maximum; \$2.00 per day for each additional rod)
(7)	Youth Seven-Day Fishing Pass (Ages 12 and under)	\$32.50 (any seven days in a one month period from date purchased, two rod maximum; \$2.00 per day for each additional rod)
(8)	Sightseeing Pass (Ages 13 and over)	\$ 2.00 (unlimited sightseeing for date of purchase)
(9)	Youth Sightseeing Pass (Ages 12 and under)	\$ 1.00 (unlimited sightseeing for date of purchase)

History Note: Authority G.S. 143B-289.41(b); 143B-289.44;
Eff. March 1, 2004;
Amended Eff. January 1, 2006;
Transferred and Recodified from 15A NCAC 01R .0101 Eff. August 1, 2007;
Amended Eff. September 1, 2011; January 1, 2011; April 1, 2010;
Temporary Amendment Eff. February 28, 2014.

TITLE 21 – OCCUPATIONAL LICENSING BOARDS AND COMMISSIONS

CHAPTER 22 – HEARING AID DEALERS AND FITTERS BOARD

Rule-making Agency: Hearing Aid Dealers and Fitters Board

Rule Citation: 21 NCAC 22J .0116

Effective Date: February 28, 2014

Date Approved by the Rules Review Commission: February 20, 2014

Reason for Action: A serious and unforeseen threat to the public health, safety or welfare. The effective of a recent act of the General Assembly: Cite: Session Law 2013-410 effective August 23, 2013 and Session Law 2013-296 effective October 1, 2013. The Board is appealing the Commission action taken January 31, 2014. The Board accepts the Commission decision and will pursue permanent rulemaking for 21 NCAC 22F .0113, .0114, .0115, .0116, .0301, .0302, .0303, .0304, .0305 and .0306. However, the Board believes that 21 NCAC 22J .0116 does not exceed the statutory authority to justify temporary rulemaking and should be reconsidered by the Commission to approve adoption of this rule. Pursuant to G.S. 150B-21.1(b1) the Board is resubmitting the rule for Commission review with a new statement.

Session Law 2013-410: 93D-1.1 was added to define the scope of practice for a hearing aid specialist, listing 16 activities that fall within the scope of practice for regulated individuals.

Additionally, 93D-5(a) was amended to state that "No person shall undertake any activity within the scope of practice of a hearing aid specialist in this State unless the person first has been issued a license by the Board or is an apprentice working under the supervision of a Registered Sponsor." The legislative changes require the Board to regulate all identified activities in the scope of practice for licensees. The Board believes immediate action is necessary to protect the public because the Board does not have rules and regulations which address the identified scope of regulated activities. The Board now seeks to adopt a rule making it unethical to engage in activities for which apprentices or licensees are not properly trained. The Board believes this is in the public's best interest to ensure that services are provided in a safe and effective manner.

Immediate action is necessary in order to ensure that the Board is equipped to enforce the provisions of its governing statute, which was amended by the Legislature in August 2013. The Board seeks to continue to preserve public interest and safety to ensure that no licensee or apprentice engages in practices for which they have not been trained - and through which they could thus injure their clients. Immediate adoption would provide (1) clarity and guidance to licensees on how they can continue to ethically practice and (2) would allow the Board to take disciplinary action to prevent future harm in the event that a licensee or apprentice recklessly undertakes procedures for which he has not received any training. Without the adoption of this rule, the legislative action creates an unforeseen and serious potential threat to the public health, safety and welfare of North Carolina citizens by authorizing licensees to perform functions which they may have no knowledge or training to perform.

Based upon the feedback the Board received during the public comment period, the Board has determined that additional rules are needed to clarify the terms used in the scope of practice

legislation. The Board wants to establish rules that will clearly delineate the activities that may be performed under this scope of practice. Additional time is needed to consult with other interested parties in the medical and audiology communities in developing those rules. Having this rule approved under temporary rulemaking will give the Board time to craft appropriate language while still protecting the public by giving the Board a mechanism through which to administer discipline if needed. The Board anticipates that additional rules with specific language related to the activities within the scope of practice will replace this proposed temporary rule and is working diligently to prepare these rules for adoption through established permanent rulemaking procedures.

SUBCHAPTER 22J – CODE OF ETHICS

21 NCAC 22J .0116 SCOPE OF PRACTICE

It shall be unethical for ~~licensees or apprentices~~ a licensee or apprentice to perform services as set forth in G.S. 93D-1.1 for which they have if the licensee or apprentice has not been trained. ~~trained for the specific service.~~

History Note: Authority G.S. 93D-1.1; 93D-3; 93D-9; 93D-13;

Temporary Adoption Eff. February 28, 2014.

TITLE 25 – OFFICE OF STATE HUMAN RESOURCES

Rule-making Agency: *State Human Resources Commission*

Rule Citation: 25 NCAC 01C .0202; 01H .1103; 01J .0617-.0618, .1308-.1309, .1311

Effective Date: *February 28, 2014*

Date Approved by the Rules Review Commission: *February 20, 2014*

Reason for Action: *The effective date of a recent act of the General Assembly: HB 834 [Session Law 2013-382], effective August 21, 2013.*

25 NCAC 01C .0202 – *This rule is contained in Subchapter C, Personnel Administration. It is incorrect as written given the changes in HB 834, S.L. 2013-382. Rather than amend the rule here in Subchapter C, the agency has chosen to repeal the rule here and add an "amended" version (as an adoption) to Subchapter J, where the rule should appear (25 NCAC 01J .0617).*

25 NCAC 01H .1103 – *As currently written, the rule is incorrect after the changes wrought by HB 834. Adherence to the usual notice and publication schedules will increase the risk that employees may file grievances that might get dismissed for not following the procedure currently mandated by law (G.S. 126-34.01 and 126-34.02).*

25 NCAC 01J .0617, .0618 – *These rules are required by the terms of G.S. 126-34.01 and 126-34.02, which were part of HB 834. Adherence to usual notice and hearing schedules may result in employees' not knowing in a timely manner about the*

changes in law which might then prejudice their ability to pursue grievances against the State.

25 NCAC 01J .1308, .1309, .1311 – *These rules are very similar to a rule which currently appears in Subchapter 01B (State Personnel Commission). Its virtual twin is being amended to clarify that it applies to matters which arose before the effective date of the recent amendments to the State Human Resources Act. The adoption of this rule as a temporary rule is required by the terms of G.S. 126-34.01 and 126-34.02, which are derived from HB 834. Adherence to usual notice and hearing schedules may result in employees' not knowing in a timely manner about the changes in law which might then prejudice their ability to pursue grievances against the State and obtain the leave to which the employee might be entitled.*

CHAPTER 01 – STATE HUMAN RESOURCES COMMISSION

SUBCHAPTER 01C – PERSONNEL ADMINISTRATION

SECTION .0200 – GENERAL EMPLOYMENT POLICIES

25 NCAC 01C .0202 EQUAL EMPLOYMENT OPPORTUNITY

~~Neither race, religion, color, creed, national origin, sex, age, political affiliation, or handicapping condition shall be considered in the recruitment and selection of new employees; selection of employees for promotion, training, career development, transfer, demotion, or reduction in force; administration of disciplinary policies or termination for cause; and establishment of rates of pay including the awarding of salary adjustments or annual salary increases. See 25 NCAC Subchapter 01L.~~

History Note: Authority G.S. 126-4; 126-5(c)(1)-(4); 126-16; 126-36; 168A-5(b)(3); P.L. 92-261, March 24, 1972; S.L. 2013-382, s. 7.1;

Eff. February 1, 1976;

Amended Eff. October 1, 2004; November 1, 1988; July 1, 1988; October 1, 1983; December 1, 1978;

Temporary Repeal Eff. February 28, 2014.

SUBCHAPTER 01H – RECRUITMENT AND SELECTION

SECTION .1100 – VETERANS' PREFERENCE

25 NCAC 01H .1103 DENIAL OF VETERANS' PREFERENCE

~~Any claim or allegation that veterans' preference has not been accorded to an eligible veteran shall be filed with the State Personnel Commission through the contested case procedures of the Office of Administrative Hearings. Such claims shall be filed in a manner consistent with the requirements of G.S. 150B-23 and G.S. 126-38. Such claims shall be heard as contested cases pursuant to G.S. 150B, Article 3. The State Personnel Commission may, upon a finding that veterans' preference was denied in violation of these Rules, order the employment, subsequent employment, promotion, reassignment or horizontal transfer of any affected person, as well as any other remedy~~

necessary to correct the violation, first follow the agency grievance procedure.

History Note: Authority G.S. 126-4(10); 126-4(11); 150B, Article 3; S.L. 2013-382, s. 6.1;
Eff. September 1, 1987;
Recodified from 25 NCAC 01H .0613 Eff. October 5, 2004;
Amended Eff. June 1, 2008; February 1, 2007;
Temporary Amendment Eff. February 28, 2014.

SUBCHAPTER 01J – EMPLOYEE RELATIONS

SECTION .0600 – DISCIPLINARY ACTION: SUSPENSION AND DISMISSAL

25 NCAC 01J .0617 DISCRIMINATION AND RETALIATION

Neither race, religion, color, ~~creed~~, national origin, sex, age, political affiliation, disability or genetic information shall be considered in making any decisions about any term or condition of employment for any employees or applicants. Nor shall the fact that an employee or applicant has complained about discrimination or participated in a hearing, proceeding, or investigation of discrimination be considered when making any decisions about any term or condition of employment.

History Note: Authority S.L. 2013-382, s. 7.1;
Temporary Adoption Eff. February 28, 2014.

25 NCAC 01J .0618 APPEAL OF DENIAL OF VETERAN'S PREFERENCE

An appeal by an applicant, employee, or former employee that he or she was denied a veteran's preference in initial employment, subsequent hiring, promotion, reassignment, horizontal transfer, or other employment event in violation of the law shall first be made through the agency grievance procedure.

History Note: Authority S.L. 2013-382, s. 6.1;
Temporary Adoption Eff. February 28, 2014.

SECTION .1300 – EMPLOYEE APPEALS AND GRIEVANCE PROCESS

25 NCAC 01J .1308 LEAVE

(a) An employee shall be credited on reinstatement with all vacation leave which would have been earned except for the interruption in employment.

(b) An employee shall be credited on reinstatement with all sick leave which would have been earned except for the interruption in employment.

(c) The decision as to whether or not to allow the reinstated employee to purchase back the vacation leave paid out in a lump sum at dismissal is within the discretion of the agency. A failure to allow such repurchase is not grievable.

(d) Employees reinstated from dismissal shall have their former balance of sick leave at dismissal reinstated, in addition to the

credit for sick leave which would have been earned except for the dismissal.

History Note: Authority S.L. 2013-382, s. 6.1;
Temporary Adoption Eff. February 28, 2014.

25 NCAC 01J .1309 HEALTH INSURANCE

Employees reinstated from dismissal shall be entitled to either retroactive coverage under the state health insurance plan or to reimbursement up to the amount the state contributes for employee only coverage. The employee shall have the right to elect between these two choices, provided that if the employee elects reimbursement the employee may do so only if the employee had secured alternate health insurance coverage during the period of interruption of employment. The employee shall not be reimbursed for the cost of coverage of dependents or spouse during the period between dismissal and reinstatement. It is the responsibility of the employee to provide proof of insurance expenses incurred during the period of unemployment.

History Note: Authority 2013-382, s. 6.1;
Temporary Adoption Eff. February 28, 2014.

25 NCAC 01J .1311 REINSTATEMENT

When an employee who was dismissed or demoted is reinstated, the employee shall return to employment in the same position, or a similar position at management's option, at the same salary grade or salary grade equivalency which the employee enjoyed prior to dismissal.

History Note: Authority S.L. 2013-382, s. 6.1;
Temporary Adoption Eff. February 28, 2014.

TITLE 26 – OFFICE OF ADMINISTRATIVE HEARINGS

Rule-making Agency: *Office of Administrative Hearings*

Rule Citation: 26 NCAC 03 .0118

Effective Date: *March 1, 2014*

Date Approved by the Rules Review Commission: *February 20, 2014*

Reason for Action: *The effective date of a recent act of the General Assembly: S.L. 2013-382, s.6.1, effective August 21, 2013. Pursuant to S.L. 2013-382, s. 6.1, OAH must hear and issue a decision on personnel cases within 180 days from the commencement of the contested case. The 180 days can only be exceeded if there is "extraordinary cause" to do so. Consequently, this term clearly needs to be defined for the presiding administrative law judge and parties involved. The statute is in effect. Therefore, litigants and the presiding administrative law judge must have a definition of "extraordinary cause" immediately to base motions for continuance.*

CHAPTER 03 – HEARINGS DIVISION

SECTION .0100 - HEARING PROCEDURES

26 NCAC 03 .0118 CONTINUANCES

(a) Requests for a continuance of a hearing shall be granted upon a showing of good cause or extraordinary cause. Unless time does not permit, a request for a continuance of a hearing shall be made in writing to the administrative law judge and shall be served upon all parties of record. In determining whether good cause or extraordinary cause exists, due regard shall be given to the ability of the party requesting a continuance to proceed effectively without a continuance. A request for a continuance filed within five days of a hearing shall be denied unless the reason for the request could not have been ascertained earlier.

- (1) "Good cause" includes death or incapacitating illness of a party, representative, or attorney of a party; a court order requiring a continuance; lack of proper notice of the hearing; a substitution of the representative or attorney of a party if the substitution is shown to be required; a change in the parties or pleadings requiring postponement; and agreement for a continuance by all parties if either more time is clearly necessary to complete mandatory preparation for the case, such as authorized discovery, and the parties and the administrative law judge have agreed to a new hearing date or the parties have agreed to a settlement of the case that has been or is likely to be approved by the final decision maker.
- (2) "Good cause" shall not include: intentional delay; unavailability of counsel or other representative because of engagement in another judicial or administrative proceeding unless all other members of the attorney's or representative's firm familiar with the case are similarly engaged, or if the notice of the other proceeding was received subsequent to the notice of the hearing for which the

continuance is sought; unavailability of a witness if the witness testimony can be taken by deposition, and failure of the attorney or representative to properly utilize the statutory notice period to prepare for the hearing.

(b) For the purpose of determining whether "extraordinary cause" exists to allow a final decision to be issued beyond 180 days after the commencement of a personnel case under G.S. 126-34.02(a) the phrase "extraordinary cause" is defined as follows: out of the ordinary; exceeding the usual, average, or normal measure or degree; not usual, regular or of a customary kind. "Extraordinary cause" includes:

- (1) a stay issued by a federal or state trial or appellate judge;
- (2) a stay issued by an administrative law judge under G.S. 150B-33(a); or
- (3) a pending OAH civil rights investigation which addresses the same issues of discrimination as the subject matter of the contested case when the OAH investigation has not been pending in the Civil Rights Division longer than 90 days.

"Extraordinary cause" shall not be granted for any cause listed in Subparagraph (a)(2) of this Rule.

(c) A continuance for good cause shall not be granted when to do so would prevent the case from being concluded within any statutory or regulatory deadline.

~~(b)(d)~~ During a hearing, if it appears in the interest of justice that further testimony should be received and sufficient time does not remain to conclude the testimony, the administrative law judge shall either order the additional testimony taken by deposition or continue the hearing to a future date for which oral notice on the record is sufficient.

History Note: Authority G.S. 126-34.02; 150B-33(b)(4); Eff. August 1, 1986; Amended Eff. November 1, 1987; Temporary Amendment Eff. March 1, 2014.

This Section contains information for the meeting of the Rules Review Commission on February 20, 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

Margaret Currin (Chair)
Jeff Hyde
Jay Hemphill
Faylene Whitaker

Appointed by House

Garth Dunklin (1st Vice Chair)
Stefanie Simpson (2nd Vice Chair)
Jeanette Doran
Ralph A. Walker
Anna Baird Choi

COMMISSION COUNSEL

Joe DeLuca	(919)431-3081
Amanda Reeder	(919)431-3079
Abigail Hammond	(919)431-3076
Amber Cronk	(919)431-3074

RULES REVIEW COMMISSION MEETING DATES

March 20, 2014	April 17, 2014
May 15, 2014	June 19, 2014

RULES REVIEW COMMISSION MEETING MINUTES

February 20, 2014

The Rules Review Commission met on Thursday, February 20, 2014, in the Commission Room at 1711 New Hope Church Road, Raleigh, North Carolina. Commissioners present were: Anna Choi, Margaret Currin, Jeanette Doran, Garth Dunklin, Jeff Hyde, Jay Hemphill, Stephanie Simpson, Faylene Whitaker and Ralph Walker.

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

The meeting was called to order at 10:03 a.m. with 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

Chairman Currin asked for any discussion, comments, or corrections concerning the minutes of the January 16, 2014 meeting. There were none and the minutes were approved as distributed.

Chairman Currin asked for any discussion, comments, or corrections concerning the minutes of the January 31, 2014 meeting. There were none and the minutes were approved as distributed.

FOLLOW-UP MATTERS

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.

The Commission unanimously approved all rules except Rules .0101 and .0109. The Commission continued its objection to both rules finding the agency lacks statutory authority to investigate member complaints against Telephone Membership Corporations.

The Commission additionally objected to Rule .0109, finding the agency has no authority to set the process for arbitration outside of rulemaking as proposed in Item (6).

Frances Liles with the agency and Lareena Phillips with the NC DOJ, agency counsel, addressed the Commission.

The agency presented a new rule, proposed 04 NCAC 08 .0313, to satisfy the Commission's objection to Item (6) in Rule .0109. Citing to Rule 26 NCAC 05 .0108(a), the Commission declined to review 04 NCAC 08 .0313 at the February meeting, but will review it at the March meeting.

Child Care Commission

All rules were unanimously approved.

Alexi Gruber with the NC DOJ, agency counsel, addressed the Commission.

Commission for Mental Health, Developmental Disabilities and Substance Abuse Services

10A NCAC 27G .0504 - The Commission for MH/DD/SAS is required to respond within ten days of its next regularly scheduled meeting, which is February 27, 2014. There was no action for the Commission to take at the meeting.

Commission for Mental Health, Developmental Disabilities and Substance Abuse Services

10A NCAC 27G .6702; 27H .0201, .0202, .0203, .0204, .0205, .0206 and .0207: The Commission for MH/DD/SAS has not responded. There was no action for the Commission to take at the meeting.

Sheriffs' Education and Training Standards Commission

12 NCAC 10B .1901 was unanimously approved.

Hearing Aid Dealers and Fitters Board

21 NCAC 22J .0116 was unanimously approved as a temporary rule based upon the revised findings of need provided by the Board pursuant to G.S. 150B-21.1(b1).

Pursuant to G.S. 150B-21.1(b2) and at the request of the Board, the following rules are to be returned to the Board: Rules 21 NCAC 22F .0113, .0114, .0115, .0116, .0301, .0302, .0303, .0304, .0305, and .0306.

Catherine Jorgenson with the agency addressed the Commission.

Board of Speech and Language Pathologists

All rules were unanimously approved.

State Human Resources Commission

The agency has not submitted any rewritten rules and there is no action for the Commission to take at the meeting.

LOG OF FILINGS

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

State Board of Education

16 NCAC 06D .0508 and 06G .0504 were withdrawn at the request of the agency. Therefore, there was no action for the Commission to take.

Katie Cornetto with the agency addressed the Commission.

Commissioner Simpson asked staff about the process agencies use to withdraw rules. Staff referred to Rule 26 NCAC 05 .0107. Commissioner Simpson asked to add a discussion about that process to the business portion of the agenda.

Cemetery Commission

The Commission objected to all rules based on ambiguity and based on failure to complete the technical corrections as requested to clarify ambiguous language.

Board of Pharmacy

21 NCAC 46 .3501 was approved unanimously.

Examiners of Board of Plumbing, Heating and Fire Sprinkler Contractors

All rules were approved unanimously except for Rule 21 NCAC 50 .0301. The Commission objected based on lack of statutory authority. The Commission found that the Board has no authority to waive the requirement that applicants for licensure take an exam as set forth in Paragraph (I) of the Rule.

Board of Licensed Professional Counselors

All rules were withdrawn at the request of the agency. Therefore, there was no action for the Commission to take at the meeting.

Building Code Council

The amendments to the N.C. Fire, Plumbing, and Residential codes were unanimously approved and the repeals of two of the N.C. Residential Code provisions were unanimously approved.

The Commission extended the period of review on the 2015 N.C. Existing Building Code adoption in order to give the agency time to respond to the comments it received from RRC counsel concerning the adoption of this code.

The Commission recessed at 12 p.m. and reconvened at 12:10 p.m.

Commissioner Doran was not present during the discussion or vote for the remaining rules.

TEMPORARY RULES

Chairman Currin presided over the review of the log of temporary rules

Department of Environment and Natural Resources

Commissioner Walker was not present during the discussion or vote for this rule.

15A NCAC 28 .0302 was approved unanimously.

State Board of Education

Commissioner Walker was not present during the discussion or vote for this rule.

The Commission declined to approve Rule 16 NCAC 06C .0701 based on failure to comply with the Administrative Procedure Act (APA) in accordance with G.S. 150B-21.1(a) and 150B-21.9.

The findings of need for the rule states that the temporary rule was required by the Session Law 2013-360, Section 9.6(e) that states the following:

SECTION 9.6.(e) The State Board of Education shall develop by rule as provided in Article 2A of Chapter 150B of the General Statutes a model contract for use by local boards of education in awarding teacher contracts. The State Board may adopt a temporary rule for a model contract as provided in G.S. 150B-21.1 to provide a contract to local boards of education no later than January 1, 2014, but shall replace the temporary rule with a permanent rule as soon as practicable.

The Commission declined to approve Rule 16 NCAC 06C .0701 because the adoption date was after January 1, 2014 and therefore, the N.C. State Board of Education lacked the statutory authority for temporary rule making. Furthermore, the Commission expressed concerns that the temporary rule did not contain a model contract for use by local boards of education.

Jason Weber with the agency addressed the Commission.

State Human Resources Commission

Commissioner Hemphill was not present for the discussion or vote for this and remaining rules.

The Commission unanimously objected to Rule 25 NCAC 01J .1310 based on ambiguity. The agency asserted that it is not the intent of the agency to dictate to an Administrative Law Judge what an ALJ may do in terms of the relief an ALJ may order but does intend to state what it believes is the available relief concerning the interest an agency may pay in settling a grievance. The Commission believes it is unclear whether the rule actually makes that distinction.

The Commission unanimously approved the temporary repeal of Rule 25 NCAC 01C .0202; the temporary amendment of 25 NCAC 01H .1103; and the temporary adoptions of 25 NCAC 01J .0617, .1308, .1309, and .1311.

Office of Administrative Hearings

Rule 26 NCAC 03 .0118 was approved unanimously.

Judge Julian Mann with the agency addressed the Commission.

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

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

Commissioner of Agriculture

The Commission certified that the agency adhered to the principles in G.S. 150B-19.1 for proposed rules 02 NCAC 52K .0301, .0401, and .0501.

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 09B .0403 and 09E .0105.

COMMISSION BUSINESS

Chairman Currin opened the meeting for a public hearing on the proposed amendment to Rules 26 NCAC 05 .0105 and .0106 and the adoption of Rule 26 NCAC 05 .0211 at 2:20 p.m. Chairman Currin called on anyone present who wished to comment on or object to the rule actions as they were noticed in the NC Register. No one present offered a comment. The period to receive comments for Rules 26 NCAC 05 .0105 and .0106 will expire at 5:00 p.m., March 17, 2014. The period to receive comments for Rule 26 NCAC 05 .0211 will expire at 10 a.m., March 20, 2014. The Commission may vote on the adoption of all three rules at its regularly scheduled meeting in March.

The public hearing portion of the meeting closed at 2:24.

Staff informed the Commission that it had not received comments on Rules .0105 and .0106. The Commission received one written comment for Rule .0211 before the meeting from DENR, asking to move a few rules within the schedule. Staff informed the Commission that the comment will become part of the rulemaking record. Staff requested permission from the Commission to make the proposed change after the meeting and send the revised rule to interested persons. Commissioner Dunklin moved to allow staff to make this change following the meeting. The motion was unanimously approved.

The period to receive comments for Rules 26 NCAC 05 .0105 and .0106 will expire at 5:00 p.m., Monday, March 17, 2014. The period to receive comments for Rule 26 NCAC 05 .0211 will expire at 10:00 a.m., Thursday March 20, 2014.

The Commission considered proposed Rules 26 NCAC 05 .0201 - .0210. The Commission decided to postpone final action on these Rules until its March meeting to ensure the members had adequate time to review all comments and staff's proposed changes to the rules.

The Commission discussed amending Rule 26 NCAC .0107 to state that once an agency has filed a rule for RRC review, it cannot withdraw the rule; instead, all rules filed by the deadline will be reviewed by the Commission.

The Commission also discussed ensuring the members have sufficient time to review all materials before a meeting. The members looked at Rule 26 NCAC 05 .0108, which governs when rewritten rules with technical changes incorporated are due. The Commission acknowledged that the Rule includes a waiver provision in Paragraph (e), which allows staff to extend the deadline for receiving the properly completed rules. The members, citing concerns about the increasing workload in the coming G.S. 150B-21.3A existing rule review process, instructed staff to grant these waivers only when the agency meets the requirements of the Rule. The Commission indicated it will discuss amending the Rule to remove or restrict the waiver provision.

The meeting adjourned at 2:50 p.m.

The next regularly scheduled meeting of the Commission is Thursday, March 20th 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
Administrative Assistant

Minutes approved by the Rules Review Commission:

Margaret Currin, Chair

Rules Review Commission

Meeting

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FEBRUARY 20, 2014

Name	Agency
Margaret Treary	NC Board of Examiners for Speech Language Pathology & Audiology
Makale Keller	Please Print Legibly
Ray J. Davis	Please Print Legibly
David Blalock	Please Print Legibly
Cynthia Pook	Please Print Legibly
Sandra Capps	"
Nadia Lybr	NCCN
Jack Nichols	Allen, Pinnix & Nichols
Ann Wall	Sec of State
Janice Davidson	NC DOR
BRADES	NC DENR
Lareena J. Phillips	Counsel, NCREA
Curtis Aldenclifer	NC REC
PATRICK BUFFIN	NC AEC
Jay Campbell	NC BAR
John Allen	DCDEE
Muri Smith	NC DOJ
Lorie Pugh	NC DHHS - DCDEE
Julia Lohman	DOJ - Sheriff's Stols
Trevor Allen	DOJ - CJETS
Frances Likes	NCREA

Rules Review Commission
Meeting

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FEBRUARY 20, 2014

Name	Agency
Tom Harris	SEANC
Jennifer Everett	NC DENR
Jonathan Jorda	NCGA
DAVID GRIFFIN	NC DENR
Katie Cornejo	NC SBE
Kevin Mauter	SBE
Jason Weber	SBE
Valerie Bateman	OSHR
CLINT PENTAN	NCBOP
Anca GROZAV	OSBM
Catherine Jorgensen	HADEB
Chris Evans	BCBSNC
Ben Downing	OSHR
Tina Simpson	NC DOJ
Megan Langhorne	DHSR

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February 20, 2014 Meeting

NC RURAL ELECTRIFICATION AUTHORITY

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<u>Notification of Meetings</u>	04	NCAC	08	.0108
<u>Correspondence and Communications</u>	04	NCAC	08	.0110
<u>Board Proceedings</u>	04	NCAC	08	.0111
<u>Member Visitation</u>	04	NCAC	08	.0112
<u>Definitions</u>	04	NCAC	08	.0201
<u>Loan Applications and Categories</u>	04	NCAC	08	.0202
<u>Loan Categories</u>	04	NCAC	08	.0203
<u>Documents Required for Loan</u>	04	NCAC	08	.0204
<u>Presentation of Documents</u>	04	NCAC	08	.0205
<u>Operating Rules and Regulations</u>	04	NCAC	08	.0206
<u>Operating Rules and Regulations</u>	04	NCAC	08	.0207
<u>Bylaws</u>	04	NCAC	08	.0208
<u>Rate Schedules</u>	04	NCAC	08	.0209
<u>Complaints</u>	04	NCAC	08	.0210
<u>Data Sheets for Progress Reports</u>	04	NCAC	08	.0211
<u>Operating Budget</u>	04	NCAC	08	.0212
<u>Definitions</u>	04	NCAC	08	.0301
<u>Loan Applications</u>	04	NCAC	08	.0302
<u>Loan Categories</u>	04	NCAC	08	.0303
<u>Presentation of Documents</u>	04	NCAC	08	.0305
<u>Operating Rules and Regulations</u>	04	NCAC	08	.0306
<u>Operating Rules and Regulations</u>	04	NCAC	08	.0307
<u>Bylaws</u>	04	NCAC	08	.0308
<u>Tariffs</u>	04	NCAC	08	.0309
<u>Complaints</u>	04	NCAC	08	.0310
<u>Data Sheets for Progress Reports</u>	04	NCAC	08	.0311
<u>Operating Budget</u>	04	NCAC	08	.0312
<u>Petitions for Rule-Making Hearings</u>	04	NCAC	08	.0401
<u>Declaratory Rulings</u>	04	NCAC	08	.0404

CHILD CARE COMMISSION

<u>Application for a License for a Child Care Center</u>	10A	NCAC	09	.0302
<u>Application for a License for a Family Child Care Home</u>	10A	NCAC	09	.1702
<u>General Safety Requirements</u>	10A	NCAC	09	.2506
<u>Scope</u>	10A	NCAC	09	.2701
<u>Definitions</u>	10A	NCAC	09	.2702
<u>Criminal Record Check Requirements for Child Care Providers</u>	10A	NCAC	09	.2703

RULES REVIEW COMMISSION

<u>Criminal Record Check Requirements for Nonlicensed Home P...</u>	10A NCAC	09	.2704
<u>Staff Qualifications</u>	10A NCAC	09	.2903

SHERIFFS EDUCATION AND TRAINING STANDARDS COMMISSION

<u>Military and Military Spouse Transferees</u>	12 NCAC	10B	.1901
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PHARMACY, BOARD OF

<u>Reports from the Controlled Substances Reporting System</u>	21 NCAC	46	.3501
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PLUMBING, HEATING AND FIRE SPRINKLER CONTRACTORS, EXAMINERS OF BOARD OF

<u>Applications: Issuance of License</u>	21 NCAC	50	.0306
<u>Limited Plumbing Contractor License</u>	21 NCAC	50	.0518
<u>License Fees</u>	21 NCAC	50	.1102

SPEECH AND LANGUAGE PATHOLOGISTS AND AUDIOLOGISTS, BOARD OF EXAMINERS FOR

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

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<u>2012 NC Fire Code/Group R Automatic Sprinkler System</u>	903.2.8
<u>2012 NC Plumbing Code/Prefabricated Showers and Shower ...</u>	417.1
<u>2012 NC Residential Code/Eave Projections, Soffit Protect...</u>	R302.1, 302.1.1, 302.1.2, 302.2.6
<u>2012 NC Residential Code/Soffit</u>	R703.11.3
<u>NC Residential Code/Flame Spread</u>	R703.11.4

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<u>Allegation of Denial of Veterans Preference</u>	25 NCAC 01H	.1103
<u>Discrimination and Retaliation</u>	25 NCAC 01J	.0617
<u>Appeal of Denial of Veterans' Preference</u>	25 NCAC 01J	.0618
<u>Leave</u>	25 NCAC 01J	.1308
<u>Health Insurance</u>	25 NCAC 01J	.1309
<u>Reinstatement</u>	25 NCAC 01J	.1311

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02 NCAC 52K .0301

Fencing

02 NCAC 52K .0401

Hand Washing Stations

02 NCAC 52K .0501

CRIMINAL JUSTICE EDUCATION AND TRAINING STANDARDS COMMISSIONEvaluation for Training Waiver

12 NCAC 09B .0403

Minimum Training Specifications: Annual In-Service Training

12 NCAC 09E .0105

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

Melissa Owens Lassiter	A. B. Elkins II
Don Overby	Selina Brooks
J. Randall May	Craig Croom
J. Randolph Ward	

<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>DATE</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
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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	
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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	
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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	
ABC Commission v. T C Fox, LLC T/A Fig Café and Wine Bar	13 ABC 17131	01/07/14	
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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	

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Teresa Herbin v. Department of Public Safety Victim Services	12 CPS 03680	08/10/12
Jacqueline M Davis victim-Antonio T Davis v. Dept. of Public Safety	12 CPS 05919	11/06/12
Demario J. Livingston v. Dept. of Public Safety Victim Services	12 CPS 06245	10/19/12
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Teresa Diane Marsh v. DHHS, Division of Health Service Regulation	11 DHR 11456	04/27/12	
Betty Parks v. Division of Child Development, DHHS	11 DHR 11738	06/20/12	
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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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Liberty Healthcare Properties of West Wake County, LLC, Liberty Commons Nursing and Rehabilitation Center of West Wake County, LLC, Liberty Healthcare Properties of Wake County LLC, and Liberty Commons Nursing and Rehabilitation Center of Wake County, LLC v. DHHS, Division of Health Service Regulation, Certificate of Need Section, and Hillcrest Convalescent Center, Inc.; E.N.W., LLC and Bellarose Nursing and Rehab Center, Inc.; Britthaven, Inc. and Spruce LTC Group, LLC; and AH North Carolina Owner LLC d/b/a The Heritage of Raleigh	12 DHR 08669	06/20/13	28:09 NCR 928
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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 1695
Cathy M. Brown v. Private Protective Services Board	13 DOJ 14219	01/13/14	28:18 NCR 2266
Martise Lamar Jones v. NC Alarm Systems Licensing Board	13 DOJ 14844	10/30/13	
Marshall Letitus Wiley v. Criminal Justice Education and Training Standards Commission	13 DOJ 15365	01/10/14	
Dominic Orlando Chavis v. Criminal Justice Education and Training Standards Commission	13 DOJ 15454	01/29/14	
Trina Liverman Basnight v. Criminal Justice Education and Training Standards Commission	13 DOJ 15455	01/07/14	
Charles Robert Austin, Jr. v. NC Alarm Systems Licensing Board	13 DOJ 15507	10/30/13	
Bobby Russell v. Sheriffs' Education and Training Standards Commission	13 DOJ 13549	01/17/14	
Deane Eugene Barnett 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	
Alejandro Maurent v. Private Protective Services Board	13 DOJ 17940	01/31/14	
Jimmy Wayne Ford v. NC Alarm Systems Licensing Board	13 DOJ 17997	01/27/14	
David Lee Kroger v. NC Alarm Systems Licensing Board	13 DOJ 18373	01/13/14	28:18 NCR2271
Vernon L. Rodden v. NC Alarm Systems Licensing Board	13 DOJ 18445	01/13/14	28:18 NCR 2275

DEPARTMENT OF LABOR

United Quest Care Services v. Department of Labor	13 DOL 12224	09/17/13	
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Absolute Contracting Service Inc., Felicia Myers v. NCDOL, Adriana King	13 DOL 16701	10/30/13
TP's Resurrection Co., LLC, Thomas A. Patterson, Registered Agent v. NC Department of Labor (NCDOL)	13 DOL	01/31/14

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

Dwayne 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	
Ruby J. Edmondson v. Department of Treasurer	13 DST 15268	11/12/13	28:18 NCR 2280
Nathaniel I. Orji v. Department of State Treasurer, Retirement Systems Division	13 DST 16695	02/04/14	

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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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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	
Kirk V. Stroupe v. State Board of Education	13 EDC 13003	01/16/14	
Gary Alan Cooper v. Department of Public Instruction	13 EDC 13731	12/30/13	

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

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Save Mart of Duplin LLC v. DENR	12 EHR 02328	07/25/12
NC Coastal Federation, Cape Fear River Watch, PenderWatch, and Conservancy Sierra Club v. DENR, Division of Air Quality and Carolina Cement Company, LLC	12 EHR 02850	09/23/13

James D. Halsey v. DENR, Division of Environmental Health	13 EHR 10216	06/05/13
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
Paul M. Stella v. DHHS, Division of Public Health	13 EHR 19269	02/06/14
Denise Leavitt v. DENR, Division of Coastal Management	13 EHR 19954	02/07/14

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	

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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	

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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
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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	
Raeford 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	
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Larry C. Goldston v. UNC-Chapel Hill	12 OSP 02222	09/26/12	27:16 NCR 1754
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Sandra Kay Tillman v. County of Moore Department of Social Services, John L. Benton, Director	12 OSP 02433	07/29/13	
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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	
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Natalie Wallace-Gomes v. Winston Salem State University	12 OSP 03910	10/22/12	
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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	
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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
David W. Morgan v. Department of Public Safety, NC Highway Patrol	12 OSP 07543	08/29/13	28:17 NCR 2149
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

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Patricia Burgess v. NC Community College System	12 OSP 10339	08/09/13	28:14 NCR 1669
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	
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David Ryan Brown v. Department of Public Safety, Division of Community Corrections	12 OSP 12179	10/08/13	
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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	
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Kevin D. Terry v. State of NC Office of State Controller	13 OSP 11088	07/15/13	
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Cynthia C. Goodwin v. Department of Revenue	13 OSP 11232	08/02/13	
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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	
Leora Robin Johnson v. Broughton Hospital, Alicia Nexeon HR, Rebecca Powell, RN NSA, Denise Lunsford	13 OSP 14357	09/12/13	28:15 NCR 1843
David M. Andrews v. Department of Transportation, Technical Services-Client Support	13 OSP 15144	10/03/13	
Linda G. Griffin v. NC DPS Hoke Corr	13 OSP 15267	01/30/14	
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	
Sabrina Powell v. Caswell Development Center	13 OSP 18465	01/23/14	
Heather Englehart v. DHHS, NC Division of Social Services	13 OSP 18540	01/07/14	
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	
Derrick Copeland v. Department of Public Safety	13 OSP 19257	01/16/14	
David Scott Ayscue v. Department of Public Safety	13 OSP 19895	02/07/14	

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Jerry Lamont Lindsey v. Department of Revenue	11 REV 1914	07/25/12	
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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	
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Jesus A. Cabrera v. Department of Revenue	12 REV 08968	01/03/13	
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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	

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Wanda Y. Robinson v. Department of Revenue 13 REV 18482 02/03/14

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
Joseph B. Millikan v. UNC Hospitals 13 UNC 13905 01/07/14
Pamela Klute v. UNC Hospitals 13 UNC 15828 11/25/13
Barney Kohout v. UNC Hospitals 13 UNC 18549 01/23/14

WILDLIFE RESOURCES COMMISSION

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

FILED
OFFICE OF ADMINISTRATIVE HEARINGS
1/13/2014 11:05 AM

STATE OF NORTH CAROLINA
COUNTY OF DURHAM

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
13DHR17671

Moses J Bee Petitioner v. Department Of Health And Human Services, Division of Health Service Regulation Respondent	FINAL DECISION ORDER OF DISMISSAL
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This matter comes before the undersigned on Respondent's Motion to Dismiss filed January 9, 2014. Having reviewed the motion and the file, I find as follows:

1. By certified letter dated September 3, 2013, Respondent notified Petitioner of its intent to list and investigate an allegation that Petitioner had neglected a resident of Murdock Developmental Center on or about August 7, 2013.
2. On September 13th, 2013, Petitioner appealed the listing of the allegation.
3. By letter dated January 6, 2014, Respondent notified Petitioner that it had completed its investigation and did not substantiate the allegation that Petitioner had neglected a resident of Murdock Developmental Center on or about August 7, 2013.
4. The allegation has been removed from the Health Care Personnel Registry and no substantiated finding will be entered in the Nurse Aide Registry and Health Care Personnel Registry.

WHEREFORE, it appears to the undersigned that there are no justiciable issues to be resolved in this matter, and the same should be, and hereby is, DISMISSED AS MOOT.

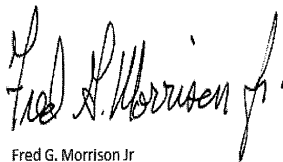
NOTICE

This is a Final Decision issued under the authority of N.C. Gen. Stat. § 150B-34.

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 the county where the person aggrieved by the administrative decision resides, or in the case of a person residing outside the State, the county where the contested case which resulted in the final decision was filed. **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 03.0102, 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 13th day of January, 2014.



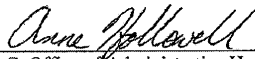
Fred G. Morrison Jr
Senior Administrative Law Judge

On this date mailed to:

Moses J Bee
5307 Stardust Drive
DURHAM NC 27712
Petitioner

Thomas E Kelly
Assistant Attorney General, NC Department of Justice
9001 Mail Service Center
Raleigh NC 27699-9001
Attorney For Respondent

This the 13th day of January, 2014.



N. C. Office of Administrative Hearings
6714 Mail Service Center
Raleigh NC 27699-6714
919 431 3000
Facsimile: 919 431 3100

2. Petitioner applied to Respondent Board for renewal of her unarmed guard registration.

3. Respondent denied the unarmed guard registration due to Petitioner's criminal record which showed the following since her last renewal:

A conviction in New Hanover County, State of North Carolina, on August 9, 2012 for misdemeanor Larceny and Financial Card Fraud.

4. Petitioner requested a hearing on Respondent's denial of the renewal of her unarmed guard permit.

5. By Notice of Hearing dated November 2, 2013, the undersigned Administrative Law Judge advised Petitioner that a hearing on the denial of her unarmed guard registration would be held at the Office of Administrative Hearings, 1711 New Hope Church Road, Raleigh, North Carolina 27609 on November 26, 2013.

6. At hearing, Petitioner explained that she was living in Wilmington, NC in 2012, and was working a part-time job at a group home. One day, during her break, she and a coworker went to lunch. They stopped at her house first. She got out of her car, grabbed her mail, threw the mail into her car, and then ran into the house to get some things. Unbeknownst to her, the coworker that was riding with her went through her mail, and grabbed a letter containing her brother's credit card. She left her house, drove to her coworker's house, and then back to work.

7. She claimed she did not know the letter containing her brother's credit card was missing.

8. Petitioner claimed that later, she learned that her coworker was part of a credit card theft ring that ran scams. The coworker's gang activated the card, and applied Petitioner's name to her brother's card. Petitioner used the card to purchase gas and a cell phone.

9. Petitioner advised Anthony Bonapart, Deputy Director of the Board, that the credit card company contacted her brother, and asked him if he received a credit card. He replied, "No." The company told him that purchases were being charged to the card. Petitioner informed Mr. Bonapart that her brother called her, and asked her if his card had come in the mail, and she told her brother, "No." Her brother pressed charges. Petitioner was charged, because her name was on the credit card.

10. A public defender was assigned to Petitioner's case, and recommended that Petitioner enter a guilty plea. Petitioner pled guilty, because she did not have the money to pay all the money back at one time. She paid off the charges while on probation.

11. Petitioner could not explain exactly how her name was placed on the credit card, and then returned to her without her suspecting anything.

12. Petitioner she served five (5) years as a New York City police officer, and is now a supervisor at her current employment.

13. Petitioner has worked for Universal Protection Service LLC for four years. She is assigned to various warehouses and a condominium complex, and patrols the assigned areas to deter crime.

CONCLUSIONS OF LAW

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

2. Under G.S. §74C-12(a)(25), Respondent Board may refuse to grant a registration if it determines the applicant has demonstrated intemperate habits or lacks good moral character.

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

4. Respondent Board presented evidence that Petitioner has demonstrated intemperate habits and lack good moral character through conviction in New Hanover County, North Carolina for misdemeanor Larceny and Financial Card Fraud.

5. Petitioner presented insufficient evidence to explain the factual basis for the charge, and rebut the presumption.

PROPOSAL FOR DECISION

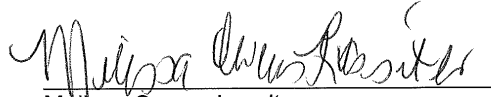
Based upon the foregoing Findings of Fact and Conclusions of Law, the undersigned hereby recommends that Respondent **DENY** Petitioner's renewal of her unarmed guard registration.

NOTICE AND ORDER

The NC Private Protective Services Board will make the Final Decision in this contested 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. Gen. Stat. § 150B-40(e).

The undersigned hereby orders that agency serve a copy of its Final Decision in this case on the Office of Administrative Hearings, 6714 Mail Service Center, Raleigh, N.C. 27699-6714.

This 13th day of January, 2014.



Melissa Owens Lassiter
Administrative Law Judge

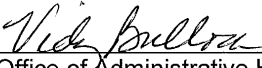
CERTIFICATE OF SERVICE

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

Cathy M. Brown
3200 Galway Road
Castle Hayne, NC 28429
PETITIONER

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

This 5th day of January, 2014.



Office of Administrative Hearings
6714 Mail Service Center
Raleigh, NC 27699-9001
Phone: 919-431-3000
Fax: 919-431-3100

2. In April of 2013, Petitioner applied to Respondent Board for an alarm installation registration.

3. Respondent denied Petitioner's alarm installation registration due to Petitioner's criminal record which showed the following:

A conviction in Guilford County, State of North Carolina, on October 8, 2012 for felony Elude Arresting in a Motor Vehicle, a conviction in Guilford County on November 27, 2012 for a misdemeanor Probation Violation, and then a second conviction in Forsyth County on July 30, 2012 for a misdemeanor Probation Violation.

4. Petitioner requested a hearing on Respondent's denial of the alarm installation registration.

5. By Notice of Hearing dated October 3, 2013, and mailed via certified mail, Respondent advised Petitioner that a hearing on the denial of his alarm installation registration would be held at the Office of Administrative Hearings, 1711 New Hope Church Road, Raleigh, North Carolina 27609 on November 26, 2013.

6. Petitioner appeared at the hearing. Petitioner explained that in March 2012 he and 10 to 15 friends were riding their motorcycles from Greensboro to Winston-Salem on Interstate 40. They were having fun, but speeding westward on I-40 at speeds of 110 mph. Two police officers spotted them, and gave chase. He admitted he looked back, and saw the police officers, but decided to "stay with the pack." He finally decided to pull over, and one of the police officers pulled behind him. The police officer issued him a ticket for driving 110 MPH in a 65 mph zone.

7. At that time, Petitioner was on probation for a 2011 DWI conviction. He violated the conditions of his probation when he received the speeding ticket on the motorcycle.

8. Petitioner has worked for Secure One Inc. for 2½ years. He is a sales representative, and goes door-to-door selling security systems.

CONCLUSIONS OF LAW

1. The parties properly are before the Office of Administrative Hearings, and both parties received proper Notice of Hearing of this case.

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

3. Under G.S. §74C-8(d)(2), conviction of any felony is *prima facie* evidence

that the applicant does not have good moral character or temperate habits.

4. At hearing, Respondent Board presented evidence that Petitioner had demonstrated intemperate habits and lacked good moral character through conviction in Forsyth County, North Carolina for a felony elude arrest in a motor vehicle, and two (2) misdemeanor probation violations.

5. At hearing, Petitioner presented evidence sufficient to explain the factual basis for the charge, and rebut that presumption.

PROPOSAL FOR DECISION

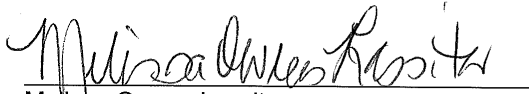
Based upon the foregoing Findings of Fact and Conclusions of Law, the undersigned hereby recommends that Respondent issue an alarm installation registration permit to Petitioner.

NOTICE AND ORDER

The North Carolina Alarms Systems Licensing Board will make the Final Decision in this contested 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 G.S. §150B-40(e).

The undersigned hereby orders that agency to serve a copy of its Final Decision in this case on the Office of Administrative Hearings, 6714 Mail Service Center, Raleigh, NC 27699-6714.

This 14th day of January, 2014.


Melissa Owens Lassiter
Administrative Law Judge


CERTIFICATE OF SERVICE

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

David Lee Koger
2145 Burton Run Road
High Point, NC 27262
PETITIONER

Jeffrey P. Gray
Bailey & Dixon, LLP
P.O. Box 1351
Raleigh, North Carolina 27602
ATTORNEY FOR RESPONDENT

This 13th day of January, 2014



Office of Administrative Hearings
6714 Mail Service Center
Raleigh, NC 27699-9001
Phone: 919-431-3000
Fax: 919-431-3100

330380

STATE OF NORTH CAROLINA

COUNTY OF WAKE

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
13 DOJ 18445

VERNON L. RODDEN,
Petitioner,

v.
N.C. ALARM SYSTEMS LICENSING
BOARD,
Respondent.

PROPOSAL FOR DECISION

On November 26, 2013, Administrative Law Judge Melissa Owens Lassiter conducted a hearing in Raleigh, North Carolina in this contested case pursuant to N.C. Gen. Stat. 150B-40(e). On January 2, 2013, Respondent filed a Proposal for Decision with the Office of Administrative Hearings.

APPEARANCES

Petitioner appeared *pro se*.

Respondent was represented by attorney Jeffrey P. Gray, Bailey & Dixon, LLP, P.O. Box 1351, Raleigh, North Carolina 27602.

ISSUE

Should Respondent deny Petitioner's alarm installation registration application based on Petitioner's lack of good moral character and temperate habits as evidenced by two (2) convictions of misdemeanor Obtaining Property by False Pretenses?

APPLICABLE STATUTES AND RULES

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

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 alarm installation business.

2. Petitioner applied to Respondent Board for an alarm installation registration.

3. Respondent denied the alarm installation registration due to Petitioner's criminal record which showed the following:

Two (2) convictions in Gaston County, State of North Carolina, on January 6, 1999 for misdemeanor Obtaining Property by False Pretense.

4. Petitioner requested a hearing on Respondent's denial of the alarm installation registration.

5. By Notice of Hearing dated November 1, 2013, and mailed via certified mail, Respondent advised Petitioner that a hearing on the denial of his alarm installation registration would be held at the Office of Administrative Hearings, 1711 New Hope Church Road, Raleigh, North Carolina 27609 on November 26, 2013.

6. At hearing, Petitioner explained that he was living in Charlotte, NC in 1997. One day in 1997, he received a letter from BB&T informing him that two payroll checks from David Watts Drywall of Gastonia NC had bounced. The two payroll checks totaled \$600.00 and \$500.00 respectively. The bank advised him that the checks had been returned due to insufficient funds, and needed to be paid.

7. Petitioner was not employed by David Watts Drywall, and did not bank at BB&T. However, someone had cashed these payroll checks at BB&T, and endorsed his name on the back of the checks. Upon receiving the letter, Petitioner went to BB&T, and talked with them.

8. Petitioner also reported the incident to the police department. The police initiated an investigation, and determined that Petitioner cashed the checks. Petitioner submitted a handwriting sample to the police to prove his innocence. He further explained at hearing that the person who cashed the checks came through the drive-through of the bank, but the police could not definitively identify the person due to the poor quality of the picture.

9. Petitioner obtained a lawyer and went to trial on those charges in 1999. At trial, Petitioner's lawyer recommended that Petitioner accept a plea deal from the District Attorney. Petitioner pled guilty, and the Court found him guilty of two counts of misdemeanor Obtaining Property by False Pretense. Petitioner received 2 years probation, community service, and was required to pay back the money. Petitioner paid the money back, plus court costs, within the 2-year probation period.

10. Petitioner pled guilty solely on the advice of his attorney. He understood that after the restitution was paid, and the probation ended, his record would be

expunged. He did not know the convictions were on his record until notified by the Respondent Board.

11. Petitioner had no other criminal charges except speeding citations.

12. The applicant stated that he has worked for Simplex Grinnell, LP for four years, where he was hired to install fire alarms. Currently, Petitioner works in that company's warehouse.

CONCLUSIONS OF LAW

1. The parties properly are before the Office of Administrative Hearings, and received proper Notice of Hearing for this case.

2. Under G.S. §74D-6(3), Respondent Board may refuse to grant a registration if it is determined that the applicant has demonstrated intemperate habits or lacks good moral character.

3. Under G.S. §74D-6(2), conviction of any crime involving an act of fraud is *prima facie* evidence that the applicant does not have good moral character or temperate habits.

4. In this hearing, Respondent Board presented evidence that Petitioner had demonstrated intemperate habits and lacked good moral character through two (2) convictions in Gaston County, North Carolina for misdemeanor Obtaining Property by False Pretense.

5. In this hearing, Petitioner presented insufficient evidence to explain the factual basis for the charge, and rebut the presumption.

PROPOSAL FOR DECISION

Based upon the foregoing Findings of Fact and Conclusions of Law, the undersigned hereby recommends that Petitioner's application for an alarm installation registration be denied.

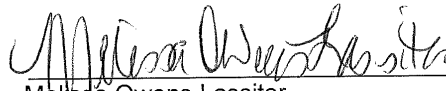
NOTICE AND ORDER

The NC Alarms System Licensing Board is the agency that will make the Final Decision in this contested 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. Gen. Stat. § 150B-40(e).

The undersigned hereby orders the Respondent agency serve a copy of its Final Decision in this case on the Office of Administrative Hearings, 6714 Mail Service

Center, Raleigh, N.C. 27699-6714.

This 13th day of January, 2014.


Melissa Owens Lassiter
Administrative Law Judge

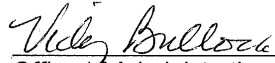
CERTIFICATE OF SERVICE

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

Vernon Lee Rodden
3631 Hunt Lynn Road
Charlotte, NC 28214
PETITIONER

Jeffrey P. Gray
Baily & Dixon
P.O. Box 1351
Raleigh, NC 27602-1351
ATTORNEY FOR RESPONDENT

This 13th day of January, 2014.



Office of Administrative Hearings
6714 Mail Service Center
Raleigh, NC 27699-9001
Phone: 919-431-3000
Fax: 919-431-3100

STATE OF NORTH CAROLINA
COUNTY OF MECKLENBURG

FILED
2013 NOV 12 PM 12:45

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
13 DST 15268

Ruby J. Edmondson,
Petitioner,

vs

Department of Treasurer,
Respondent,

OFFICE OF
ADMINISTRATIVE HEARINGS
)
)
)
)
)

FINAL DECISION

On November 5, 2013, Administrative Law Judge Selina M. Brooks heard this contested case in Charlotte, North Carolina.

APPEARANCES

For Petitioner: *Pro se*

For Respondent: Robert M. Curran
Special Deputy Attorney General

ISSUE

Whether Respondent correctly determined that, for purposes of calculating Petitioner's creditable service at retirement, Petitioner cannot receive additional creditable service for unused sick leave days from employment which ended more than 5 years prior to her date of retirement.

APPLICABLE STATUTES AND RULES

N.C.G.S. § 135-4(e).

EXHIBITS ADMITTED INTO EVIDENCE

For Petitioner: June 2005 Paystub from Charlotte-Mecklenburg Schools

For Respondent: Ret. Form 6 Claiming Your Monthly Retirement Benefit

WITNESSES

For Petitioner: Petitioner

For Respondent: Garry Austin, Retirement Systems Division

FINDINGS OF FACT

1. Petitioner was a member of the Teachers' and State Employees' Retirement System ("TSERS"), prior to the effective date of her retirement on October 1, 2012. Her last day of employment with Charlotte-Mecklenburg Schools ("CMS"), and her last month of contributing membership service in the TSERS, was June 2005.

2. At the time she left her employment with CMS, Petitioner had a balance of 74.5 days of unused sick leave standing to her credit with CMS.

3. Petitioner's last day of employment with CMS was more than 5 years prior to her effective date of retirement of October 1, 2012.

CONCLUSIONS OF LAW

1. The Office of Administrative Hearings has personal and subject matter jurisdiction over this contested case, and the parties received proper notice of the hearing in this matter. To the extent that the Findings of Fact contain Conclusions of Law, or that the Conclusions of Law are Findings of Fact, they should be so considered without regard to the given labels.

2. N.C.G.S. § 135-4(e) provides that:

(e) Creditable service at retirement on which the retirement allowance of a member shall be based shall consist of the membership service rendered by him since he last became a member, and also if he has a prior service certificate which is in full force and effect, the amount of service certified on his prior service certificate; and if he has sick leave standing to his credit upon retirement on or after July 1, 1971, one month of credit for each 20 days or portion thereof, but not less than one hour; sick leave shall not be counted in computing creditable service for the purpose of determining eligibility for disability retirement or for a vested deferred allowance. Creditable service for unused sick leave shall be allowed only for sick leave accrued monthly during employment under a duly adopted sick leave policy and for which the member may be able to take credits and be paid for sick leave without restriction. **However, in no instance shall unused sick leave be credited to a member's account at retirement if the member's last day of actual service is more than five years prior to the effective date of the member's retirement.**

....

N.C.G.S. § 135-4(e) (emphasis added).

3. Petitioner's last day of actual service, for purposes of N.C.G.S. § 135-4(e), was the last day that she was a "teacher" and a contributing member in the TSERS, which occurred in June 2005. N.C.G.S. § 135-1(23). Because Petitioner's last day of actual service was more than 5 years prior to her effective date of retirement, any unused sick leave which Petitioner may have had with CMS cannot be used to increase the amount of her creditable service in the TSERS.

DECISION

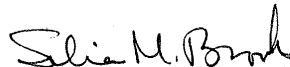
Based on the foregoing Findings of Fact and Conclusions of Law, the undersigned hereby ORDERS that whatever unused sick leave Petitioner had standing to her credit at the time she left her employment with CMS cannot be used in the computation of her monthly benefit.

NOTICE

This is a Final Decision issued under the authority of N.C. Gen. Stat. § 150B-34.

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 the county where the person aggrieved by the administrative decision resides, or in the case of a person residing outside the State, the county where the contested case which resulted in the final decision was filed. **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 03.0102, 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 8th day of November, 2013.



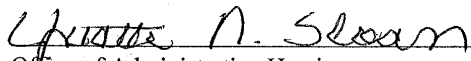
Selina M. Brooks
Administrative Law Judge

A copy of the foregoing was sent to:

Ruby J Edmonson
2809 Greenbriar Rd
Charlotte, NC 28209
PETITIONER

Robert M Curran
Assistant Attorney General
NC Dept of Justice
9001 Mail Service Center
Raleigh, NC 27699
ATTORNEY FOR RESPONDENT

This the 12th day of November, 2013.



Office of Administrative Hearings
6714 Mail Service Center
Raleigh, N.C. 27699-6714
919/431-3000
Fax: 919/431-3100