

NORTH CAROLINA REGISTER

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October 15, 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.

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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
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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
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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 Personnel Commission. If the first or fifteenth of any month is a Saturday, Sunday, or a holiday for State employees, the North Carolina Register issue for that day will be published on the day of that month after the first or fifteenth that is not a Saturday, Sunday, or holiday for State employees.

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

NOTICE OF TEXT

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

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

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

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



NORTH CAROLINA

State Board of Elections

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KIM WESTBROOK STRACH
Executive Director

September 17, 2014

Mr. Michael McKnight
Ogletree, Deakins, Nash, Smoak & Stewart, P.C.
4208 Six Forks Road, Suite 1100
Raleigh, NC 27609

Re: Request for Opinion Letter Regarding Interpretation of N.C. GEN. STAT.
§ 163-278.13C as Revised by Session Law 2013-381

Dear Mr. McKnight:

The following Opinion is provided in accordance with N.C. GEN. STAT. ("G.S.") § 163-278.23. In your request for an opinion, you seek guidance regarding the interpretation of G.S. § 163-278.13C as it relates to three primary issues. Each issue is addressed separately, below, consistent with the format of your submission:

1. Lobbyist's ability to serve as a political committee treasurer or direct contributions from a political committee to a candidate

Pursuant to G.S. § 120C-304(d), a registered lobbyist is prohibited from serving "as a treasurer as defined in G.S. 163-278.6(19) or an assistant campaign treasurer for a political committee for the election of a member of the General Assembly or a Constitutional officer of the State." The term "political committee," which is defined in G. S. 163-278.6(14), encompasses not only the committee of a candidate for any of the above-mentioned offices, but also that of an official seated in any of the above-mentioned offices. It is, however, permissible for a registered lobbyist to serve as the treasurer or assistant treasurer for political committees that are not controlled by a member of the General Assembly or constitutional officer of the State, or by a candidate for the General Assembly or a candidate for a constitutional office of the State.

While it is permissible for a lobbyist to serve as a treasurer or assistant treasurer for some political committees, G.S. § 163-278.13C provides prohibitions for lobbyists that could affect their roles as treasurers or assistant treasurers. G.S. §163-278.13C provides the following:

- (a) No lobbyist may make a contribution as defined in G.S. 163-278.6 to a candidate or candidate campaign committee as defined in G.S. 163-278.38Z when that candidate meets any of the following criteria:

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441 N. Harrington Street • Raleigh, NC 27611-7255

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- (1) Is a legislator as defined in G.S. 120C-100.
- (2) Is a public servant as defined in G.S. 138A-3(30)a. and G.S. 120C-104.
- (b) **No lobbyist may do any of the following with respect to a candidate or candidate campaign committee described in subdivision (a)(1) and (a)(2) of this section:**
 - (1) **Collect a contribution or multiple contributions from one or more contributors intended for that candidate or candidate campaign committee.**
 - (2) **Take possession of a contribution or multiple contributions intended for that candidate or candidate campaign committee.**
 - (3) **Transfer or deliver a collected contribution or multiple contributions to the intended candidate or candidate campaign committee.**
- (c) This section shall not apply to a lobbyist, who has filed a notice of candidacy for office under G.S. 163-106 of Article 11 of Chapter 163 of the General Statutes or has been nominated under G.S. 163-114 or G.S. 163-98, making a contribution to that lobbyist's candidate campaign committee.
- (d) For purposes of this section, the term "lobbyist" shall mean an individual registered as a lobbyist under Chapter 120C of the General Statutes.

[emphasis added]

The bolded text poses the potential issues for treasurers and assistant treasurers. Article 22A of Chapter 163 of the North Carolina General Statutes regulates contributions and expenditures in political campaigns. It also prescribes the duties and responsibilities of political committee treasurers.

Political committee treasurers bear considerable responsibility for the overall compliance of the political committees they serve. The following examples are not inclusive of all statutory responsibilities and duties assigned to the treasurer, but serve to illustrate their breadth:

- G.S. § 163-278.8 provides that it is the duty of the appointed treasurer to keep detailed accounts of all contributions received and expenditures made on behalf of the committee, and to maintain all moneys of the political committee in bank accounts that have not been commingled with other moneys;
- G.S. § 163-278.16(a)(2) provides that no contribution may be received or expenditure made by or on behalf of the political committee unless such contribution is received or the expenditure is made by or through the treasurer of the political committee;
- G.S. § 163-278.9 provides that it is the duty of the appointed treasurer to furnish disclosure reports and attest to their veracity. The treasurer's signature certifies his or her belief in the accuracy of the reports and is treated as an oath. If a treasurer provides this

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certification knowing that the information contained in such filing is not true, the treasurer is guilty of a Class I felony; and

- G.S. § 163-278.7(8) provides that the treasurer shall be fully liable for any violation of Article 22A committed by any assistant treasurer.

Your letter poses the following questions (bolded), responses to which are provided (italicized), below:

- a. **Following the amendments made to N.C.G.S. § 163-278.13C by Session Law 2013-381, is a registered lobbyist prohibited from making or signing checks intended for a candidate's campaign committee?**

No. The act of making or signing checks does not involve collecting contributions, taking possession of contributions, or transferring or delivering contributions.

Does it make a difference whether the check is made and signed by hand or using a computer program that does not require the lobbyist to physically touch or "take possession" of the check?

No. The act of preparing a contribution, whether by manual or electronic means, does not require the preparer to "take possession" of the contribution. Possession of the contribution occurs only after the contribution has been prepared.

Similarly, does the revised language of N.C.G.S. § 163-278.13C(b)(2) prohibit a registered lobbyist from making an online contribution using a debit card belonging to a PAC?

Not necessarily. The statute eliminates the ability of a lobbyist to engage in any form of bundling for candidates identified in G.S. § 163-278.13C(a), including the delivery of any contribution to these candidates. The act of making an online contribution does not require the individual making the contribution to "take possession" of the contribution; the contribution is simply being prepared and executed without interfacing with a member of the candidate campaign committee.

- b. **Following the amendments to N.C.G.S. § 163-278.13C made by Session Law 2013-381, is a registered lobbyist prohibited from serving as a treasurer of a PAC or other political committee in any respect?**

No, there is no statutory provision barring a lobbyist from serving as a treasurer of a political committee that is not controlled by a candidate identified in G.S. § 163-278.13C(a). As long as the lobbyist is able to comply with all duties and responsibilities outlined in Article 22A, he or she could serve as treasurer for political committees not defined in G.S. § 120C-304(d). The fact that lobbyists are

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not necessarily barred from serving as treasurers does not eliminate the potential for complications. For example, small political committees often require their treasurers to deliver contributions to candidates, yet a lobbyist serving as treasurer could not deliver checks to candidate campaign committees defined in G.S. §163-278.13C(a).

- c. **If a lobbyist may not be the treasurer, may an employee or other non-lobbyist under the supervision of a registered lobbyist serve as the treasurer or provide other administrative support, including check writing, signing, or delivery to a PAC?**

See answer to question b, above.

- d. **So long as a registered lobbyist does not personally deliver a contribution to a candidate or candidate committee, may the lobbyist allow his or her business card to be included in the envelope along with a contribution intended for a candidate committee without violating the statute?**

Yes, the placement of a business card of a lobbyist in the envelope with a contribution is permissible. However, such a practice might cause the recipient to infer that the individual named on the business card is the individual who mailed the contribution.

In addition to the bundling prohibitions found in G.S. § 163-278.13C(b), subsection (a) provides that a lobbyist may not make a contribution to a candidate for the legislature or a Council of State office. The prohibition also applies to members of the legislature and council of state officeholders.

The second part of your letter raises several questions related to registered lobbyists and their attendance at fundraisers that require or request a contribution in order to attend the event.

2. Attendance by a lobbyist at fundraisers or other events hosted by a candidate or candidate campaign committee

- a. **Notwithstanding any restrictions in N.C.G.S. § 163-278.13B, may a registered lobbyist lawfully attend a fundraiser, reception, or other event for a candidate with knowledge that a contribution has been made (or will be made in the future) to the candidate's campaign committee by a PAC or other political committee that employs or contracts with the lobbyist or whose parent entity employs or contracts with a lobbyist?**

Yes, such attendance is permissible, so long as the lobbyist does not personally make a contribution or deliver any check to the candidate committee. As noted

earlier in this Opinion, the candidate committees under discussion here are only those defined in G.S. § 163-278.13C(a).

- b. Notwithstanding any restrictions in N.C.G.S. § 163-278.13B, may a registered lobbyist who attends a fundraiser, reception, or other event for a candidate lawfully communicate to the candidate or to a representative of a candidate's campaign committee that a contribution is "on the way" or will be sent to the candidate's campaign committee by a PAC or other political committee to "pay for" or cover the lobbyist's attendance at the event[?]**

G.S. § 163-278.14(a) prohibits contributions made in the name of another. The lobbyist may not make a contribution to a PAC or other political committee for the purpose of covering his or her costs at a fundraiser. In other words, since a lobbyist is prohibited from making a contribution to those candidate committees defined in G.S. § 163-278.13C(a), the lobbyist may not make a contribution to a PAC that will then make the contribution to the candidate committee to cover attendance at the event. Candidate committees have the ability to allow lobbyists to attend fundraisers, receptions or other candidate events without requiring them to make a contribution. Nor is the candidate committee required to permit the lobbyist to attend those events. In order to avoid a potential violation of G.S. § 163-278.14(a), the lobbyist should advise candidate committees that he or she is unable to make a contribution, that the PAC employing the lobbyist would make a contribution at its own discretion, and that if such a contribution were made by the PAC, it would not be on behalf of the lobbyist.

- c. Does a registered lobbyist violate any of the prohibitions in N.C.G.S. § 163-278.13C, as amended, by attending a fundraiser, reception, or other event for a candidate's campaign committee and bringing a guest who is not a registered lobbyist to the event if the guest (but not the lobbyist) makes a contribution to the candidate's campaign committee?**

No, the lobbyist may bring such a guest. However, as discussed earlier, the lobbyist could not take possession of the guest's contribution for delivery to the candidate committee. Any arrangement between the lobbyist and guest by which the funds used by the guest are to be reimbursed would run afoul of the law against giving in the name of another.

3. Recommendations of support by a lobbyist.

Do the amendments to N.C.G.S. § 163-278.13C in any way or further restrict a registered lobbyist's ability to recommend that a political committee (including a PAC the lobbyist works for, contracts with or whose parent entity the lobbyist

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works for or contracts with) or individual make a contribution to a "candidate" or "candidate campaign committee" from the requirements in place before the statute was revised?

No. As long as the lobbyist does not control the funds used to make the contribution, a suggestion or recommendation by a lobbyist for a PAC or individual to make a contribution to a specific candidate or candidates is not prohibited.

This opinion is based upon the information provided in your request for opinion. If any information in that letter changes, you should consult with our office to ensure that this Opinion is still binding.

This Opinion will be filed with the Codifier of Rules to be published unedited in the North Carolina Register and the North Carolina Administrative Code.

Sincerely,



Kim Westbrook Strach

cc: Mollie Masich, Codifier of Rules

Amy Strange, Deputy Director-Campaign Finance and Operations

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 AND
CONSUMER SERVICES**

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Pesticide Board intends to adopt the rule cited as 02 NCAC 09L .0707.

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

Proposed Effective Date: February 1, 2015

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 October 30, 2014, to James W. Burnette, Jr., Secretary, NC Pesticide Board, 1090 Mail Service Center, Raleigh, NC 27699-1090.*

Reason for Proposed Action: *The proposed rule declares the Eastern and Hairy-tailed Moles as pests as provided by law. In addition, the rule prescribes places pesticide registered by the NC Pesticide Board may be applied in controlling the moles listed above, and the manner in which pesticides are to be applied to minimize hazards to nontarget species, including the Star Nosed Mole (Condylura cristata parva), carrying out G.S. 113-300.2(g).*

Comments may be submitted to: James Burnette, Jr., 1090 Mail Service Center Raleigh, NC 27699-1090, phone (919) 733-3556, email james.burnette@ncagr.gov.

Comment period ends: December 15, 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 09 – FOOD AND DRUG PROTECTION

SUBCHAPTER 09L – PESTICIDE SECTION

**SECTION .0700 – DECLARATION OF PESTS AND
RESTRICTIONS ON THEIR CONTROL**

**02 NCAC 09L .0707 EASTERN AND HAIRY-TAILED
MOLES**

(a) The North Carolina Pesticide Board hereby declares the eastern mole, Scalpus aquaticus, and the hairy-tailed mole, Parascalops breweri, to be pest as provided by law.

(b) Pesticides registered for use to control the eastern mole and the hairy-tailed mole may be used when either species is tunneling in managed turf in the following areas:

- (1) residential;
- (2) commercial;
- (3) government property, excluding federal and state parks;
- (4) golf courses, driving ranges, and golf instructional facilities;
- (5) sod farms;
- (6) athletic fields; or
- (7) visitor centers and cemeteries.

(c) For purposes of this regulation, managed turf shall not include pastures.

(d) Pesticides used to control the eastern mole and the hairy-tailed mole shall not be applied within 100 feet of natural or man-made bodies of water, including but not limited to, streams, rivers, ponds, swamps, lakes, and wetlands.

(e) Pesticides used to control the eastern mole and the hairy-tailed mole shall not be applied at elevations of 4000 feet or greater.

Authority G.S. 143-444(1); 143-458.

TITLE 10A – DEPARTMENT OF HEALTH AND HUMAN SERVICES

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Medical Care Commission intends to amend the rules cited as 10A NCAC 13F .1003, .1010; 13G .1003, and .1010.

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

Proposed Effective Date: April 1, 2015

Public Hearing:

Date: December 9, 2014

Time: 10:00 a.m.

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

Reason for Proposed Action: *The rules have been amended to allow adult care homes (adult care homes of more than six beds and family care comes) to package medications needed for a resident in a leave of absence from the facility instead of only being able to send one dose of each medication with the resident, sending all of the medication with the resident, or having a dispensing practitioner package the amount of medications needed for the leave of absence. It is not unusual for some adult care home residents to take a leave of absence for several days during which time they need to continue their medication regimen. It can be difficult for facilities to get specific amounts of medications for a resident's leave repackaged by a pharmacy due to distance and time factors. Some pharmacies will not repackage. The other alternative has been to send all the resident's medications with the resident or responsible party, but this creates resident health and safety concerns since the facility is no longer accountable for the medications as well as their administration. The amended rule will make the process of sending the needed medications with the resident easier yet assuring accountability for the medications and promoting safety of the resident.*

Comments may be submitted to: Megan Lamphere, 2707 Mail Service Center, Raleigh, NC 27699-2707, fax (919) 733-7021, email DHSR.RulesCoordinator@dhhs.nc.gov

Comment period ends: December 15, 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 13 – NC MEDICAL CARE COMMISSION

SUBCHAPTER 13F – LICENSING OF HOMES FOR THE AGED AND INFIRM

SECTION .1000 – MEDICATIONS

10A NCAC 13F .1003 MEDICATION LABELS

(a) Prescription legend medications shall have a ~~legible-printed~~ label with the following information:

- (1) the name of the resident for whom the medication is prescribed;
- (2) the most recent date of issuance;
- (3) the name of the prescriber;
- (4) the name and concentration of the medication, quantity dispensed, and prescription serial number;
- (5) directions for use stated and not abbreviated;
- (6) a statement of generic equivalency shall be indicated if a brand other than the brand prescribed is dispensed;
- (7) the expiration date, unless dispensed in a single unit or unit dose package that already has an expiration date;
- (8) auxiliary statements as required of the medication;
- (9) the name, address and telephone number of the dispensing pharmacy; and
- (10) the name or initials of the dispensing pharmacist.

(b) For medication systems ~~such as med-paks and multi-paks when-in which~~ two or more prescribed solid oral dosage forms are packaged and dispensed together, labeling shall be in accordance with Paragraph (a) of this Rule and the label or package shall also have a physical description or identification of each medication contained in the package.

(c) The facility shall assure the container is relabeled by a licensed pharmacist or a dispensing practitioner at the refilling of the medication when there is a change in the directions by the prescriber. The facility shall have a procedure for identifying direction changes until the container is correctly labeled. No person other than a licensed pharmacist or dispensing practitioner shall alter a prescription label.

(d) Non-prescription medications shall have the manufacturer's label with the expiration date visible, unless the container has

been labeled by a licensed pharmacist or a dispensing practitioner, practitioner in accordance with Paragraph (a) of this Rule. Non-prescription medications in the original manufacturer's container shall be labeled with at least the resident's name and the name shall not obstruct any of the information on the container. Facility staff may label or write the resident's name on the container.

(e) Medications, prescription and non-prescription, shall not be transferred from one container to another except when prepared for a resident's leave of absence or administration to a resident.

~~(f) Prescription medications leaving the facility shall be in a form packaged and labeled by a licensed pharmacist or a dispensing practitioner. Non-prescription medications that are not packaged or labeled by a licensed pharmacist or dispensing practitioner must be released in the original container and directions for administration must be provided to the resident or responsible party. The facility shall assure documentation of medications, including quantity released and returned to the facility.~~

Authority G.S. 131D-2.16; 131D-4.5; 143B-165.

10A NCAC 13F .1010 PHARMACEUTICAL SERVICES

(a) An adult care home shall allow the residents the right to choose a pharmacy provider as long as the pharmacy will provides services that are in compliance with the facility's medication management policies and procedures.

(b) There shall be a current, written agreement with a licensed pharmacist or a prescribing practitioner for pharmaceutical care services according to Rule .1009 of this Section. ~~The written agreement shall include a statement of the responsibility of each party.~~

(c) The facility shall assure the provision of pharmaceutical services to meet the needs of the residents including procedures that assure the accurate ordering, receiving and administering of all medications prescribed on a routine, emergency, or as needed basis.

(d) The facility shall assure the provision of medication for residents on temporary leave from the facility or involved in day activities out of the facility. Medications prepared for a resident's temporary leave of absence shall be packaged in a manner that facilitates safe administration and enables the resident or resident's responsible person to identify the correct medication and correct administration time for each medication. The amount of medications necessary to cover the duration of the resident's absence may be taken from the supply of medication already dispensed to the resident and prepared by a medication aide, or licensed health professional with authority to administer or dispense medications. The following information for each medication prepared for the resident's absence shall be provided verbally and in writing to the resident or the person who is designated as the resident's responsible person during the absence:

- (1) the name and strength of the drug;
- (2) the directions for administration as prescribed by the resident's physician; and
- (3) any cautionary information from the original prescription package.

For medications removed from the resident's supply of medications, the name of the resident and the information provided in Subparagraphs (1) and (2) shall be provided directly on the container containing the medication. The facility shall maintain documentation of medications provided for the resident's leave of absence, including the quantity released from the facility, the quantity returned to the facility, and the name of the individual who prepared the medication for the resident's leave of absence.

(e) The facility shall assure that accurate records of the receipt, use and disposition of medications are maintained in the facility and readily available for review.

(f) A facility with 12 or more beds shall have a written agreement with a pharmacy provider for dispensing services. ~~The written agreement shall include a statement of the responsibility of each party.~~

Authority G.S. 131D-2.16; 131D-4.5; 143B-165.

SUBCHAPTER 13G – LICENSING OF FAMILY CARE HOMES

SECTION .1000 - MEDICATIONS

10A NCAC 13G .1003 MEDICATION LABELS

(a) Prescription legend medications shall have a ~~legible-printed~~ label with the following information:

- (1) the name of the resident for whom the medication is prescribed;
- (2) the most recent date of issuance;
- (3) the name of the prescriber;
- (4) the name and concentration of the medication, quantity dispensed, and prescription serial number;
- (5) directions for use stated and not abbreviated;
- (6) a statement of generic equivalency shall be indicated if a brand other than the brand prescribed is dispensed;
- (7) the expiration date, unless dispensed in a single unit or unit dose package that already has an expiration date;
- (8) auxiliary statements as required of the medication;
- (9) the name, address and telephone number of the dispensing pharmacy; and
- (10) the name or initials of the dispensing pharmacist.

(b) For medication systems ~~such as med-paks and multi-paks when in which~~ two or more prescribed solid oral dosage forms are packaged and dispensed together, labeling shall be in accordance with Paragraph (a) of this Rule and the label or package shall also have a physical description or identification of each medication contained in the package.

(c) The facility shall assure the container is relabeled by a licensed pharmacist or a dispensing practitioner at the refilling of the medication when there is a change in the directions by the prescriber. The facility shall have a procedure for identifying direction changes until the container is correctly labeled. No

person other than a licensed pharmacist or dispensing practitioner shall alter a prescription label.

(d) Non-prescription medications shall have the manufacturer's label with the expiration date visible, unless the container has been labeled by a licensed pharmacist or a dispensing practitioner. ~~practitioner in accordance with Paragraph (a) of this Rule.~~ Non-prescription medications in the original manufacturer's container shall be labeled with at least the resident's name and the name shall not obstruct any of the information on the container. Facility staff may label or write the resident's name on the container.

(e) Medications, prescription and non-prescription, shall not be transferred from one container to another except when prepared for a resident's leave of absence or administration to a resident.

~~(f) Prescription medications leaving the facility shall be in a form packaged and labeled by a licensed pharmacist or a dispensing practitioner. Non-prescription medications that are not packaged or labeled by a licensed pharmacist or dispensing practitioner must be released in the original container and directions for administration must be provided to the resident or responsible party. The facility shall assure documentation of medications, including quantity released and returned to the facility.~~

~~Note: Dispensing of medications is restricted to pharmacists or other health care practitioners that are approved by the North Carolina Board of Pharmacy. Repackaging or providing more than one dose of a prescription medication, including unit dose prescription medications, for subsequent administration is an act of dispensing.~~

Authority G.S. 131D-2.16; 131D-4.5; 143B-165.

10A NCAC 13G .1010 PHARMACEUTICAL SERVICES

(a) A family care home shall allow the residents the right to choose a pharmacy provider as long as the pharmacy will provide services that are in compliance with the facility's medication management policies and procedures.

(b) There shall be a current, written agreement with a licensed pharmacist, prescribing practitioner or registered nurse for pharmaceutical care services according to Rule .1009 of this Section. ~~The written agreement shall include a statement of the responsibility of each party.~~

(c) The facility shall assure the provision of pharmaceutical services to meet the needs of the residents, including procedures that assure the accurate ordering, receiving and administering of all medications prescribed on a routine, emergency, or as needed basis.

(d) The facility shall assure the provision of medication for residents on temporary leave from the facility or involved in day activities out of the facility. Medications prepared for a resident's temporary leave of absence shall be packaged in a manner that facilitates safe administration and enables the resident or resident's responsible person to identify the correct medication and correct administration time for each medication. The amount of medications necessary to cover the duration of the resident's absence may be taken from the supply of medication already dispensed to the resident and prepared by a medication aide, or licensed health professional with authority to administer

or dispense medications. The following information for each medication prepared for the resident's absence shall be provided verbally and in writing to the resident or the person who is designated as the resident's responsible person during the absence:

- (1) the name and strength of the drug;
- (2) the directions for administration as prescribed by the resident's physician; and
- (3) any cautionary information from the original prescription package.

For medications removed from the resident's supply of medications, the name of the resident and the information provided in Subparagraphs (1) and (2) shall be provided directly on the container containing the medication. The facility shall maintain documentation of medications provided for the resident's leave of absence, including the quantity released from the facility, the quantity returned to the facility, and the name of the individual who prepared the medication for the resident's leave of absence.

(e) The facility shall assure that accurate records of the receipt, use and disposition of medications are maintained in the facility and readily available for review.

Authority G.S. 131D-2.16; 131D-4.5; 143B-165.

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Medical Care Commission intends to repeal the rules cited as 10A NCAC 13H .0101-.0104, .0201-.0203, .0301-.0302, .0401-.0411, .0501-.0502, .0601-.0613, .0701-.0704, .0801-.0808, .0901-.0907, .1001-.1003, .1101-.1102, .1201-.1202, .1301-.1302, .1401-.1402, .1501-.1506, .1601-.1607, .1701-.1703, and .1901-.1903.

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

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

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

Proposed Effective Date: April 1, 2015

Public Hearing:

Date: December 9, 2014

Time: 10:00 a.m.

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

Reason for Proposed Action:

The agency has identified that the rules included in this Subchapter are outdated and unnecessary. The rules were originally under the jurisdiction of the N.C. Social Services Commission until 1999 when Senate Bill 10 was passed and placed the rule-making authority for these homes under the N.C. Medical Care Commission. When facilities that existed under

these rules came under the authority of the Medical Care Commission, and thus the Division of Health Service Regulation (DHSR), the DHSR and the Division of MH/DD/SAS determined that individuals served in these types of facilities would be more appropriately served in existing facility types, specifically adult or family care homes or mental health "5600" group homes. Currently, there is no licensure category for these rules and there are no facilities licensed under this Subchapter. In 2001, all existing "DDA" facilities licensed under Subchapter 13H were converted to either an adult care or mental health facility. For these reasons, the agency proposes to repeal Subchapter 10A NCAC 13H.

Comments may be submitted to: Megan Lamphere, 2701 Mail Service Center, Raleigh, NC 27699-2701; fax (919) 733-7021; email DHSR.RulesCoordinator@dhhs.nc.gov

Comment period ends: December 15, 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 13H – LICENSING OF HOMES FOR DEVELOPMENTALLY DISABLED ADULTS

SECTION .0100 - IDENTIFYING INFORMATION

10A NCAC 13H .0101 GROUP HOMES; DEVELOPMENTALLY DISABLED ADULTS

(a) A group home for developmentally disabled adults is a small residence which provides care for two to nine adults who are developmentally disabled and who have or can develop self help skills, are ambulatory, in need of a home and are able to participate in activities in the community. This means a residence established for the specific purpose of serving adults

who are capable of having a work experience and/or are able to or have the potential to participate in community activities.

(b) ~~Developmentally disabled adults may purchase care and personal services in this type of home where they shall be given the opportunity to grow and develop to their potential. They shall have the advantage of a homelike atmosphere with the opportunity to progress through the process of normalization.~~

(c) ~~In those licensed homes (family care homes and group homes for developmentally disabled adults) that are developed and supported in part by state mental health and mental retardation funds, the legal responsibilities are as follows:~~

- (1) ~~The legal responsibility for licensing belongs to the Division of Health Service Regulation.~~
- (2) ~~The legal responsibility for evaluation and for sending in licensing materials and recommendations to the Division of Health Service Regulation belongs to the county departments of social services.~~
- (3) ~~The responsibility of the area mental health and mental retardation programs is to ensure that group homes which receive mental health and mental retardation funds meet program criteria established by the Mental Health and Mental Retardation Commission, and to work with these homes to help them develop and maintain sound programming.~~

~~In most private non profit homes, the area mental health and mental retardation programs have set up non profit boards to work towards developing homes that will enhance the growth of the developmentally disabled individuals who are admitted to these homes. Their initial money has been used in obtaining, leasing, buying, building, and renovating appropriate houses for use as group homes. The efforts of the division of mental health and mental retardation services and the area mental health and mental retardation programs have proved to be very beneficial to individuals leaving institutional care and coming back to their own communities.~~

(d) ~~In all instances where homes are being developed by state mental health funds, it is necessary that the county departments of social services and the area mental health and mental retardation programs work together from the beginning. The area mental health and mental retardation programs will give needed assistance to the county departments of social services in gathering information necessary for licensing. The county departments of social services evaluate the homes on the basis of licensing requirements. The area mental health and mental retardation staff will evaluate on the basis of mental health and mental retardation program criteria.~~

(e) ~~In addition to the standards and regulations contained in this Subchapter, private non profit and governmentally operated (public) group homes that are funded by mental health and mental retardation must meet the standards, regulations and procedures contained in Regulation 10 NCAC 18O .0707, .0708, .0805, .0806, .0809, .0812 through .0815 and .0901.~~

Authority G.S. 131D-2; 143B-153; 168-1; 168-9.

10A NCAC 13H .0102 GROUP HOMES FOR DEVELOPMENTALLY DISABLED ADULTS

~~(a) Group homes for developmentally disabled adults are divided into the following types:~~

- ~~(1) homes operated by private non-profit boards;~~
- ~~(2) governmentally operated homes;~~
- ~~(3) private for profit homes.~~

~~(b) Private for Profit or Private Non-profit Group Homes. Both private non profit and private for profit group homes for developmentally disabled adults must apply through and be approved by the county departments of social services and licensed by the Division of Health Service Regulation.~~

~~(c) The division of social services and the county departments do not have responsibility for approving governmentally operated (public) group homes; however, this type of group home must be licensed by the Division of Health Service Regulation.~~

Authority G.S. 131D-2; 143B-153; 168-1; 168-9.

10A NCAC 13H .0103 PRIVATE FOR PROFIT GROUP HOMES

~~Private for profit group homes for developmentally disabled adults are owned and/or managed by an individual who has applied and been licensed to operate this type of home.~~

Authority G.S. 131D-2; 143B-153; 168-1; 168-9.

10A NCAC 13H .0104 DEFINITIONS

~~(a) The following definitions shall apply throughout this Subchapter:~~

- ~~(1) Group Home for Developmentally Disabled Adults. A group home for developmentally disabled adults is a residence which provides care for two to nine adults who are developmentally disabled and who have or can develop self help skills, are ambulatory, in need of a home and are able to participate in activities in the community.~~
- ~~(2) Developmental Disability. A developmental disability is defined as a severe, chronic disability which:

 - ~~(A) Is attributed to a mental or physical impairment or combination of mental or physical impairments;~~
 - ~~(B) Is manifested before the person attains age 22;~~
 - ~~(C) Is likely to continue indefinitely;~~
 - ~~(D) Results in substantial functional limitations in three or more of the following areas of major life activity:

 - ~~(i) self care;~~
 - ~~(ii) receptive and expressive language;~~
 - ~~(iii) learning;~~
 - ~~(iv) mobility;~~
 - ~~(v) self direction;~~~~~~

~~(vi) capacity for independent living;~~

~~(vii) economic self sufficiency; and~~

~~(E) Reflects the person's need for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services which are of lifelong or extended duration and are individually planned and coordinated.~~

~~(3) Manager. A person hired by a private non-profit board to live in a non-profit group home to manage the home for developmentally disabled adults.~~

~~(4) Co manager. One who shares the responsibility of managing a home for developmentally disabled adults with the manager.~~

~~(5) Executive Director. Person employed by an incorporated private non profit or governmentally operated group home body to provide and/or coordinate services to the group home residents, staff and their operation.~~

~~(6) Relief Person in Charge. A mature, competent adult capable of being in charge of a group home for developmentally disabled adults during the absence of the administrator, co-administrator, manager or co-manager.~~

~~(7) Adult Group Home Coordinator. The employee in the area mental health and mental retardation program who has been designated to work with group homes.~~

~~(8) Ambulatory. Able to attend to most physical needs with or without special prosthetic devices including walkers.~~

~~(9) Admissions Committee. A committee appointed by a non profit or governmental board to interview, review, and select potential residents of the group home. This committee is also responsible for referring residents for discharges and/or transfers.~~

~~(10) Governmentally Operated. Governmentally operated group homes are homes operated by the area mental health and mental retardation program and funded with mental health and mental retardation money through the regional mental health and mental retardation office. This type home is not supervised by social services but is licensed by the North Carolina Division of Health Service Regulation. Public assistance funds, including state county special assistance for adults, are not available to residents of these homes.~~

~~(11) Private Non profit Operated. Group homes operated by non profit boards and supported by funds channeled through the regional mental health and mental retardation offices to~~

~~the area mental health and mental retardation programs. These homes are evaluated, approved and supervised by the county departments of social services and licensed by the North Carolina Division of Health Service Regulation. The programs are also supervised by the area mental health and mental retardation programs.~~

- (12) ~~Normalization. A guiding philosophy which makes available to the developmentally disabled the patterns and conditions of every day life which are as close as possible to the norms and patters of mainstream society. (Nirje, 1969). The overall purposes and goals are to help the mentally retarded individuals gain a concept of self worth, the worth of others and to provide them the tools to function in this society as independently as possible. (Wolf Wolfensberger, Ph.D., National Institute on Mental Retardation, Toronto, Ontario, is considered to be the foremost authority on normalization. Refer to his book, "The Principle of Normalization in Human Services").~~

~~(b) The definitions contained in 10A NCAC 13G .0101 of the following terms shall control for this Subchapter: minimum standards, administrator, staff, residents, adult homes specialist, licensing agency, and monitoring agency.~~

Authority G.S. 131D-2; 143B-153.

SECTION .0200 - MANAGEMENT IN PRIVATE FOR PROFIT HOMES

10A NCAC 13H .0201 REGULATION

~~Regulation 10A NCAC 13G .0601 shall control for this Subchapter except that: a qualified adult staff member must be in charge of the home during the temporary absence of the administrator or supervisor in charge. Note: For those residents who are deemed capable of staying in the home without supervision, it shall be documented in writing by an appropriate professional and approved by the area mental health and mental retardation program and the county department of social services.~~

Authority G.S. 131D-2; 143B-153; 168-1; 168-9.

10A NCAC 13H .0202 THE CO-ADMINISTRATOR

~~The rule stated in 10A NCAC 13G .0602 shall control for this Subchapter.~~

Authority G.S. 131D-2; 143B-153; 168-1; 168-9.

10A NCAC 13H .0203 RELIEF PERSON-IN-CHARGE

~~The relief person in charge is a qualified individual who is responsible for the operation of the home in the absence of the administrator and/or co-administrator.~~

Authority G.S. 131D-2; 143B-153; 168-1; 168-9.

SECTION .0300 - MANAGEMENT IN HOMES OPERATED BY PRIVATE NON-PROFIT BOARDS

10A NCAC 13H .0301 THE HOME MANAGER IN PRIVATE NON-PROFIT HOMES

~~(a) The home manager has the following responsibilities:~~

- ~~(1) Is responsible to the board of directors for the operation of the home. The board of directors is responsible to the licensing agency (Division of Health Service Regulation) and the supervising agencies (county departments of social services and the area mental health and mental retardation programs) for maintaining licensing standards and carrying out their recommendations;~~
- ~~(2) Must live in the home;~~
- ~~(3) Must be in charge of the home at all times or must have the co manager or a qualified relief person in charge of the home at all times;~~
- ~~(4) During waking hours the manager, co manager or a relief person in charge must be in the home when any resident needing supervision or care is in the home. There must be at least one staff person in the home at night. One other staff person must be available on call during all hours in case of any emergency; Note: For those residents who are deemed capable of staying in the home without supervision, it shall be documented in writing by an appropriate professional and approved by the area mental health and mental retardation program.~~

~~(b) The co-manager has the following responsibilities:~~

- ~~(1) shares the responsibilities for the operation of the home with the manager;~~
- ~~(2) may live in with the manager or in absence of the manager.~~

~~(c) The co-manager has the following responsibilities:~~

- ~~(1) shares the responsibilities for the operation of the home with the manager;~~
- ~~(2) may live in with the manager or in absence of the manager;~~

Authority G.S. 131D-2; 143B-153; 168-1; 168-9.

10A NCAC 13H .0302 CHANGE OF MANAGER

~~When a currently licensed manager can no longer continue to manage a home, the following procedure is required:~~

- ~~(1) The applicant to manage the home must meet the qualifications for manager as outlined in these standards and regulations.~~
- ~~(2) All residents and their families must be advised of the change and given the opportunity to remain or plan for other living arrangements.~~

Authority G.S. 131D-2; 143B-153; 168-1; 168-9.

SECTION .0400 - PERSONNEL

10A NCAC 13H .0401 PERSONNEL REQUIREMENTS

The qualifications of administrator, co-administrator, supervisor in charge, manager, and co-manager are as follows:

- (1) ~~shall be an adult;~~
- (2) ~~shall be a high school graduate or certified under the G.E.D. Program (applies to those employed on or after August 1, 1991);~~
- (3) ~~shall earn 12 hours a year of continuing education credits related to the management of homes and training of developmentally disabled adults.~~

Authority G.S. 131D-2; 131D-4.5; 143B-153; 168-1; 168-9; S.L. 99-0334.

10A NCAC 13H .0402 QUALIFICATIONS OF OTHER STAFF AND FAMILY MEMBERS LIVING IN

The qualifications of other staff and family members are as follows:

- (1) ~~must be in good health;~~
- (2) ~~must have a medical form DSS 1864 completed for all staff and family members living in.~~

Authority G.S. 131D-2; 143B-153; 168-1; 168-9.

10A NCAC 13H .0403 QUALIFICATIONS OF RELIEF PERSON-IN-CHARGE

(a) Qualifications of relief person in charge are set forth in Rule .0402 of this Section except that the relief person in charge must provide written documentation about convictions of criminal offenses from the clerk of court in the county in which the conviction was made, and about any driving offenses other than minor traffic violations from the motor vehicles office.

(b) Desired Standard. Relief person must be willing to improve abilities by taking suitable courses offered in the local community and attending workshops related to the management of homes and training of developmentally disabled adults.

Authority G.S. 131D-2; 143B-153.

10A NCAC 13H .0404 RESPONSIBILITIES OF RELIEF PERSON-IN-CHARGE

The relief person in charge must be a qualified individual who is responsible for the operation of the home in the absence of the manager and/or co-manager.

Authority G.S. 131D-2; 143B-153; 168-1; 168-9.

10A NCAC 13H .0405 QUALIFICATIONS OF OTHER STAFF NOT LIVING IN

Qualifications of other staff are as follows:

- (1) ~~must be in good health;~~

- (2) ~~must have medical information form (DSS-1864) completed.~~

Authority G.S. 131D-2; 143B-153; 168-1; 168-9.

10A NCAC 13H .0406 HEALTH REQUIREMENTS

(a) ~~The administrator and supervisor in charge must have a medical examination, including tests for tuberculosis documenting freedom from the disease in a communicable stage, within 30 days prior to employment.~~

(b) ~~All staff and live-in non residents must be tested for tuberculosis within 30 days prior to employment or living in the home, and annually thereafter.~~

(c) ~~All staff and live-in non residents must be screened for Hepatitis B infection according to guidelines published by the Department of Human Resources.~~

(d) ~~Any staff member or live-in non resident who behaves in a manner that jeopardizes the health and safety of others in the home may be required to undergo a medical or psychological examination.~~

Authority G.S. 131D-2; 143B-153; 168-1; 168-9.

10A NCAC 13H .0407 GENERAL PERSONNEL REQUIREMENTS

(a) ~~Additional staff must be employed to perform housekeeping, supervision and personal care of the residents as determined by the home's licensed capacity and number of the provider's family members living in the home who require care and supervision.~~

(b) ~~A detailed job description must be on file in the facility for each staff member, signed by the administrator and the employee.~~

(c) ~~All direct care staff must complete training and maintain certification in American Red Cross or equivalent standard first aid and cardio-pulmonary resuscitation.~~

(d) ~~All staff must demonstrate ability to apply all of the home's accident, fire safety and emergency procedures.~~

(e) ~~All staff must be informed of the confidential nature of resident information and must protect such information from unauthorized disclosure in accordance with G.S. 131D-21 (1) and (6).~~

(f) ~~Any staff member left alone with the residents must be 18 years of age or older.~~

Authority G.S. 131D-2; 143B-153; 168-1; 168-9.

10A NCAC 13H .0408 STAFF COMPETENCY AND TRAINING

10A NCAC 13F .0501 shall control for staff who perform or directly supervise staff who perform personal care tasks listed in Paragraphs (h) and (i) of 10A NCAC 13F .0501.

Authority G.S. 131D-2; 131D-4.3; 143B-153.

**10A NCAC 13H .0409 TRAINING PROGRAM
CONTENT AND APPROVAL**

~~10A NCAC 13F .0502 shall control for staff who perform or directly supervise staff who perform personal care tasks listed in Paragraphs (h) and (i) of 10A NCAC 13F .0502.~~

Authority G.S. 131D-2; 131D-4.3; 143B-153.

**10A NCAC 13H .0410 QUALIFICATIONS OF
MEDICATION STAFF**

~~(a) Effective February 15, 2000, staff who administer medications, hereafter referred to as medication aides, and staff who directly supervise the administration of medications shall have documentation of successfully completing the clinical skills validation portion of the competency evaluation according to Paragraphs (d) and (e) of Rule 10A NCAC 13G .0503 as cross-referenced in Rule .0411 of this Section prior to the administration or supervision of the administration of medications. Medication aides who perform other personal care tasks shall also meet the staff training and competency requirements according to Rule 10A NCAC 13F .0501 as cross-referenced in Rule .0408 of this Section. Persons authorized by state occupational licensure laws to administer medications are exempt from this requirement.~~

~~(b) Effective October 1, 2000, medication aides and staff who directly supervise the administration of medications, except persons authorized by state occupational licensure laws to administer medications, shall successfully pass the written examination prior to or within 90 days after successful completion of the clinical skills validation portion of a competency evaluation according to Rule 10A NCAC 13G .0503 as cross referenced in Rule .0411 of this Section.~~

~~(c) Medication aides and staff who directly supervise the administration of medications, except persons authorized by state occupational licensure laws to administer medications, shall complete six hours of continuing education annually related to medication administration.~~

Authority G.S. 131D-2; 131D-4.5; 143B-165; S.L. 1999-0334.

**10A NCAC 13H .0411 MEDICATION
ADMINISTRATION COMPETENCY EVALUATION**
Rule 10A NCAC 13G .0503 shall control for this Subchapter.

Authority G.S. 131D-2; 131D-4.5; 143B-165; S.L. 1999-0334.

SECTION .0500 - THE HOME

10A NCAC 13H .0501 LOCATION

~~The location of the home shall meet the local zoning requirements.~~

Authority G.S. 131D-2; 143B-153; 168-1; 168-9.

10A NCAC 13H .0502 CONSTRUCTION

~~Group homes for developmentally disabled adults must meet the applicable requirements of the North Carolina State Building Code in force at the time of initial licensure. Group homes~~

~~which increase capacity or which change ownership must meet the applicable requirements of the North Carolina State Building Code in force at that time.~~

Authority G.S. 131D-2; 143B-153.

**SECTION .0600 - ARRANGEMENT AND SIZE OF
ROOMS**

10A NCAC 13H .0601 LIVING AREAS

~~(a) In existing buildings the living areas (living room, den, parlor, and/or family room) must be large enough to meet the needs of the family, residents and guests.~~

~~(b) In buildings to be constructed, the living areas must have a minimum of 300 square feet.~~

~~(c) Living areas must be well lighted, heated and ventilated.~~

Authority G.S. 131D-2; 143B-153; 168-1; 168-9.

10A NCAC 13H .0602 DINING AREA

~~(a) The home must have a designated dining room or area of 120 square feet or more used exclusively for dining. When used in combination with a kitchen, an area five feet wide must be allowed as work space in front of kitchen work areas. This space cannot be used as dining area. The dining area must be large enough to seat all residents, family and guests comfortably.~~

~~(b) Dining area must be well lighted, heated and ventilated.~~

Authority G.S. 131D-2; 143B-153; 168-1; 168-9.

10A NCAC 13H .0603 KITCHEN

~~The kitchen must be large enough to provide for preparation and preservation of food and for sanitizing of dishes.~~

Authority G.S. 131D-2; 143B-153; 168-1; 168-9.

10A NCAC 13H .0604 BEDROOMS

~~(a) No room can be approved for a resident's bedroom where the only access is through a bathroom, kitchen or another bedroom.~~

~~(b) The residents' bedrooms must have 100 square feet (inside measurements excluding closets and wardrobes) for single occupancy and 80 square feet per bed (inside measurements excluding closets and wardrobes) in multi-occupancy bedrooms.~~

~~(c) No person shall be allowed to sleep in the basement or attic.~~

~~(d) No person shall be allowed to sleep on the second floor who cannot move up and down the steps independently.~~

~~(e) Bedrooms must be well lighted, heated and ventilated.~~

~~(f) Walls and ceilings must be easily cleanable.~~

~~(g) The manager and family must have bedrooms separate from the residents. Bedrooms must be sufficient in number and size to meet individual needs according to age and sex.~~

Authority G.S. 131D-2; 143B-153; 168-1; 168-9.

10A NCAC 13H .0605 CLOSETS

~~Bedroom closets or wardrobes must be large enough to provide each resident a minimum of 48 cubic feet of hanging clothing~~

storage space (approximately two feet deep by three feet width by eight feet height).

Authority G.S. 131D-2; 143B-153; 168-1; 168-9.

10A NCAC 13H .0606 BATHROOMS

(a) Bathrooms shall be located as conveniently as possible to the bedrooms.

(b) In existing buildings there must be at least one full bathroom for six or fewer persons including family living in. At least one of these bathrooms must have a tub. In newly constructed buildings there must be at least one full bath for four or fewer persons including family living in.

(c) If the home has only the minimum number of full baths required, the only entrance to these baths cannot be through another bathroom or a bedroom.

(d) Comply with rules and regulations governing the sanitation and other aspects of residential care facilities. Copies may be ordered from: Sanitary Engineering Section, Division of Health Services, Raleigh, North Carolina 27611.

(e) Toilet rooms shall be well ventilated to the outside air through windows, gravity ducts having cross sectional areas of at least 72 square inches extending through the roof, or mechanical ventilation systems, in accordance with the State Building Code.

Authority G.S. 131D-2; 143B-153; 168-1; 168-9.

10A NCAC 13H .0607 STORAGE AREAS

The storage areas shall be adequate in size and number for storage of clean linens, soiled linens, cleaning materials, household supplies, food and equipment. Refer to rules and regulations governing the sanitation and other aspects of residential care facilities.

Authority G.S. 131D-2; 131D-4.5; 143B-165; 168-9; S.L. 1999-0334.

10A NCAC 13H .0608 FLOORS

All floors must be easily cleanable and shall be kept clean and in good repair.

Authority G.S. 131D-2; 143B-153; 168-1; 168-9.

10A NCAC 13H .0609 LAUNDRY

(a) In existing buildings, approval of location of laundry equipment will be made by the Division of Health Service Regulation.

(b) In homes being constructed, the laundry equipment must be located out of the kitchen, living areas, dining areas and bedrooms.

(c) Desired Standard. Laundry equipment shall be located in a room off the corridor.

Authority G.S. 131D-2; 143B-153; 168-1; 168-9.

10A NCAC 13H .0610 OUTSIDE ENTRANCES

(a) If any residents are physically handicapped, outside entrances must be at ground level, or (b) of this Rule shall apply.

(b) The home must have all steps and porches protected by handrails.

(c) If the board plans to admit residents who are dependent on wheel chairs, ramps must be constructed for easy and safe accessibility for entering and leaving the home. (See building code for specifications).

Authority G.S. 131D-2; 143B-153; 168-1; 168-9.

10A NCAC 13H .0611 FIRE SAFETY REQUIREMENTS

Fire safety requirements are as follows:

- (1) Fire extinguishers of the type recommended by the fire inspector but no less than a two and one half gallon water type for every 1800 square feet of floor area and for each floor there shall be at least one; A dry powder of CO(2) type is required for the kitchen;
- (2) Provide automatic single station U.L. products of combustion type smoke detectors as determined by the Division of Health Service Regulation and U.L. approved heat detectors in the attic and basement. These units must be wired directly to the house current;
- (3) Other U.L. approved fire detection system as required by city ordinances or county building inspectors;
- (4) Must have a manual fire alarm or signal system which is audible throughout the building;
- (5) Plan for Evacuation. There must be a written fire evacuation plan approved by the local fire department. Fire drills must be held once a month without warning at various times of the day and night. New residents must have fire drill instructions the first day of residence. This written fire evacuation plan must be posted;
- (6) The electrical system must be approved by the local electrical inspector;
- (7) Stairways must be enclosed by a one hour fire resistant construction and solid core door equipped with self closer.

Authority G.S. 131D-2; 143B-153; 168-1; 168-9.

10A NCAC 13H .0612 OTHER REQUIREMENTS

(a) There must be an approved central heating system which will maintain a comfortable temperature range. No space heaters, room heaters or portable heaters are allowed in the home.

(b) The plumbing system must be approved by the local plumbing inspector.

(c) Hot water supply must be large enough to provide continuous hot water to kitchen, bathrooms and laundry. There must be mixing faucets for the sinks and tubs. Water temperature at all fixtures used by residents, except those in the

kitchen, shall not exceed 110 degrees Fahrenheit. Facilities providing training for residents returning to nonlicensed community living may provide a second bathroom with water temperature exceeding 110 degrees Fahrenheit.

Authority G.S. 131D-2; 143B-153; 168-1; 168-9.

10A NCAC 13H .0613 HOUSEKEEPING AND FURNISHINGS

(a) The house shall be maintained in an uncluttered, clean and orderly manner with an attractive, homelike atmosphere.

(b) The facility must receive an approved rating on DHS 2094 (sanitation form).

(c) Each bedroom shall be furnished with:

- (1) single beds equipped with box springs and mattress or solid link springs and no sag innerspring or foam mattress. Double beds are allowed if used only for single occupancy. Pillows suited to the individual needs and preferences of residents must be provided. Bed coverings must be clean and washable and consist of a top and bottom sheet, pillow case, bedspread and blanket;
- (2) nightstand and lamp for each resident;
- (3) bureau or chest for each resident;
- (4) a wall mirror in each room or a mirror for each resident;
- (5) chair suitable to meet the needs of each resident;
- (6) individual towels and washcloths.

(d) Living and dining areas must be appropriately and attractively furnished, taking into consideration the special needs of the residents.

Authority G.S. 131D-2; 143B-153; 168-1; 168-9.

SECTION .0700 - SERVICES

10A NCAC 13H .0701 PERSONAL CARE

Residents shall be trained to exercise maximum independence in health, hygiene, and grooming practices, including bathing, brushing teeth, shampooing, combing and brushing hair, shaving and caring for toenails and fingernails.

Authority G.S. 131D-2; 143B-153; 168-1; 168-9;

10A NCAC 13H .0702 HEALTH CARE

(a) Only occasional or incidental medical care shall be provided in the home.

(b) The resident shall be allowed to choose a physician and dentist whenever possible.

(c) Provisions shall be made to furnish, and maintain in good repair, dentures, eyeglasses, hearing aids, braces, etc., prescribed by appropriate specialists.

Authority G.S. 131D-2; 143B-153; 168-1; 168-9.

10A NCAC 13H .0703 FOOD SERVICE

(a) Each resident shall be served a minimum of three nutritionally balanced meals a day with at least a ten hour period between breakfast and supper. Food preferences and special individual dietary needs shall be considered when planning meals. Six to eight cups of liquid are needed for metabolic purposes.

(b) Menus shall be prepared one week in advance for guidance in purchasing and preparing foods.

(c) Menus as served and invoices of purchases or other appropriate receipts shall be kept in a file for a year and are subject to periodic review by the Department of Human Resources.

(d) Any home canning of fruits or vegetables must be approved by the county health department or the home extension agent.

(e) Daily menus shall include the following:

- (1) milk: two cups per resident; (Reconstituted dry skim milk and diluted evaporated milk may be used only in cooking);
- (2) fruit: two servings daily; one serving of citrus fruit or tomatoes, or juice (fresh, frozen, or canned), daily plus at least one serving of another variety of fresh, canned, or dried fruit (one half cup equals one serving);
- (3) vegetables: two servings (one half cup equals one serving) of vegetables; one of these should be a green leafy or yellow vegetable every other day;
- (4) eggs: three to five a week, spread over the week;
- (5) lean meat, fish, poultry: at least a four ounce serving each day; to meet additional requirements for protein, substitutes including cheese, dried beans and peas, and peanut butter may be used;
- (6) cereals and bread: enriched or whole grain, such as oatmeal, enriched rice, corn meal, enriched prepared cereals, bread, or biscuits at least twice a day;
- (7) fats: include butter or margarine daily; restrict the use of seasoning with fats.

Authority G.S. 131D-2; 143B-153; 168-1; 168-9.

10A NCAC 13H .0704 OTHER REGULATIONS

(a) Transportation. Transportation services shall be available to the residents and residents shall be encouraged to use public transportation when available, and if the residents are able.

(b) Communication

- (1) Residents shall have access to the telephone for incoming and local outgoing calls, conducive to privacy.
- (2) Residents shall have access to pay telephones, or the equivalent, for outgoing long distance calls.
- (3) Residents shall be encouraged and assisted, if necessary, to correspond with relatives and friends according to resident's wishes.

- (4) ~~Residents shall open their own mail and packages.~~
- (5) ~~Residents shall not have their incoming or outgoing mail read by staff, unless requested by the resident.~~

(e) ~~Visiting. Visiting by friends and relatives should be encouraged within reason and concurring with resident wishes.~~

Authority G.S. 131D-2; 143B-153; 168-1; 168-9.

SECTION .0800 - PROGRAM STANDARDS

10A NCAC 13H .0801 INDIVIDUAL GOALS

~~Individual goals shall be developed with all residents. These shall:~~

- (1) ~~show short term goals leading up to the long-term goals;~~
- (2) ~~be developed in coordination with group home staff and each resident;~~
- (3) ~~build on the strengths of the resident;~~
- (4) ~~be reviewed on quarterly basis;~~
- (5) ~~be dated specifically and clearly written in positive terms;~~
- (6) ~~identify staff responsibilities to assure goal attainment;~~
- (7) ~~serve as a basis for monitoring and evaluating progress of individuals in the program.~~

Authority G.S. 131D-2; 143B-153.

10A NCAC 13H .0802 INDIVIDUAL RECORDS

~~An individual record is maintained for each resident that is adequate for:~~

- (1) ~~developing and continuously evaluating the individual program plan;~~
- (2) ~~providing a means of communication among all persons contributing to the individual program plan;~~
- (3) ~~recording progress in achieving the objective specified in the individual program plan;~~
- (4) ~~serving as a basis for review, study, and evaluation of the program provided by the agency for its residents;~~
- (5) ~~protecting the legal rights of the resident, agency and staff.~~

Authority G.S. 131D-2; 143B-153; 168-1; 168-9.

10A NCAC 13H .0803 POLICIES AND PROCEDURES

~~The facility shall have a written statement of policies and procedures:~~

- (1) ~~concerning the rights of residents that assure the civil rights of all residents;~~
- (2) ~~that are in accordance with the Declaration of General and Special Rights of the Mentally Retarded of the International League of Societies for the Mentally Handicapped;~~

- (3) ~~that describe the means of making legal counsel available to residents for the protection of their rights;~~

- (4) ~~the "rhythm of life" in the living unit shall resemble the cultural norm for the residents' non-retarded age peers, unless a departure from this rhythm is justified on the basis of maximizing the residents' human qualities.~~

Authority G.S. 131D-2; 143B-153; 168-1; 168-9.

10A NCAC 13H .0804 RESIDENT'S LIVING STATUS

~~The group home program shall maximize the resident's independent living status. Residents shall be provided the opportunity to move from:~~

- (1) ~~more to less structured living;~~
- (2) ~~larger to smaller facilities;~~
- (3) ~~larger living units to smaller living units;~~
- (4) ~~dependent to independent living;~~
- (5) ~~group to individual residence;~~
- (6) ~~segregated to integrated living.~~

Authority G.S. 131D-2; 143B-153; 168-1; 168-9.

10A NCAC 13H .0805 ACTIVITIES OUTSIDE OF THE HOME

(a) ~~Residents shall be appropriately engaged in competitive employment, a sheltered workshop program (evaluation, training, or work activity) or in an adult developmental activity program, or other appropriate community programs.~~

(b) ~~If a volunteer service program exists, provisions shall be made for volunteer orientation and training.~~

(c) ~~The residents shall have time for social development both individually and in groups:~~

- (1) ~~Residents should be encouraged to develop their own social and recreation activities.~~
- (2) ~~The group home should encourage parties, dances, and other social events. Opportunities for activities such as ballgames, movies, and bowling should be offered to the residents.~~

(d) ~~There shall be a mechanism whereby each resident shall have an opportunity to express his ideas and concerns which may be incorporated into the program. Leadership roles by residents should be encouraged.~~

(e) ~~Residents shall be trained and encouraged to exercise maximum independence in the selection, use and maintenance of their own clothing:~~

- (1) ~~Residents shall select and purchase their own clothing as independently as possible.~~
- (2) ~~Residents shall select their daily clothing and dress themselves appropriately according to the activities in which they plan to engage.~~
- (3) ~~Residents shall launder, mend and iron their own clothing if possible.~~

Authority G.S. 131D-2; 143B-153; 168-1; 168-9.

10A NCAC 13H .0806 ACCIDENT PREVENTION

~~There shall be an education program for staff and residents which involves the principles of accident prevention and control of specific hazards:~~

- ~~(1) Fire drill programs shall be conducted on a monthly basis or as a new resident is admitted.~~
- ~~(2) Written evacuation plans shall be posted and reviewed.~~
- ~~(3) Residents shall be trained in personal safety habits and safe working and living conditions.~~

Authority G.S. 131D-2; 143B-153; 168-1; 168-9.

10A NCAC 13H .0807 PLAN FOR MEDICAL SERVICES

~~A plan shall be implemented for obtaining medical, dental and related services including emergencies:~~

- ~~(1) Contact should be made with the county health department and other ancillary services as needed.~~
- ~~(2) The availability of health insurance for residents should be investigated (the resident may be eligible for medicaid services, for example).~~

Authority G.S. 131D-2; 143B-153; 168-1; 168-9.

10A NCAC 13H .0808 PERSONAL SKILLS DEVELOPMENT

~~Residents shall have an opportunity to acquire personal skills that will make them more independent and self sufficient. Residents shall participate in ordinary daily chores that relate to family living.~~

Authority G.S. 131D-2; 143B-153; 168-1; 168-9.

SECTION .0900 - ADMISSION: TRANSFER: AND DISCHARGE POLICIES

10A NCAC 13H .0901 ADMISSIONS

- ~~(a) Admission policies of the home must be in writing.~~
- ~~(b) Any adult who, because of a developmental disability, is unable to live in or maintain his own home may be admitted, when, in the opinion of the resident and/or physician and/or department of social services social worker and/or group home admissions committee, the services and accommodations of the home will meet his particular needs.~~
- ~~(c) Regulation 10A NCAC 13G .0701, "Exceptions," shall control for this Subchapter.~~
- ~~(d) Admission to the group home shall occur only when it is determined to be the optimal available plan or the appropriate resource currently available.~~

Authority G.S. 131D-2; 143B-153; 168-1; 168-9.

10A NCAC 13H .0902 MEDICAL REQUIREMENTS

- ~~(a) Each resident must have a medical examination including a tuberculin test and/or chest x ray. When the tuberculin test is~~

~~given and the results are positive, the resident must have a chest x-ray. The results of the complete examination are to be entered on the form DSS FL2 and dated within 90 days prior to the resident's admission or re-admission to the home. A current copy of the DSS FL2 must be kept in the resident's record in the home.~~

- ~~(b) The medical examination form (DSS FL2) must be reviewed prior to admission. If the information on the form is not clear or is insufficient, the physician must be contacted for clarification in order to determine if the services of the home can meet his patient's needs.~~

Authority G.S. 131D-2; 143B-153; 168-1; 168-9.

10A NCAC 13H .0903 PERSONAL INFORMATION

~~Personal information shall be obtained to share with the manager from the resident, his family or social worker which will help to make the adjustment to the new living situation easier.~~

Authority G.S. 131D-2; 143B-153; 168-1; 168-9.

10A NCAC 13H .0904 WRITTEN AGREEMENTS

~~There shall be a written agreement between each resident and the group home which shall state responsibility of the group home and responsibility of the resident:~~

- ~~(1) Responsibility of group home shall include:
 - ~~(a) documentation of establishment of goals with the resident;~~
 - ~~(b) rate to be charged and method of payment;~~
 - ~~(c) resident's right to privacy and leisure time within reasonable limits;~~
 - ~~(d) information regarding resident responsibilities in relation to his living in the home shall be conveyed in such a manner that the resident understands his responsibilities.~~~~
- ~~(2) Responsibilities of residents shall include:
 - ~~(a) accepting responsibilities in the group home commensurate with their interests, abilities, and goal plans, to enhance feelings of self respect and to develop skills of independent living;~~
 - ~~(b) respecting the rights of all persons living in the home;~~
 - ~~(c) respecting the property of other persons;~~
 - ~~(d) agreeing to participate in the group home program;~~
 - ~~(e) sharing in daily chores.~~~~
- ~~(3) Agreement shall be signed and dated by both parties.~~

Authority G.S. 131D-2; 143B-153; 168-1; 168-9.

10A NCAC 13H .0905 PLANS AT TIME OF ADMISSION

Plans must be made for the following at the time of admission or before and written on the resident's register (form DSS 1865):

- (1) ~~payment for medical care (physician's fees, drugs, dental, eye, etc.);~~
- (2) ~~payment for ambulance fees;~~
- (3) ~~payment for hospitalization (including name of insurance company, if any);~~
- (4) ~~payment for personal needs (clothing, tobacco, dry cleaning, etc.);~~
- (5) ~~care of spending money and other valuables;~~
- (6) ~~refunds;~~
- (7) ~~death;~~
- (8) ~~serious illness.~~

Authority G.S. 131D-2; 143B-153; 168-1; 168-9.

10A NCAC 13H .0906 PROCEDURES FOR TRANSFER

(a) ~~When it is necessary for a resident to transfer from one licensed facility to another, procedures under Sections .0900 and .1000 of this Subchapter are to be followed.~~

(b) ~~When it is necessary for a home to close or another person applies to manage the home immediately, each resident must be given the opportunity to make other plans if he does not desire to remain with the new management.~~

(c) ~~Copies of all pertinent information must be sent to the new home.~~

(d) ~~If the medical report (DSS FL2) is less than three months old and there have been no apparent changes in the mental or physical condition of the resident, a copy of it may be used for admission to the home to which the resident is going.~~

Authority G.S. 131D-2; 143B-153; 168-1; 168-9;

10A NCAC 13H .0907 PROCEDURES FOR DISCHARGE

~~Rule 10A NCAC 13G .0705 shall control for this Subchapter.~~

Authority G.S. 131D-2; 131D-4.5; 143B-165; S.L. 1999-0334.

SECTION .1000 - MEDICAL POLICIES

10A NCAC 13H .1001 PHYSICIANS

(a) ~~Immediate arrangements must be made for a resident:~~

- (1) ~~to secure another physician or dentist when he cannot remain under the care of his own;~~
- (2) ~~to have an emergency plan if the need arises.~~

(b) ~~The name, address and telephone number of the new physician must be recorded on form DSS 1865.~~

Authority G.S. 131D-2; 143B-153; 168-1; 168-9.

10A NCAC 13H .1002 PHYSICAL EXAMINATIONS

(a) ~~A physical examination for each resident is required prior to admission and annually thereafter and must be recorded on form DSS FL2.~~

~~(b) A dental examination before entering, annually and as the need arises thereafter.~~

~~(c) Between annual physical examinations there may be a need for a physician's care. In this case the DSS 1867 must be used by the physician to report any medications prescribed, treatment given or recommended for minor illnesses.~~

~~(d) A tuberculin test and/or chest x ray is required as part of the annual physical examination. When the tuberculin test is given and the results are positive, a chest x ray is required. Results and recommendations are recorded on form DSS FL2 or DSS 1867.~~

Authority G.S. 131D-2; 143B-153; 168-1; 168-9.

10A NCAC 13H .1003 MEDICATIONS

~~(a) The group home shall have a written policy regarding medication:~~

- (1) ~~The group home shall have a systematic training program to help each resident become less reliant on drug administration by staff and more self reliant regarding drug administration.~~
- (2) ~~Programs designed to gradually reduce the use of psychotropic medications shall be under the supervision of a qualified physician. Care shall be taken to distinguish psychotropic medications from medication used for other purposes such as for seizure control.~~
- (3) ~~Medications for all residents shall be re-evaluated and re-authorized every six months by a physician.~~
- (4) ~~The home administrator manager shall be responsible for assuring that the resident complies with the prescribed drugs regimen.~~

~~(b) The rules stated in 10A NCAC 13G .1000 shall control for this Section of the Subchapter.~~

Authority G.S. 131D-2; 131D-4.5; 143B-165; S.L. 1999-0334.

SECTION .1100 – RATES: RESIDENTS' FUNDS: REFUNDS

10A NCAC 13H .1101 HANDLING FUNDS OF RESIDENTS

(a) ~~Residents shall handle their own funds whenever possible.~~

(b) ~~Residents shall be provided training in money management when needed.~~

~~(c) Residents must endorse checks made out to them unless a legal guardian or personal representative or some other legally constituted authority has been authorized to endorse their checks. Note: It is illegal to endorse a check made out to another person unless the endorser has been legally authorized to do so.~~

~~(d) In situations where the resident is unable to manage his funds, the manager must contact a family member of the department of social services regarding the need for a guardian or personal representative.~~

~~(e) Upon the resident's written request, the manager may handle the personal and/or medically related allowance for a resident provided an accurate accounting of monies received and disbursed and the balance on hand is available upon request by the resident. A copy of this written request must be maintained in the resident's record.~~

~~(f) When a payee for social security payments is needed for a resident and there is not an appropriate family member to serve, it is recommended the county director of social services be appointed as payee.~~

~~(g) If a resident has been declared legally incompetent by the courts, the manager shall give the resident's legal guardian or personal representative receipts for any monies received on behalf of the resident.~~

~~(h) In order to maintain accurate records on the amounts and sources of a resident's funds, the DSS 1866 must be completed each month.~~

Authority G.S. 131D-2; 143B-153; 168-1; 168-9.

10A NCAC 13H .1102 REFUND POLICIES

~~(a) The refund policies must be in writing and signed by the administrator, manager or an authorized member of the non-profit board.~~

~~(b) A copy must be given to the resident, family or social worker at time of admission. A copy must also be filed in the resident's record.~~

~~(c) Personal funds of residents:~~

~~(1) When, at the resident's request, the manager handles the personal or medical funds or both funds, the balance must be given to the resident or the person responsible for planning for his care when he leaves the home.~~

~~(2) In case of death, when no administrator for the estate has been appointed and the personal estate is under one thousand dollars (\$1,000), all of the resident's money, including any refund due, shall be paid to the clerk of superior court to be disbursed in accordance with General Statute 28A-25.6.~~

~~(d) When payment is made a month in advance and the resident leaves before the end of the month, the daily cost must be refunded to the resident, his nearest of kin, or his estate for days not used. If there are unusual costs, it is recommended that the refund be based on a reasonable charge for any extra expenses incurred prior to the resident's discharge.~~

Authority G.S. 131D-2; 143B-153.

SECTION .1200 - RECORDS AND REPORTS

10A NCAC 13H .1201 RECORDS

Required forms are available free of charge, upon request, from the county department of social services. The following records shall be maintained in an orderly manner on each resident and be readily available for review by a representative of the supervising and/or licensing agency:

(1) Agreement between resident and group home;

~~(2) The services and accommodations the home offers for a particular resident must be in writing and a copy signed by the manager and the resident or responsible party. A copy must be given to the resident and/or family and/or agency responsible for placement. A copy must be kept in the resident's record in the facility;~~

~~(3) Refund policies must be in writing and signed by an authorized board member or the administrator with a copy given to the resident, family and/or social worker at the time of admission. A copy must also be filed in the resident's record;~~

~~(4) Resident register form DSS 1865;~~

~~(5) Resident financial record form DSS 1866 or an approved bookkeeping system;~~

~~(6) Report of health services to resident form DSS 1867 or DSS FL2;~~

~~(7) Reports of medical examinations form DSS FL2;~~

~~(8) An approved record noting monthly receipts, disbursements and balance on hand of any money a resident requests the manager to keep. All or any portion of the funds must be available to the resident upon his request;~~

~~(9) Individual goal plan;~~

~~(10) Authorization of self administering of medication;~~

~~(11) All reports must be used as listed in 10A NCAC 13G .1200 for this type home.~~

Authority G.S. 131D-2; 143B-153; 168-1; 168-9.

10A NCAC 13H .1202 REPORTS

Required forms are available free of charge, upon request, from the county department of social services:

~~(1) When a resident is admitted or discharged, the manager must send a DSS 1869 to the county department of social services for their records.~~

~~(2) The manager shall submit on or before July 31 of each year an annual population report for the previous fiscal year (DSS 1868) to the county department of social services.~~

~~(3) The manager shall notify the county department of social services of any accident to a resident within 24 hours. Use form DSS-1870 to report these. The department of social services and the area mental health and mental retardation program, when applicable, needs to know how, when, and where the accident happened and what was done about any accident to a resident, no matter how insignificant it appears.~~

Authority G.S. 131D-2; 143B-153; 168-1; 168-9.

SECTION .1300 - CAPACITY

10A NCAC 13H .1301 CAPACITY

- ~~(a) Group homes for developmentally disabled adults have a capacity of two to nine residents.~~
- ~~(b) The total number of residents shall not exceed the number shown on the license.~~
- ~~(c) The total number of residents assigned to a room shall not exceed the number authorized for that particular room.~~
- ~~(d) Only rooms authorized shall be used for residents' bedrooms.~~

Authority G.S. 131D-2; 143B-153; 168-1; 168-9.

10A NCAC 13H .1302 INCREASE IN CAPACITY

- ~~(a) A request for an increase in capacity must be made to the county department of social services and approved by the state Division of Health Service Regulation.~~
- ~~(b) A request for an increase in capacity by adding rooms or remodeling must be made to the county department of social services and submitted to the state Division of Health Service Regulation, accompanied by two copies of floor plans or blueprints and specifications, showing the existing building and the addition. Plans must show how the addition will be tied onto the old and all proposed changes in old structure.~~
- ~~(c) When licensed facilities increase their designed capacity by the addition to or remodeling of the existing physical plant, the entire facility must meet all current fire safety regulations.~~

Authority G.S. 131D-2; 143B-153; 168-1; 168-9.

SECTION .1400 - APPLICATION PROCEDURES

10A NCAC 13H .1401 APPLICATION FOR LICENSE

- ~~(a) An application for a license to operate a group home for developmentally disabled adults in an existing building shall be made at the county department of social services by the group home board.~~
- ~~(b) Regulation 10 NCAC 42C .3301(b), (c), (e), and (f) shall control for this Subchapter.~~

Authority G.S. 131D-2; 143B-153; 168-1; 168-9.

10A NCAC 13H .1402 NEW CONSTRUCTION: ADDITIONS AND RENOVATIONS

~~Regulation 10A NCAC 13G .0205(a) to (c) shall control for this Subchapter except for the following:~~

- ~~(1) The county department of social services will contact references and determine if the manager is qualified and if the group home board's plans of operation meet present standards.~~
- ~~(2) Following the review of application, references, and all forms, a pre licensing visit will be made by a consultant or licensing specialist of the state Division of Health Service Regulation.~~
- ~~(3) The consultant or licensing specialist will report his findings and recommendations and shall promptly notify, in writing, the applicant~~

~~and the county department of social services of the action taken.~~

Authority G.S. 131D-2; 143B-153.

SECTION .1500 - LICENSING INFORMATION

10A NCAC 13H .1501 CURRENT LICENSE

~~Regulation 10A NCAC 13G .0202, "Current License," shall control for this Subchapter, except that the license shall be on file in the home, unless it is a provisional license in which case it shall be conspicuously posted in the home.~~

Authority G.S. 131D-2; 143B-153; 168-1; 168-9.

10A NCAC 13H .1502 RENEWAL OF LICENSE

~~Regulation 10A NCAC 13G .0208 shall control for this Subchapter.~~

Authority G.S. 131D-2; 143B-153; 168-1; 168-9.

10A NCAC 13H .1503 TERMINATION OF LICENSE

- ~~(a) The license will automatically terminate when there is a change in location of the home.~~
- ~~(b) The license is not transferable or assignable.~~
- ~~(c) The unexpired license shall be returned to the state Division of Health Service Regulation by the county department of social services with the following information:~~
 - ~~(1) reason for closing;~~
 - ~~(2) date of closing;~~
 - ~~(3) plans made for residents.~~
- ~~(d) When a group home board voluntarily closes the home, a signed statement to this effect must be submitted to the Division of Health Service Regulation.~~

Authority G.S. 131D-2; 143B-153; 168-1; 168-9.

10A NCAC 13H .1504 DENIAL OR REVOCATION OF LICENSE

~~Regulation 10A NCAC 13G .0212 shall control for this Subchapter.~~

Authority G.S. 131D-2; 143B-153; 168-1; 168-9.

10A NCAC 13H .1505 PROCEDURE FOR APPEAL

~~Regulation 10A NCAC 13G .0213 shall control for this Subchapter.~~

Authority G.S. 131D-2; 143B-153; 168-1; 168-9.

10A NCAC 13H .1506 SUSPENSION OF ADMISSIONS

~~10A NCAC 13G .0214 through .0215 shall control for this Section.~~

Authority G.S. 130-9.7(e).

SECTION .1600 - MISCELLANEOUS RULES

10A NCAC 13H .1601 ADMINISTRATIVE PENALTY DETERMINATION PROCESS

~~10A NCAC 13G .0216 shall control for this Subchapter.~~

Authority G.S. 131D-2; 131D-34; 143B-153.

10A NCAC 13H .1602 RESIDENT ASSESSMENT

~~10A NCAC 13G .0801 shall control for this Subchapter.~~

Authority G.S. 131D-2; 131D-4.3; 143B-153.

10A NCAC 13H .1603 RESIDENT CARE PLAN

~~10A NCAC 13G .0802 shall control for this Subchapter.~~

Authority G.S. 131D-2; 131D-4.3; 143B-153.

10A NCAC 13H .1604 LICENSED HEALTH PROFESSIONAL SUPPORT

~~10A NCAC 13G .0903 shall control for this Subchapter.~~

Authority G.S. 131D-2; 131D-4.3; 143B-153.

10A NCAC 13H .1605 COOPERATION WITH CASE MANAGERS

~~10A NCAC 13G .0908 shall control for this Subchapter.~~

Authority G.S. 131D-2; 131D-4.3; 143B-153.

10A NCAC 13H .1606 HEALTH CARE PERSONNEL REGISTRY

~~The facility shall comply with G.S. 131E-256 and supporting Rules 10A NCAC 13O .1001 and .1002.~~

Authority G.S. 131D-2; 131D-4.5; 131E-256; 143B-165; S.L. 1999-0334.

10A NCAC 13H .1607 RESPITE CARE

~~Respite care shall be controlled by 10 NCAC 42C .2406 and all the rules of this Subchapter except for Rules 42B .1702, .1707, .1802, .2001, .2402 and .2403.~~

Authority G.S. 131D-2; 143B-165; S.L. 2000-50.

SECTION .1700 – ADULT HOME CARE LICENSES

10A NCAC 13H .1701 DEFINITIONS

~~Rule 10A NCAC 13G .0201 shall control for this Subchapter.~~

Authority G.S. 131D-2; 131D-4.5; 143B-165; S.L. 1999-0113; S.L. 1999-0334.

10A NCAC 13H .1702 PERSONS NOT ELIGIBLE FOR NEW ADULT CARE HOME LICENSES

~~Rule 10A NCAC 13G .0203 shall control for this Subchapter.~~

Authority G.S. 131D-2; 131D-4.5; 143B-165; S.L. 1999-0113; S.L. 1999-0334.

10A NCAC 13H .1703 CONDITIONS FOR LICENSE RENEWAL

~~Rule 10A NCAC 13G .0209 shall control for this Subchapter.~~

Authority G.S. 131D-2; 131D-4.5; 143B-165; S.L. 1999-0113; S.L. 1999-0334.

SECTION .1900 – DEATH REPORTING REQUIREMENTS

10A NCAC 13H .1901 DEFINITIONS

~~The following definitions shall apply throughout this Section:~~

- ~~(1) "Accident" means an unexpected, unnatural or irregular event contributing to a resident's death and includes, but is not limited to, medication errors, falls, fractures, choking, elopement, exposure, poisoning, drowning, fire, burns or thermal injury, electrocution, misuse of equipment, motor vehicle accidents, and natural disasters.~~
- ~~(2) "Immediately" means at once, at or near the present time, without delay.~~
- ~~(3) "Violence" means physical force exerted for the purpose of violating, damaging, abusing or injuring or abusing another person.~~

Authority G.S. 131D-2; 131D-34.1.

10A NCAC 13H .1902 SCOPE

~~For purposes of this Section, facilities licensed in accordance with G.S. 131D-2 shall report resident deaths to the Division of Health Service Regulation.~~

Authority G.S. 131D-2; 131D-34.1.

10A NCAC 13H .1903 REPORTING REQUIREMENTS

~~(a) Upon learning of a resident death as described in Paragraphs (b) and (c) of this Rule, a facility shall file a report in accordance with this Rule. A facility shall be deemed to have learned of a resident death when any facility staff obtains information that the death occurred.~~

~~(b) A written notice containing the information listed under Paragraph (d) of this Rule shall be made immediately for the following:~~

- ~~(1) a resident death occurring in an adult care home within seven days of the use of a physical restraint or physical hold on the resident; or~~
- ~~(2) a resident death occurring within 24 hours of the resident's transfer from the adult care home to a hospital, if the death occurred within seven days of physical restraint or physical hold of the resident.~~

~~(c) A written notice containing the information under Paragraph (d) of this Rule shall be made within three days of any death resulting from violence, accident, suicide or homicide.~~

~~(d) Written notice may be submitted in person or by telefacsimile or electronic mail. If the reporting facility does not~~

have the capacity or capability to submit a written notice immediately, the information contained in the notice may be reported by telephone following the same time requirements under Subparagraphs (b) and (c) of this Rule until such time the written notice may be submitted. The notice shall include at least the following information:

- (1) ~~Reporting facility: Name, address, county, license number (if applicable), Medicare/Medicaid provider number (if applicable), facility administrator and telephone number, name and title of person preparing report, first person to learn of death and first staff to receive report of death, and date and time report prepared;~~
- (2) ~~Resident information: Name, Medicaid number (if applicable), date of birth, age, sex, race, primary admitting diagnoses, and date of most recent admission to an acute care hospital.~~
- (3) ~~Circumstances of death: place and address where resident died, date and time death was discovered, physical location decedent was found, cause of death (if known), whether or not decedent was restrained at the time of death or within 7 days of death and if so, a description of the type of restraint and its usage, and a description of events surrounding the death; and~~
- (4) ~~Other information: list of other authorities such as law enforcement or the County Department of Social Services that have been notified, have investigated or are in the process of investigating the death or events related to the death.~~

~~(e) The facility shall submit a written report, using a form pursuant to G.S. 131D-34.1(e). The facility shall provide, fully and accurately, all information sought on the form. If the facility is unable to obtain any information sought on the form, or if any such information is not yet available, the facility shall so explain on the form.~~

~~(f) In addition, the facility shall:~~

- (1) ~~Notify the Division of Health Service Regulation immediately whenever it has reason to believe that information provided may be erroneous, misleading, or otherwise unreliable;~~
- (2) ~~Submit to the Division of Health Service Regulation, immediately after it becomes available, any information required by this rule that was previously unavailable; and~~
- (3) ~~Provide, upon request by the Division of Health Service Regulation, other information the facility obtains regarding the death, including, but not limited to, death certificates, autopsy reports, and reports by other authorities.~~

~~(g) With regard to any resident death under circumstances described in G.S. 130A-383, a facility shall notify the~~

~~appropriate law enforcement authorities so the medical examiner of the county in which the body is found may be notified. Documentation of such notification shall be maintained by the facility and be made available for review by the Division upon request.~~

~~(h) In deaths not under the jurisdiction of the medical examiner, the facility shall notify the decedent's next of kin, or other individual authorized according to G.S. 130A-398, that an autopsy may be requested as designated in G.S. 130A-389.~~

Authority G.S. 131D-2; 131D-34.1.

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Social Services Commission intends to amend the rules cited as 10A NCAC 97B .0401-.0403; and 97C .0104, .0106, .0108-.0109, .0111.

Link to agency website pursuant to G.S. 150B-19.1(c):
<http://www.ncdhhs.gov/dss/sscommission/pubnot.htm>

Proposed Effective Date: *February 1, 2015*

Public Hearing:

Date: *December 15, 2014*

Time: *10:00 a.m.*

Location: *NC DSS Program Compliance Conference Room 126, 1st Floor, McBryde Building, 820 South Boylan, Raleigh, NC 27603; telephone conference call number 1-559-726-1200 access code 728311*

Reason for Proposed Action: *The current rules prohibit the NC DHHS DSS Office of Economic Opportunity from allocating the total amount of funding made available in accordance with Section 675C of the Community Opportunities, Accountability and Training and Education Services Act of 1998. As a result, North Carolina's low-income residents do not have access to all potential benefits afforded through the Community Services Block Grant. The proposed amendments will provide greater opportunity to maximize the use of the available funding. Specifically, the potential for an additional \$772,795 in SFY 14 and \$481,452 each fiscal year thereafter for purposes specified in items (b)(1)(A-H) of Section 675C the Community Opportunities, Accountability and Training and Education Services Act of 1998 {42 U.S.C. 9907}. Further, the proposed amendments will resolve inconsistencies with the federal provision for carry forward funds and eliminate the mandate of funding Limited Purpose Agencies.*

Comments may be submitted to: *Glenda Pearce, Social Services Commission, 2401 Mail Service Center, Raleigh, NC 27699-2401; phone (919) 527-6425; fax (919) 334-1198; email glenda.pearce@dhhs.nc.gov*

Comment period ends: *December 15, 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 97 – OFFICE OF ECONOMIC OPPORTUNITY

SUBCHAPTER 97B – GENERAL ADMINISTRATIVE POLICIES

SECTION .0400 – CITIZEN PARTICIPATION AND HEARINGS

10A NCAC 97B .0401 GENERAL PROVISIONS

Each applicant for programs funded under 10A NCAC 97C .0108(a)(1) administered by the Office shall provide citizens with an adequate opportunity for meaningful involvement on a continuing basis and for participation in the planning, implementation, evaluation and assessment of the program. The applicant shall:

- (1) provide adequate information to citizens;
- (2) hold a public hearing at the initial stage of the planning process;
- (3) publish a notice of intent to file an application prior to the governing board's approval, and subsequent submission of the application to the ~~Office~~; Division of Social Services;
- (4) allow citizen participation on substantive amendments in the program; and
- (5) provide an opportunity to comment on the applicant's performance.

Authority G.S. 143B-153; 42 USC 9901.

10A NCAC 97B .0402 CITIZEN PARTICIPATION IN THE APPLICATION PROCESS

Each applicant for programs funded by under 10A NCAC 97C .0108(a)(1) administered by the Office shall develop and maintain procedures that meet the following requirements:

- (1) Solicit and respond in a timely and appropriate manner to reviews and proposals of citizens, particularly low-income persons, members of minority groups, and resident areas where activities are proposed. Applicants shall respond in writing to written citizen comments objecting to an application. The applicant shall consider written objections made only on the following grounds:
 - (a) The applicant's description of the needs, goals and objectives is plainly inconsistent with available facts and data.
 - (b) The activities to be, or being, undertaken are plainly inappropriate to meeting the needs, goals, and objectives identified by the applicant.
 - (c) The application does not comply with the requirements of this Chapter or other applicable laws and regulations.

Responses to the written objection shall be made within 10 calendar days of receipt of the citizen comment.

- (2) Provide technical assistance to facilitate citizen participation, where requested. The level and type shall be determined by the applicant.
- (3) Provide adequate notices of public hearings in a timely manner and in such a way as to make them accessible and understandable to all citizens. A notice of the public hearing shall be given once a week for two successive calendar weeks in the non-legal section of a newspaper having general circulation in the area. The notice shall be published the first time not less than 10 days nor more than 25 days before the date fixed for the hearing.
- (4) Schedule public hearings to obtain citizen views and to respond to citizen proposals at times and locations which permit broad participation, particularly by low income persons, members of minority groups, handicapped persons, and residents of project areas.
- (5) Conduct at least one public hearing at the initial stage of the planning process to allow citizens the opportunity to express views and proposals.
- (6) Publish a notice of intent to file an application, at least one time in the non-legal section of a newspaper, having general circulation in the area, no less than 10 calendar days prior to final approval by the recipient's governing

board. The notice shall specify the time and place the governing board shall meet to consider adopting a resolution (as required by Rule .0203(2)(b) of this Subchapter) to approve the application. The notice shall contain a description of the activities to be undertaken and the amount of funds requested in the application.

- (7) Persons wishing to object to the approval of an application by the ~~Office~~ Division of Social Services shall make such objection in writing. The ~~Office~~ Division of Social Services will consider objections made only on the following grounds:
 - (a) The applicant's description of the needs, goals, and objectives is plainly inconsistent with available facts and data.
 - (b) The activities to be undertaken are plainly inappropriate to meeting the needs, goals, and objectives identified by the applicant.
 - (c) The application does not comply with the requirements of this Chapter or other applicable laws and regulations.
- (8) All objections shall include both an identification of the requirements not met and, in the case of objections made on the grounds that the description of needs and objectives is plainly inconsistent with available facts and data, the data upon which the persons rely.

Authority G.S. 143B-153; 42 USC 9901.

10A NCAC 97B .0403 CITIZEN PARTICIPATION IN THE PROGRAM AMENDMENT PROCESS

- (a) Each grant recipient funded under 10A NCAC 97C .0108(a)(1) shall respond to citizen objections and comments in the same manner as in Rule .0402(1) of this Section.
- (b) Amendments which require prior ~~Office~~ Division of Social Services approval also may require a public hearing. After determination by the ~~Office~~ Division of Social Services that a public hearing is required, it shall be held in accordance with Rule .0402(3) and (4) of this Section.
- (c) The ~~Office~~ Division of Social Services may determine that a hearing is required if a program is substantially changed by:
 - (1) A new or amended state or federal statute or regulation requires a new provision, or conflicts with any existing plan provision;
 - (2) A court decision changes the interpretation of a statute or regulation;
 - (3) The grant recipient proposes to add, significantly modify, or delete any project.

Authority G.S. 143B-153; 42 USC 9901.

SUBCHAPTER 97C – COMMUNITY SERVICES BLOCK GRANT PROGRAM

SECTION .0100 – GENERAL PROVISIONS

10A NCAC 97C .0104 DEFINITIONS

For the purpose of this Subchapter, the following definitions apply:

- (1) Act. The Omnibus Budget Reconciliation Act of 1981, as amended, under which the Community Services Block Grant Program was established.
- (2) Community Action Agency (CAA). An agency officially designated and funded by the Community Services Administration in Federal Fiscal Year 1981 for the purpose of operating an anti-poverty project and which was funded by the Office in fiscal year 1985 to administer a Community Services Block Grant anti-poverty project or any agency designated as such by the Governor or his designee and determined to be eligible by the ~~Office~~ Office, currently within NC Division of Social Services.
- (3) Community Services Block Grant. The state administered Community Services Block Grant Program (CSBG).
- ~~(4) Limited Purpose Agency. An agency funded by the Community Services Administration in Federal Fiscal Year 1981 for the purpose of operating projects for a specific target population, such as senior citizens, or for a specific program area, such as economic development and which was funded by the Office in fiscal year 1982 to carry out similar specific and limited projects.~~
- ~~(4)(5)~~ Local Administering Agency. ~~An agency funded by the Office to carry out programs in a single or multi county area. Organizations that address the causes and effects of poverty in North Carolina. This includes Community Action Agencies and entities providing services related to capacity building activities, training and technical assistance, staff training and corrective actions.~~
- ~~(5)(6)~~ OCS. The Office of Community Services is established in the U.S. Department of Health and Human Services and is charged with the responsibility of administering the program.
- ~~(6)(7)~~ Persons in poverty. For the purpose of the allocation of CSBG fund, persons in poverty is defined as the number of persons who fall below the poverty threshold established by the Bureau of Census, U.S. Department of Commerce. The number of persons in poverty will be based on the most recent available census data. For the purpose of program eligibility, persons in poverty is defined as the persons who fall below the poverty guidelines

established by the Office of the U.S. Office of Management and Budget.

- (7)(8) Quarter. Each three months during the life of a grant agreement with a grant recipient.
- (8)(9) State Plan. The plan which sets forth how the State of North Carolina will use the funds allocated under ~~GCSBG~~ CSBG.

Authority G.S. 143B-153; 42 USC 9901.

10A NCAC 97C .0106 ELIGIBLE GRANT RECIPIENTS

Eligible grant recipients for CSBG funds include:

- (1) community action agencies as defined in (2) of Rule .0104 of this Section; in any geographic area of a state not presently served by an eligible entity, the Governor may decide to serve such a new area by:
 - (a) requesting an existing eligible entity which is located and provides services in an area contiguous to the new area to serve the new area;
 - (b) if ~~not~~ no existing eligible entity is located and provides services in an area contiguous to the new area, requesting the eligible entity located ~~elosest~~ closest to the area to be served or an existing eligible entity serving an area within reasonable proximity of the new area to provide services in the new area; or
 - (c) ~~where no existing eligible entity requested to serve the new area decides to do so,~~ designating any existing eligible entity, any organization which has a board meeting the requirements of ~~Section 675(e)(3)~~ 42 U.S.C. 9910 or any political suboffice of the state to serve the new area. The Governor's designation of an organization which has a board meeting the requirements of ~~Section 675(e)(3)~~ 42 U.S.C. 9910 or a political suboffice of the state to serve the new area shall qualify such organization as a eligible entity.
- (2) ~~organizations serving seasonal or migrant farmworkers; and organizations that address the causes and effects of poverty in North Carolina~~
- (3) ~~limited purposes agencies as defined in (6) of Rule .0104 of this Section.~~

Authority G.S. 143B-153; 42 USC 9910.

10A NCAC 97C .0108 ALLOCATION OF CSBG FUNDS

(a) Funds ~~allocated~~ available to North Carolina under the CSBG Program will be ~~used in~~ allocated ~~and in each subsequent federal fiscal year~~ as follows:

- (1) ~~No less than Ninety ninety percent of the funds to make grants to those allocated for contracting with~~ eligible grant recipients as defined in Rule ~~.0106 (a)~~ .0104(2) of this Section which are re-certified as eligible agencies each fiscal year by the ~~Office~~ Division of Social Services. The amount of the funds allocated to each eligible grant recipient shall be based on the following method of distribution:
 - (A) Funds shall be allocated based on the ratio (percentage) of persons in poverty in the county (counties) served by the eligible agency compared to the number of persons in poverty in the total area (counties) served by all eligible agencies.
 - (B) However, no eligible agency shall receive less ~~than~~ whichever is higher:
 - (i) An allocation of one hundred twenty thousand dollars (\$120,000), or
 - (ii) Eighty percent of the eligible agency's Federal Fiscal Year 1982 allocation, if the agency has maintained designation for all counties it was designated in Federal Fiscal Year 1982, whichever is higher.
- (2) Five percent of the funds will be used by the ~~Office~~ Division of Social Services for administration of the CSBG program.
- (3) The remaining five percent of the funds will be allocated in accordance with the current State CSBG Plan strategy which will be made publicly available. The Division of Social Services shall award no more than 40 percent of the total CSBG funds available under this allotment to a single Local Administering Agency as defined in Rule .0104 of this Section for activities that may include: to make grants in Federal Fiscal Year 1989 and in each subsequent federal fiscal year to those limited purpose agencies as defined in Rule .0104 of this Section and which are re-certified as eligible agencies each fiscal year by the Office. The Office shall allot to each eligible Limited Purpose Agency an amount of funds based on the percentage of the total CSBG funds the eligible agency received of those funds reserved for the limited purpose agencies and the North Carolina Commission of Indian Affairs in federal fiscal year 1986.
 - (A) providing training and technical assistance to those entities in need of such training and assistance;

- (B) coordinating State-operated programs and services, locally-operated programs and services, targeted to low-income children and families with services provided by eligible entities and other funded organizations, to ensure increased access to services provided by the State of North Carolina or local agencies;
- (C) supporting statewide coordination and communication among eligible entities;
- (D) analyzing the distribution of funds made available in this Rule to determine if such funds have been targeted to the areas of greatest need;
- (E) supporting asset-building programs for low-income individuals, such as programs supporting individual development accounts;
- (F) supporting innovative programs and activities conducted by community action agencies or other neighborhood-based organizations to eliminate poverty, promote self-sufficiency, and promote community revitalization;
- (G) supporting State charity tax credits; and
- (H) supporting other activities, consistent with the purposes of this Rule.

Any funds granted to Local Administering Agencies under this Rule shall be awarded through a prescribed selection process, to include a review body established by the Division of Social Services. Funds not awarded through the prescribed selection process will be distributed in accordance with Subparagraph (a)(1) of this Rule.

(b) ~~Beginning with federal fiscal year 1988 and effective for all subsequent fiscal years, eligible agencies will not be allowed to carry forward unearned funds at the end of a grant agreement to the succeeding grant agreement.~~ All unobligated funds must be returned to the Office Division of Social Services within 60 days after the termination of the grant agreement.

(c) Supplemental CSBG Grants. The preceding paragraphs of this Rule do not apply to the allocation of supplemental CSBG grants to North Carolina. Such allocations to eligible applicants for eligible activities will be made by the Office Division of Social Services in a manner not inconsistent with federal guidelines and conditions on supplemental appropriations. The Office Division of Social Services has the flexibility to determine the number of grants awarded and the manner in which grantee(s) are selected based upon the amount of the allocation and the intent of the applicable legislation and regulations.

(d) Any unexpended allotment of CSBG funds from ~~previous~~ a prior year's grants shall be allocated to ~~each~~ eligible entities in a

manner prescribed by the Division of Social Services ~~CSBG grant recipient~~ for the following purposes:

- (1) to assist in the implementation of special statewide initiatives, and
- (2) for one-time expenditures to enhance local programs.

~~Ninety percent of these funds will be distributed to Community Action Agencies based on the ratio of persons in poverty in the county or counties served by the Community Action Agency compared to the number of persons in poverty in the total area served by all eligible Community Action Agencies. Ten percent of these funds will be distributed to those Limited Purpose Agencies as defined in Rule .0104 of this Section on an equal basis.~~

Authority G.S. 143B-153; 42 USC 9907.

10A NCAC 97C .0109 REQUIREMENTS/GOVERNING BODIES OF PRIVATE GRANT RECIPIENTS

(a) Each ~~eligible private~~ grant recipient funded under Rule .0108(a)(1) of this Section must have a board of directors consisting of at least 15 members and not more than 51 members.

(b) The board of directors of private grant recipients funded under Rule .0108(a)(1) of this Section shall be constituted so as to assure that:

- (1) one-third of the members of the board are elected public officials, currently holding office, or their representatives, except that if the number of elected officials reasonably available and willing to serve is less than one-third of the membership of the board, membership on the board of appointive public officials may be counted in meeting such one-third requirement;
- (2) at least one-third of the members are persons chosen in accordance with democratic selection procedures adequate to assure that they are representative of the poor in the area served; and
- (3) the remainder of the members are officials or members of business, industry, labor, religious, welfare, education, or other major groups and interests in the community.

(c) All committees of the board of directors of private grant recipients shall fairly reflect the composition of the board.

(d) In addition to the general powers granted under its state charter, the board of directors of the private grant recipients must possess the following specific powers:

- (1) to appoint the executive director of the agency;
- (2) to determine major personnel, organization, fiscal, and program policies;
- (3) to determine overall program plans and priorities for the agency, including provisions for evaluating progress;
- (4) to make final approval of all program proposals and budgets;

- (5) to enforce compliance with all conditions of the ~~Office's~~ Division of Social Services grants; and
- (6) to oversee the extent and the quality of the participation of the poor in the program of the agency.

Authority G.S. 143B-153; 42 USC 9907; 42 USC 9910.

10A NCAC 97C .0111 CITIZEN PARTICIPATION

(a) Each grant recipient funded under Rule .0108(a)(1) of this Section is required to establish citizen participation policy and procedures. Grant recipients are required to hold public hearings to meet the requirements of Rule .0401(5) of Subchapter 97B only during the initial planning when a new multi-year plan is to be developed.

(b) The following special requirements on the Community Anti-Poverty Plan (application for CSBG funds) shall be ~~met~~ met by each grant recipient:

- (1) Community action agencies funded under Rule .0108(a)(1) of this Section shall meet the following requirements:
 - (A) Submit their Community Anti-Poverty Plan to their local board(s) of county commissioners in each county served by the agency for their review and comment prior to submission to the ~~Office.~~ Division of Social Services. County commissioners will be given 30 days to comment on the application.
 - (B) Hold one public hearing for review and comment in each county it serves prior to submission of the Community Anti-Poverty Plan to the ~~Office.~~ Division of Social Services.
- (2) ~~Limited purpose agencies shall meet the public review requirements by submitting a copy of their plan to the State Clearinghouse, Department of Administration for review. Any comments from the State Clearinghouse shall be submitted to the Office by the applicant within 10 working days of receipt of the Work Plan. Grant recipients funded under Rule .0108(a)(3) of this Section shall meet the public review requirements by submitting a copy of their plan to the review body established by the Division of Social Services.~~

(c) Each grant recipient is responsible for establishing special procedures to ensure that the poor are able to participate meaningfully in the decisions and activities of the grant recipient. These procedures shall include provisions for:

- (1) Advance notice of and the agenda (an outline of matters to be considered) for any board or committee meetings. These shall be provided individually to all members of the board and/or committees in writing at least five days before the meeting. In addition, notices should

be given to the local public media and posted in all the grant recipient's neighborhood and/or community centers.

- (2) Adequate information about standards of program effectiveness. This information shall be given to the representatives of the poor to permit them to plan for and evaluate agency programs and to set priorities for the use of funds and other resources. Evaluations of programs and their operation shall consider the views of the poor on the board, as well as the views of program participants and area residents.
- (3) Adequate information and training for board members about their functions, duties, and responsibilities and the issues which will come before them. This will permit board members to make the fullest possible contribution to the work of the board. In this connection, the by-laws of the agency shall be distributed and fully explained to members of the board.
- (4) Developing effective involvement of the poor in each major program. This involvement may be in the form of a program advisory committee or neighborhood council made up of target area residents. The committee and council may advise the grant recipient on program priorities, participate in the development of pertinent parts of the grant application, review and comment on programs and policies, and participate in the evaluation of programs.
- (5) The grant recipient in the planning process of its Anti-Poverty Plan, shall annually hold a sufficient number of meetings to ascertain from low-income residents their suggestions, recommendations, and priorities for eliminating poverty. The grant recipient shall provide adequate information and training to the low-income residents to ensure their effective and meaningful involvement in this planning process. The recommendations, suggestions, and priorities of the low-income residents will be reviewed by the board of directors in its determination of programs to be implemented by the grant recipient, and will be maintained by the grant recipient for public inspection.

Authority G.S. 143B-153; 42 USC 9901; 42 USC 9907.

TITLE 15A – DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

Notice is hereby given in accordance with G.S. 150B-21.2 that the Environmental Management Commission intends to amend the rule cited as 15A NCAC 02Q .0711.

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

Proposed Effective Date: March 1, 2015

Public Hearing:

Date: December 3, 2014

Time: 3:00 p.m.

Location: Training Room (#1210), DENR Green Square Office Building, 217 West Jones Street, Raleigh, NC 27603

Reason for Proposed Action: Rule amendments to the air toxics permitting requirements incorporating Session Law 2012-91 were approved in the March 2014 EMC meeting. One of the amendments was to Rule 15A NCAC 02Q .0711, Emission Rates Requiring a Permit, which added an additional set of toxic air pollutant permitting emission rates (TPER) that would apply to those situations where air pollutant emission release points at a given facility are non-obstructed and vertically oriented. Staff has identified clerical issues in the spreadsheet used to calculate the TPER values that was transferred into the table in Paragraph (b) of the rule. The rule is proposed to be revised to reflect the TPER values for three pollutants in the appropriate columns as follows. The value of 2.0 lb/hr for ethylene glycol monoethyl ether is to be reflected in the acute systemic column instead of the acute irritant column. For two pollutants the TPER values were inadvertently left out. The value of 31.59 lb/hr for methyl isobutyl ketone is to be reflected in the column for acute irritants and the value of 197.96 lb/day for toluene in the column for chronic toxicants. Rule 15A NCAC 02Q .0711 is proposed to be revised to update the TPERs in Paragraph (b) for these three toxic air pollutants.

Comments may be submitted to: Joelle Burleson, Division of Air Quality, 1641 Mail Service Center, Raleigh, NC 27699-1641, phone (919) 707-8720, fax (919) 707-8720, email daq.publiccomments@ncdenr.gov (please type Toxics Clerical Revisions in subject line)

Comment period ends: December 15, 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 02 – ENVIRONMENTAL MANAGEMENT

SUBCHAPTER 02Q – AIR QUALITY PERMITS PROCEDURES

SECTION .0700 – TOXIC AIR POLLUTANT PROCEDURES

15A NCAC 02Q .0711 EMISSION RATES REQUIRING A PERMIT

(a) A permit to emit toxic air pollutants is required for any facility where one or more emission release points are obstructed or non-vertically oriented whose actual rate of emissions from all sources are greater than any one of the following toxic air pollutant permitting emissions rates:

Pollutant (CAS Number)	Carcinogens lb/yr	Chronic Toxicants lb/day	Acute Systemic Toxicants lb/hr	Acute Irritants lb/hr
acetaldehyde (75-07-0)				6.8
acetic acid (64-19-7)				0.96
acrolein (107-02-8)				0.02
acrylonitrile (107-13-1)		0.4	0.22	
ammonia (7664-41-7)				0.68
aniline (62-53-3)			0.25	
arsenic and inorganic arsenic compounds	0.053			
asbestos (1332-21-4)	5.7 X 10 ⁻³			
aziridine (151-56-4)		0.13		
benzene (71-43-2)	8.1			

PROPOSED RULES

benzidine and salts (92-87-5)	0.0010			
benzo(a)pyrene (50-32-8)	2.2			
benzyl chloride (100-44-7)			0.13	
beryllium (7440-41-7)	0.28			
beryllium chloride (7787-47-5)	0.28			
beryllium fluoride (7787-49-7)	0.28			
beryllium nitrate (13597-99-4)	0.28			
bioavailable chromate pigments, as chromium (VI) equivalent	0.0056			
bis-chloromethyl ether (542-88-1)	0.025			
bromine (7726-95-6)				0.052
1,3-butadiene (106-99-0)	11			
cadmium (7440-43-9)	0.37			
cadmium acetate (543-90-8)	0.37			
cadmium bromide (7789-42-6)	0.37			
carbon disulfide (75-15-0)		3.9		
carbon tetrachloride (56-23-5)	460			
chlorine (7782-50-5)		0.79		0.23
chlorobenzene (108-90-7)		46		
chloroform (67-66-3)	290			
chloroprene (126-99-8)		9.2	0.89	
cresol (1319-77-3)			0.56	
p-dichlorobenzene (106-46-7)				16.8
dichlorodifluoromethane (75-71-8)		5200		
dichlorofluoromethane (75-43-4)		10		
di(2-ethylhexyl)phthalate (117-81-7)		0.63		
dimethyl sulfate (77-78-1)		0.063		
1,4-dioxane (123-91-1)		12		
epichlorohydrin (106-89-8)	5600			
ethyl acetate (141-78-6)			36	
ethylenediamine (107-15-3)		6.3	0.64	
ethylene dibromide (106-93-4)	27			
ethylene dichloride (107-06-2)	260			
ethylene glycol monoethyl ether (110-80-5)		2.5	0.48	
ethylene oxide (75-21-8)	1.8			
ethyl mercaptan (75-08-1)			0.025	
fluorides		0.34	0.064	
formaldehyde (50-00-0)				0.04
hexachlorocyclopentadiene (77-47-4)		0.013	0.0025	
hexachlorodibenzo-p-dioxin (57653- 85-7)	0.0051			
n-hexane (110-54-3)		23		
hexane isomers except n-hexane				92
hydrazine (302-01-2)		0.013		
hydrogen chloride (7647-01-0)				0.18
hydrogen cyanide (74-90-8)		2.9	0.28	
hydrogen fluoride (7664-39-3)		0.63		0.064
hydrogen sulfide (7783-06-4)		1.7		
maleic anhydride (108-31-6)		0.25	0.025	
manganese and compounds		0.63		
manganese cyclopentadienyl tricarbonyl (12079-65-1)		0.013		
manganese tetroxide (1317-35-7)		0.13		
mercury, alkyl		0.0013		
mercury, aryl and inorganic compounds		0.013		

PROPOSED RULES

mercury, vapor (7439-97-6)		0.013		
methyl chloroform (71-55-6)		250		64
methylene chloride (75-09-2)	1600		0.39	
methyl ethyl ketone (78-93-3)		78		22.4
methyl isobutyl ketone (108-10-1)		52		7.6
methyl mercaptan (74-93-1)			0.013	
nickel carbonyl (13463-39-3)		0.013		
nickel metal (7440-02-0)		0.13		
nickel, soluble compounds, as nickel		0.013		
nickel subsulfide (12035-72-2)	0.14			
nitric acid (7697-37-2)				0.256
nitrobenzene (98-95-3)		1.3	0.13	
n-nitrosodimethylamine (62-75-9)	3.4			
non-specific chromium (VI) compounds, as chromium (VI) equivalent	0.0056			
pentachlorophenol (87-86-5)		0.063	0.0064	
perchloroethylene (127-18-4)	13000			
phenol (108-95-2)			0.24	
phosgene (75-44-5)		0.052		
phosphine (7803-51-2)				0.032
polychlorinated biphenyls (1336-36-3)	5.6			
soluble chromate compounds, as chromium (VI) equivalent		0.013		
styrene (100-42-5)			2.7	
sulfuric acid (7664-93-9)		0.25	0.025	
tetrachlorodibenzo-p-dioxin (1746-01-6)	0.00020			
1,1,1,2-tetrachloro-2,2,-difluoroethane (76-11-9)		1100		
1,1,2,2-tetrachloro-1,2-difluoroethane (76-12-0)		1100		
1,1,2,2-tetrachloroethane (79-34-5)	430			
toluene (108-88-3)		98		14.4
toluene diisocyanate, 2,4-(584-84-9) and 2,6-(91-08-7) isomers		0.003		
trichloroethylene (79-01-6)	4000			
trichlorofluoromethane (75-69-4)			140	
1,1,2-trichloro-1,2,2-trifluoroethane (76-13-1)				240
vinyl chloride (75-01-4)	26			
vinylidene chloride (75-35-4)		2.5		
xylene (1330-20-7)		57		16.4

(b) A permit to emit toxic air pollutants is required for any facility where all emission release points are unobstructed and vertically oriented whose actual rate of emissions from all sources are greater than any one of the following toxic air pollutant permitting emissions rates:

Pollutant (CAS Number)	Carcinogens lb/yr	Chronic Toxicants lb/day	Acute Systemic Toxicants lb/hr	Acute Irritants lb/hr
acetaldehyde (75-07-0)				28.43
acetic acid (64-19-7)				3.90
acrolein (107-02-8)				0.08
acrylonitrile (107-13-1)		1.3	1.05	
ammonia (7664-41-7)				2.84
aniline (62-53-3)			1.05	
arsenic and inorganic arsenic compounds	0.194			

PROPOSED RULES

asbestos (1332-21-4)	7.748 x 10 ⁻³			
aziridine (151-56-4)		0.3		
benzene (71-43-2)	11.069			
benzidine and salts (92-87-5)	1.384 x 10 ⁻³			
benzo(a)pyrene (50-32-8)	3.044			
benzyl chloride (100-44-7)			0.53	
beryllium (7440-41-7)	0.378			
beryllium chloride (7787-47-5)	0.378			
beryllium fluoride (7787-49-7)	0.378			
beryllium nitrate (13597-99-4)	0.378			
bioavailable chromate pigments, as chromium (VI) equivalent	0.008			
bis-chloromethyl ether (542-88-1)	0.034			
bromine (7726-95-6)				0.21
1,3-butadiene (106-99-0)	40.585			
cadmium (7440-43-9)	0.507			
cadmium acetate (543-90-8)	0.507			
cadmium bromide (7789-42-6)	0.507			
carbon disulfide (75-15-0)		7.8		
carbon tetrachloride (56-23-5)	618.006			
chlorine (7782-50-5)		1.6		0.95
chlorobenzene (108-90-7)		92.7		
chloroform (67-66-3)	396.631			
chloroprene (126-99-8)		18.5	3.69	
cresol (1319-77-3)			2.32	
p-dichlorobenzene (106-46-7)				69.50
dichlorodifluoromethane (75-71-8)		10445.4		
dichlorofluoromethane (75-43-4)		21.1		
di(2-ethylhexyl)phthalate (117-81-7)		1.3		
dimethyl sulfate (77-78-1)		0.1		
1,4-dioxane (123-91-1)		23.6		
epichlorohydrin (106-89-8)	7655.891			
ethyl acetate (141-78-6)			147.41	
ethylenediamine (107-15-3)		12.6	2.63	
ethylene dibromide (106-93-4)	36.896			
ethylene dichloride (107-06-2)	350.511			
ethylene glycol monoethyl ether (110-80-5)		5.1	<u>2.00</u>	<u>2.00</u>
ethylene oxide (75-21-8)	2.490			
ethyl mercaptan (75-08-1)			0.11	
fluorides		0.7	0.26	
formaldehyde (50-00-0)				0.16
hexachlorocyclopentadiene (77-47-4)		2.5 x 10 ⁻²	0.01	
hexachlorodibenzo-p-dioxin (57653- 85-7)	0.007			
n-hexane (110-54-3)		46.3		
hexane isomers except n-hexane				379.07
hydrazine (302-01-2)		2.5 x 10 ⁻²		
hydrogen chloride (7647-01-0)				0.74
hydrogen cyanide (74-90-8)		5.9	1.16	
hydrogen fluoride (7664-39-3)		1.3		0.26
hydrogen sulfide (7783-06-4)		5.1		
maleic anhydride (108-31-6)		0.5	0.11	
manganese and compounds		1.3		
manganese cyclopentadienyl tricarbonyl (12079-65-1)		2.5 x 10 ⁻²		
manganese tetroxide (1317-35-7)		0.3		

PROPOSED RULES

mercury, alkyl		2.5×10^{-3}		
mercury, aryl and inorganic compounds		2.5×10^{-2}		
mercury, vapor (7439-97-6)		2.5×10^{-2}		
methyl chloroform (71-55-6)		505.4		257.98
methylene chloride (75-09-2)	2213.752		1.79	
methyl ethyl ketone (78-93-3)		155.8		93.19
methyl isobutyl ketone (108-10-1)		107.8		<u>31.59</u>
methyl mercaptan (74-93-1)			0.05	
nickel carbonyl (13463-39-3)		2.5×10^{-2}		
nickel metal (7440-02-0)		0.3		
nickel, soluble compounds, as nickel		2.5×10^{-2}		
nickel subsulfide (12035-72-2)	0.194			
nitric acid (7697-37-2)				1.05
nitrobenzene (98-95-3)		2.5	0.53	
n-nitrosodimethylamine (62-75-9)	4.612			
non-specific chromium (VI) compounds, as chromium (VI) equivalent	0.008			
pentachlorophenol (87-86-5)		0.1	0.03	
perchloroethylene (127-18-4)	17525.534			
phenol (108-95-2)			1.00	
phosgene (75-44-5)		0.1		
phosphine (7803-51-2)				0.14
polychlorinated biphenyls (1336-36-3)	7.656			
soluble chromate compounds, as chromium (VI) equivalent		2.6×10^{-2}		
styrene (100-42-5)			11.16	
sulfuric acid (7664-93-9)		0.5	0.11	
tetrachlorodibenzo-p-dioxin (1746-01-6)	2.767×10^{-4}			
1,1,1,2-tetrachloro-2,2-difluoroethane (76-11-9)		2190.2		
1,1,2,2-tetrachloro-1,2-difluoroethane (76-12-0)		2190.2		
1,1,2,2-tetrachloroethane (79-34-5)	581.110			
toluene (108-88-3)		<u>197.96</u>		58.97
toluene diisocyanate, 2,4-(584-84-9) and 2,6-(91-08-7) isomers		8.4×10^{-3}		
trichloroethylene (79-01-6)	5442.140			
trichlorofluoromethane (75-69-4)			589.66	
1,1,2-trichloro-1,2,2-trifluoroethane (76-13-1)				1000.32
vinyl chloride (75-01-4)	35.051			
vinylidene chloride (75-35-4)		5.1		
xylene (1330-20-7)		113.7		68.44

(c) For the following pollutants, the highest emissions occurring for any 15-minute period shall be multiplied by four and the product shall be compared to the value in Paragraph (a) or (b) as applicable. These pollutants are:

- (1) acetaldehyde (75-07-0);
- (2) acetic acid (64-19-7);
- (3) acrolein (107-02-8);
- (4) ammonia (7664-41-7);
- (5) bromine (7726-95-6);
- (6) chlorine (7782-50-5);
- (7) formaldehyde (50-00-0);
- (8) hydrogen chloride (7647-01-0);
- (9) hydrogen fluoride (7664-39-3); and
- (10) nitric acid (7697-37-2).

Authority G.S. 143-215.3(a)(1); 143-215-107; 143-215.108; 143B-282.

TITLE 20 – DEPARTMENT OF STATE TREASURER

Notice is hereby given in accordance with G.S. 150B-21.2 that the Department of State Treasurer intends to repeal the rules cited as 20 NCAC 01G .0101-.0109, .0201-.0204, .0207, .0301-.0307, .0401-.0409, .0501-.0508; 01H .0101-.0104, .0201-.0205, .0301-.0307, and .0401-.0402.

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

- ☐ OSBM certified on:
- ☒ RRC certified on: August 21, 2014
- ☐ Not Required

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

<https://www.nctreasurer.com/inside-the-department/OpenGovernment/proposed-rules/Pages/default.aspx>

Proposed Effective Date: February 1, 2015

Public Hearing:

Date: November 6, 2014

Time: 10:00 a.m.

Location: State Treasurer's Conference Room – First Floor (Dawson Conference Room), 325 N. Salisbury Street, Albemarle Building, Raleigh, NC 27603

Reason for Proposed Action: *The rules proposed for repeal are unnecessary, unduly burdensome, and/or inconsistent with the principles and requirements of G.S. 150B-19.1 and do not reflect the current state of investment management employed by*

the Department of State Treasurer Investment Management Division.

Comments may be submitted to: Ana-Laura Diaz, 325 N. Salisbury Street, Raleigh, NC 27603; phone (919) 807-3027; email Ana-Laura.Diaz@nctreasurer.com

Comment period ends: December 15, 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 01G - INVESTMENT PROGRAM

SECTION .0100 - GENERAL PROVISIONS

20 NCAC 01G .0101 DESCRIPTION OF THE PROGRAM

(a) ~~The Pooled Investment Program is established pursuant to G.S. 147-69.3 to provide a convenient means for investing temporarily idle cash balances and for investing moneys of specific trust funds in equities real estate, and in short term and long term fixed income securities.~~

(b) ~~There shall be separate investment funds for the following:~~

- (1) ~~Short Term Investments,~~
- (2) ~~Long Term Investments,~~
- (3) ~~Equity Investments,~~
- (4) ~~Real Estate Investments.~~

Authority G.S. 147-69.3.

20 NCAC 01G .0102 DEFINITIONS

~~The following words and phrases defined herein shall have the meanings indicated when used in this Subchapter, unless the context clearly requires another meaning:~~

- (1) ~~"Department" means the Department of State Treasurer.~~
- (2) ~~"Division" means the Division of Investment and Banking of the department.~~
- (3) ~~"Trust fund" means the funds listed in G.S. 147-169.2(a)(1) through (19), plus any other eligible entities specifically authorized by the Council of State to invest in one or more of the investment funds.~~
- (4) ~~"Investment fund" means an investment fund established under this Subchapter.~~
- (5) ~~"State" means the State of North Carolina.~~
- (6) ~~"Participant" means an entity with moneys invested in an investment fund.~~

Authority G.S. 147-69.3.

20 NCAC 01G .0103 PRINCIPLES OF ACCOUNTING AND VALUATION

~~The principles of accounting and valuation shall be those principles of accounting and valuation in general use by public pension funds, provided that exchanges of fixed income securities shall be accounted for as provided in Rule .0104 of~~

this Section. Specifically the following procedures are to be used:

- (1) ~~Net income shall be accrued on the full accrual basis of accounting.~~
- (2) ~~Unrealized appreciation and depreciation shall not be recognized in the books of account or financial statements.~~
- (3) ~~Fixed income securities shall be valued at amortized book value both for statement purposes and for calculation of the value of ownership units.~~
- (4) ~~Equity securities and real estate shall be valued at original book value for statement purposes and at current market value for calculation of the value of ownership units.~~
- (5) ~~Convertible fixed income securities held by the Equity Investment Fund shall be valued in the same manner as equity securities.~~
- (6) ~~Securities or other investments held which have become ineligible for purchase by the investment fund shall be valued at current market value for calculation of ownership units.~~
- (7) ~~Current market value shall equal the last trade shown on the Dow Jones Consolidated tape for the security on the last working day of the month. If the security is not sold on a recognized stock exchange or was not sold on the last day of the month, the current market price will be the average of the bid and ask prices for the day.~~

Authority G.S. 147-69.3.

20 NCAC 01G .0104 ACCOUNTING FOR EXCHANGES

- (a) ~~The sale of a fixed income security with a concurrent reinvestment of the proceeds of the sale in another fixed income security will be considered to be an incomplete transaction and accounted for as "exchange."~~
- (b) ~~An exchange shall be considered to be the disposition of one fixed income investment security and the reinvestment of the proceeds of that sale in an equal par value of another fixed income investment security with both transactions having the same trade date. Equal par value means that the difference in par value between the incoming and outgoing securities at the time the transaction is agreed to is less than or equal to one percent of the par value of the outgoing security(ies).~~
- (c) ~~All exchanges shall be considered to be incompleting transactions. Therefore the gain or loss on the disposition shall be accounted for as an adjustment to the cost value of the new fixed income investment.~~
- (d) ~~The adjustment to the cost value of the new fixed income investment shall be amortized over the remaining life of the new investment as an integral part of the amortization of its premium or discount.~~
- (e) ~~All other dispositions of a fixed income investment security shall be considered to be a completed transaction and the gain or~~

loss thereon shall be recognized as an adjustment to income for the fiscal period.

Authority G.S. 147-69.3.

20 NCAC 01G .0105 ALLOCATION OF MANAGEMENT COSTS

- (a) ~~Management costs directly applicable to an investment fund shall be allocated to that fund. All other investment management costs shall be allocated so that each investment fund bears its proportionate share of the costs. Proportionate share is defined as the same proportion of expenses as the book value of its investments bears to the book value of all investments of all investment funds. Provided that, since certain activities of investment management dealing with receipt and initial investment of the receipts are of value only to the short-term investment funds, each short-term investment fund's share of the management costs shall be proportionate to twice the book value of its assets.~~
- (b) ~~At the beginning of each calendar month, each investment fund shall deposit to the department upon request its share of the estimated management cost to be allocated for the month.~~
- (c) ~~At the end of each calendar quarter, the actual management costs for the quarter shall be calculated and the variance from estimated and paid expenses determined. If the actual costs are in excess of the estimated costs, each investment fund shall pay its pro rata share promptly to the department. If the actual costs are less than the costs estimated and paid, the amount to be paid by each investment fund in the subsequent period shall be reduced accordingly. Pro rata share shall mean that amount which bears the same ratio to its payments of estimated expenses for the quarter as the total variance bears to the total estimated payment for the quarter.~~
- (d) ~~The cost of clearing state warrants shall be allocated as a management cost so that each investment fund which is charged for warrants bears a proportionate share. Proportionate share is defined as the same proportion of costs that the total of warrants cleared and returned to the bank for the accounts of participants of the investment fund bears to the total of all warrants cleared and returned to the bank during the month.~~

Authority G.S. 147-69.3.

20 NCAC 01G .0106 CONSOLIDATION OF EXISTING INVESTMENTS OF PARTICIPANTS

- (a) ~~Existing portfolios of eligible fixed income securities of the new participants shall be pooled into a fixed income investment fund and each trust fund shall receive ownership units in proportion to the total of the book value of the investment securities pooled adjusted for accrued interest receivable and premiums and discounts to be amortized for the period ending on the day of the pooling. Eligible securities are securities which are permitted by G.S. 147-69.1(c) and 69.2(b)(2) through (5) and rated by a national rating agency "A" or better, as provided by law. The State Treasurer shall designate, on the day of consolidation, which securities shall be placed in which investment fund based on the investment objectives of each investment fund.~~

~~(b) Existing portfolios of eligible equity securities shall be pooled into the Equity Investment Fund and each trust fund shall receive ownership units in proportion to the total of the market value of the investment securities adjusted for accrued but unpaid dividends.~~

~~(c) At the time at which the Equity Investment Fund is actually established, each eligible retirement system shall purchase, in accordance with 20 NCAC 1G .0405, sufficient new or additional units of the Equity Investment Fund so that all eligible retirement systems will have the same proportions of its assets in equity securities as is required by 20 NCAC 1G .0401(a).~~

~~(d) The investment funds shall be established at the opening of business July 1, 1979.~~

Authority G.S. 147-69.3.

20 NCAC 01G .0107 MERGERS OF ADDITIONAL INVESTMENT PORTFOLIOS

~~(a) After the initial establishment of an investment fund, all transfers of investment securities to an investment fund either directly or indirectly through an existing participant shall be considered to be mergers. Mergers will not be effected unless the investment securities are eligible for inclusion in a specific investment fund and are valued at market in accordance with (b) of this Rule.~~

~~(b) Market price is the price at which the security sold in an arms length cash transaction during the preceding 10 working days, providing no event occurred during the time between sale and valuation which could be expected to materially affect the securities price. If no such market price is available, market price shall be the average of the appraised values of the security by three competent appraisers. One appraiser will be appointed by the State Treasurer and one by the former owner of the securities. If the appraisals vary by more than five percent of the smaller appraisal, a third appraiser will be appointed by the mutual agreement of the State Treasurer and the former owner.~~

~~(c) The eligible investment securities may be transferred to the investment fund by the former owner, at his option. Such securities shall be valued at market in accordance with (b) of this Rule and ownership units issued in proportion to the total such value of the eligible investment securities transferred.~~

Authority G.S. 147-69.3.

20 NCAC 01G .0108 LOANS BETWEEN INVESTMENT FUNDS

~~(a) Loans are permitted between investment funds provided that the lending fund is authorized to be a participant in the receiving fund.~~

~~(b) Loans shall be liquidated no later than the last day of the calendar month in which originally made.~~

~~(c) Interest shall be paid by the receiving fund to the lending fund in an amount equivalent to the amount of interest which would have been earned by a like amount for a like period if the money had been invested by the lending fund in the Short Term Fixed Income Investment Fund.~~

Authority G.S. 147-69.3.

20 NCAC 01G .0109 DELEGATION OF AUTHORITY

~~All acts required to be performed by the State Treasurer in Sections .0200 through .0400 of this Subchapter may also be performed by the Director of the Division of Investment and Banking. All actions so taken by the said director shall be as effective as though the State Treasurer himself had taken such action.~~

Authority G.S. 147-69.3.

SECTION .0200 - SHORT-TERM INVESTMENT FUNDS

20 NCAC 01G .0201 GENERAL

~~(a) A Short Term Investment Fund is established as a convenient means to invest idle cash balances for temporary periods and allocate investment income derived therefrom to the funds to which such income may by law be allocated.~~

~~(b) When used in this Section, the unmodified term "Investment Fund" shall mean a short term investment fund.~~

~~(c) The State Treasurer shall establish as many short term investment funds as he deems appropriate. When more than one short term investment fund is established, the State Treasurer shall designate which fund will be used by each eligible participant.~~

Authority G.S. 147-69.3.

20 NCAC 01G .0202 ELIGIBLE INVESTMENTS

~~Investments in a short term investment fund shall be made from among the securities eligible pursuant to G.S. 147-69.1(c) provided that savings certificates, certificates of deposit and any other savings account shall have a principal amount not less than one hundred thousand dollars (\$100,000) and shall have such maturities and interest rates as may be prescribed from time to time by the State Treasurer.~~

Authority G.S. 147-69.3.

20 NCAC 01G .0203 ELIGIBLE PARTICIPANTS

~~The following trust funds and other accounts are eligible to receive an allocation of interest earned in an investment fund, provided the funds are not commingled in the depository accounts with non-eligible funds:~~

- ~~(1) The General Fund of the State of North Carolina;~~
- ~~(2) The Highway Fund of the State of North Carolina;~~
- ~~(3) The trust funds enumerated in G.S. 147-69.2(a)(1) through (19);~~
- ~~(4) Auxiliary enterprise funds deposited pursuant to G.S. 116-36.3;~~
- ~~(5) Endowment funds of institutions of higher education deposited for investment by the State Treasurer;~~
- ~~(6) Unallocated federal revenue sharing entitlements received;~~
- ~~(7) Other investment funds;~~
- ~~(8) State Literary Fund;~~

- ~~(9) — N.C. Rural Rehabilitation Funds,~~
- ~~(10) — Rodman Trust Fund,~~
- ~~(11) — N.C. Warehouse System,~~
- ~~(12) — LEA Unemployment Benefit Fund,~~
- ~~(13) — Land Title Assurance Fund,~~
- ~~(14) — Absentee Assurance Fund,~~
- ~~(15) — Campaign Election Fund,~~
- ~~(16) — Inmate Work Release Funds,~~
- ~~(17) — N.C. Housing Finance Agency reserve funds,~~
- ~~(18) — Governmental units and public authorities as provided by law,~~
- ~~(19) — School administrative units as provided by law,~~
- ~~(20) — Community colleges as provided by law,~~
- ~~(21) — Local ABC Boards as provided by law.~~

Authority G.S. 147-69.3.

20 NCAC 01G .0204 ALLOCATION OF INCOME TO PARTICIPANTS

- ~~(a) — Income shall be calculated on the accrual basis of accounting. Net income is income less allocated expenses.~~
- ~~(b) — Each eligible participant shall receive a share of the net income of the investment fund equal to the same proportion of the income as the total of the average investable balances of all deposits with the State Treasurer to the credit of the participant bears to the total of the average investable balances of all participants.~~
- ~~(c) — Deposits with State Treasurer include budgetary code balances, disbursing account balances and other deposits directly to the State Treasurer. Investable balances shall equal the total balances on deposit times the ratio of average total investments divided by the average total net assets of the investment fund.~~
- ~~(d) — On and after June 30, 1984, allocated income shall be credited to the accounts of other investment funds as of the close of business on the last day of the month. Allocated income for all other participants of the Short Term Investment Fund shall be paid by credit to their account in lieu of cash payment on the first business day of the following month. Allocated income shall be credited to the participants of the Liquid Asset Fund as of the close of business on the day earned.~~

Authority G.S. 147-69.3.

20 NCAC 01G .0207 VOLUNTARY DEPOSITS FOR INVESTMENTS

- ~~(a) — Notwithstanding any other provision of this Section, the only participants permitted to voluntarily deposit funds in an investment pool in which the General Fund and Highway Fund are participants who are:~~
 - ~~(1) — State agencies, institutions, boards and commissions,~~
 - ~~(2) — State employees who have custody of public funds by virtue of their state position,~~
 - ~~(3) — Community colleges with the approval of their board of trustees, and~~
 - ~~(4) — School administrative units with the approval of the local board of education.~~

~~(b) — The director of the division may establish from time to time one or more short term investment funds for voluntary deposits for investment purposes when there is an established need demonstrated both in participation and in dollar volume. The director shall liquidate said funds when he determines that the need no longer exists.~~

~~(c) — All voluntary deposits for investment purposes shall be made by check drawn on a bank account of the depositing participant or as otherwise directed in writing by the director of the division.~~

~~(d) — Withdrawals from voluntary deposits shall be made by warrant drawn on the State Treasurer or as otherwise directed in writing by the director of the division. Persons, other than those enumerated in Paragraph (a) of this Rule, shall make their warrants payable to an official depository for deposit to the account(s) of the drawer.~~

Authority G.S. 147-69.3(b),(j).

SECTION .0300 - LONG-TERM INVESTMENT FUND

20 NCAC 01G .0301 GENERAL

- ~~(a) — The Long Term Investment Fund is established as a convenient means to invest the assets of trust funds which are not immediately required to meet expenditure needs and are therefore available for investment over longer periods of time.~~
- ~~(b) — When used in this Section, the unmodified term "Investment Fund" shall mean the Long Term Investment Fund.~~

Authority G.S. 147-69.3.

20 NCAC 01G .0302 ELIGIBLE INVESTMENTS

- ~~(a) — The investment fund may invest in any security which is eligible for investment pursuant to G.S. 147-69.1(c)(1) through (3) and G.S. 147-69.2(b)(2) through (5).~~
- ~~(b) — The investment fund may also participate as owner in the Short Term Fixed Income Investment Fund.~~

Authority G.S. 147-69.3.

20 NCAC 01G .0303 ELIGIBLE PARTICIPANTS

~~Participation in the investment fund is limited to trust funds and investment funds as defined in 20 NCAC 1G-.0102.~~

Authority G.S. 147-69.3.

20 NCAC 01G .0304 ALLOCATION OF INCOME TO PARTICIPANTS

~~Each month all income earned plus gains and losses realized less the investment fund's share of the expenses of investment management shall be distributed pro rata based on the number of ownership units owned by each participant. The income earned shall be transferred to the participants as additional ownership units in the investment fund. On and after June 30, 1984 the income shall be credited to the participant at the close of business on the last day of the month.~~

Authority G.S. 147-69.3.

20 NCAC 01G .0305 VALUATION OF OWNERSHIP UNITS

~~(a) Each month the ownership units in the investment fund shall be valued at book value on the last working day of the month. The value of each ownership unit shall be determined by dividing the total net assets as defined in (b) of this Rule by the total number of ownership units actually standing to the credit of all participants at the time of valuation. The valuation shall be determined before the purchase of new units and the sale of existing units to be effective that month.~~

~~(b) Total net assets is defined to include cash and its equivalent, investment securities at book value, interest income accrued and unpaid, other assets at the lower of cost or market less all accrued and other liabilities and the amount of income to be distributed for the month.~~

~~(c) Ownership units shall be rounded off to the third decimal place.~~

Authority G.S. 147-69.3.

20 NCAC 01G .0306 PURCHASE OF OWNERSHIP UNITS

~~(a) Participants shall purchase ownership units in the investment fund on the last day of a calendar month in amounts to be determined by the State Treasurer.~~

~~(b) Purchases shall be effective at the close of business on the last calendar day of the month. If the last day falls on a Saturday or a Sunday, the transactions will be effective on that date. All transactions shall be effected by a transfer of cash from the Short Term Investment Fund from balances previously deposited therein to the credit of the participant.~~

Authority G.S. 147-69.3.

20 NCAC 01G .0307 REDEMPTION OF OWNERSHIP UNITS

~~(a) Participants shall redeem ownership units in the investment fund on the last day of a calendar month in amounts to be determined by the State Treasurer.~~

~~(b) Redemptions shall be effective at the close of business on the last calendar day of the month. If the last day falls on a Saturday or a Sunday, the transactions will be effective on that date. All transactions will be effected by a transfer of cash to the Short Term Investment Fund to be deposited therein to the credit of the participant.~~

Authority G.S. 147-69.3.

SECTION .0400 - EQUITY INVESTMENT FUND

20 NCAC 01G .0401 GENERAL

~~(a) The Equity Investment Fund is established as a convenient means for all eligible retirement systems to investment in equity securities. After each set of transactions between the participating retirement systems and the Equity Investment Fund, each participating retirement system shall have approximately the same ratio of equity investment to total investment at the end of the next preceding month.~~

~~(b) When used in this Section, the unmodified term "Investment Fund" shall mean the Equity Investment Fund.~~

~~(c) Participation in the investment fund is a necessary precondition for participation by an eligible retirement system in the Long Term Fixed Income Investment Fund.~~

Authority G.S. 147-69.3.

20 NCAC 01G .0402 ELIGIBLE INVESTMENTS

~~(a) All common and preferred stock purchased shall meet the qualifications for investment established by G.S. 147-69.2(b)(6). All convertible fixed income securities shall meet the qualifications established in G.S. 147-69.2(b)(6)i.~~

~~(b) The following securities are eligible for purchase by the investment fund:~~

- ~~(1) common stock,~~
- ~~(2) preferred stock,~~
- ~~(3) securities convertible into common stock,~~
- ~~(4) ownership units of the other investment fund, and~~
- ~~(5) mutual fund shares as defined in G.S. 147-69.2(b)(6)h.4.~~

~~(c) The cash reserves of the investment fund may be temporarily invested in the Short Term Investment Fund or in securities eligible for purchase under G.S. 147-69.1(c).~~

Authority G.S. 147-69.3.

20 NCAC 01G .0403 ELIGIBLE PARTICIPANTS

~~Participation in the investment fund shall be limited to retirement systems which have specific authority to invest pursuant to G.S. 147-69.2(b)(6).~~

Authority G.S. 147-69.3.

20 NCAC 01G .0404 ALLOCATION OF INCOME TO PARTICIPANTS

~~Each month all income earned less the investment fund's share of the expenses of investment management shall be distributed pro rata based on the average number of ownership units owned by each participant. At June 30, and December 31 of each year, the net gains and losses realized since the last distribution shall be distributed on the basis of the average number of shares each participant owned during the period. On and after June 30, 1984, the income and gains or losses shall be credited to the participant at the close of business on the last day of the month.~~

Authority G.S. 147-69.3.

20 NCAC 01G .0405 VALUATION OF OWNERSHIP UNITS

~~(a) Each month the ownership units in the investment fund shall be valued at market price on the last working day of the month. The value of each ownership unit shall be determined by dividing the total net assets as defined in (b) of this Rule by the total number of ownership units actually standing to the credit of all participants at the time of valuation. The valuation shall be~~

determined before the purchase of new units and the sale of existing units to be effective that month.

(b) ~~Total net assets is defined to include cash and its equivalent, equity investment securities at current market price, other investment at book value, dividends and interest receivable adjusted for discounts and premiums, if any, the value of other investment funds owned at unit value times number of units owned, other assets (if any) at the lower of cost or market value, less all accrued and other liabilities, the amount of income to be distributed for the month, and the amount of undistributed realized gains and losses.~~

(c) ~~Ownership units shall be rounded off to the third decimal place.~~

Authority G.S. 147-69.3(j).

20 NCAC 01G .0406 PURCHASE OF OWNERSHIP UNITS

(a) ~~Participants shall purchase ownership units in the investment fund on the last day of a calendar month in which the State Treasurer, after consultation with the Equity Investment Committee, determines that the size of the Equity Investment Advisory Fund shall be increased.~~

(b) ~~Purchases shall be made in the nearest multiple of one thousand dollars (\$1,000) which will result in approximately the same ratio of book value of the ownership units of the equity investment fund to the total book value of its investment portfolio for all participants as of the end of the next preceding month.~~

(c) ~~Purchases shall be effective at the close of business on the last calendar day of the month. If the last day falls on a Saturday or Sunday, the transaction will be effective on that date. All transactions shall be affected by a transfer of cash from the Short Term Investment Fund from balances previously deposited therein to the credit of the participant.~~

Authority G.S. 147-69.3.

20 NCAC 01G .0407 REDEMPTION OF OWNERSHIP UNITS

(a) ~~Participants shall redeem ownership units in the investment fund on the last day of a calendar month in which the State Treasurer, after consultation with the Equity Investment Advisory Committee, determines that the size of the Equity Investment Advisory Fund shall be decreased.~~

(b) ~~Participants shall make such redemptions in the nearest multiple of one thousand dollars (\$1,000) which will result in approximately the same ratio of book value of the ownership units of the equity investment fund to the total book value of its investment portfolio for all participants as of the end of the next preceding month.~~

(c) ~~Redemptions shall be effective at the close of business on the last calendar day of the month. If the last day falls on a Saturday or a Sunday, the transaction will be effective on that date. All transactions shall be affected by a transfer of cash to the Short Term Investment Fund as balances to be deposited therein to the credit of the participant.~~

Authority G.S. 147-69.3.

20 NCAC 01G .0408 RESPONSIBILITY OF EQUITY INVESTMENT ADVISORY COMMITTEE

~~The equity investment advisory committee appointed pursuant to G.S. 147-69.2(e) shall meet no less often than twice in each year. The committee shall be responsible for establishing: lists of appropriate securities from which purchases may be made; the appropriate size of the Equity Investment Fund, both in terms of total dollars and in terms of a percentage of total portfolio not to exceed the statutory limit; the proportion of the equity investment fund to be invested in equity securities; and maximum size guidelines for investments in individual companies and in specific industries or groups of industries not to exceed the statutory limit. Within the established guidelines, all specific decisions shall be the sole responsibility of the State Treasurer.~~

Authority G.S. 147-69.3.

20 NCAC 01G .0409 REBALANCING OF OWNERSHIP

~~When twelve calendar months have passed without a purchase or redemption of ownership units, the State Treasurer shall rebalance the ownership in the investment fund in any manner he deems appropriate which is not inconsistent with this Section.~~

Authority G.S. 147-69.3.

SECTION .0500 - REAL ESTATE INVESTMENT FUND

20 NCAC 01G .0501 GENERAL

(a) ~~The Real Estate Investment Fund is established as a convenient means for all eligible retirement systems to investment in real estate. After each set of transactions between the participating retirement systems and the Real Estate Investment Fund, each participating retirement system shall have approximately the same ratio of real estate investment to total investment at the end of the next preceding month.~~

(b) ~~When used in this Section, the unmodified term "Investment Fund" shall mean the Real Estate Investment Fund.~~

(c) ~~Participation in the investment fund is a necessary precondition for participation by an eligible retirement system in the Long Term Fixed Income Investment Fund.~~

Authority G.S. 147-69.3(j).

20 NCAC 01G .0502 ELIGIBLE INVESTMENTS

~~Provided that the investments meet the requirements of G.S. 147-69.2 (5a), Real Estate Investments for the fund may be made in the following forms:~~

- ~~(1) Participations in individual or pooled separate accounts of insurance companies;~~
- ~~(2) Participations in group trusts;~~
- ~~(3) Participations in individual, common or collective trust funds of banks and trust companies; and~~
- ~~(4) Participations in real estate investment trusts.~~

Authority G.S. 147-69.3(j).

20 NCAC 01G .0503 ELIGIBLE PARTICIPANTS

~~Participation in the investment fund shall be limited to retirement systems which have specific authority to invest pursuant to G.S. 147-69.2(b)(6).~~

Authority G.S. 147-69.3(j).

20 NCAC 01G .0504 ALLOCATION OF INCOME TO PARTICIPANTS

~~At the end of each calendar quarter, all income and gains or losses earned less the investment fund's share of the expenses of investment management for the period shall be distributed pro rata based on the average number of ownership units owned by each participant. Distributions shall be made in ownership units to the credit of the participant at the close of business on the day of distribution.~~

Authority G.S. 147-69.3(j).

20 NCAC 01G .0505 VALUATION OF OWNERSHIP UNITS

~~(a) Each calendar quarter the ownership units in the fund shall be valued at market price on the last working day of the calendar quarter. The value of each ownership unit shall be determined by dividing the total net assets as defined in Paragraph (b) of this Rule by the total number of ownership units actually standing to the credit of all participants at the time of valuation. The valuation shall be determined before the purchase of new units and the sale of existing units to be effective that month.~~

~~(b) Total net assets is defined to include cash and its equivalent, real estate investment securities at current market price, other investments at book value, income receivable if any, the value of other investment funds owned at unit value times number of units owned, other assets (if any) at the lower of cost or market value, less all accrued and other liabilities, the amount of income to be distributed for the period, and the amount of undistributed realized gains and losses.~~

~~(c) Ownership units shall be rounded off to the third decimal place.~~

Authority G.S. 174-69.3(j).

20 NCAC 01G .0506 PURCHASE OF OWNERSHIP UNITS

~~(a) Participants shall purchase ownership units in the investment fund on the last day of a calendar quarter in which the State Treasurer determines that the size of the Real Estate Investment Fund shall be increased.~~

~~(b) Purchases shall be made in the nearest multiple of one thousand dollars (\$1,000) which will result in approximately the same ratio of book value of the ownership units of the real estate investment fund to the total book value of its investment portfolio for all participants as of the end of the next preceding month.~~

~~(c) Purchases shall be effective at the close of business on the last day of the calendar quarter. If the last day falls on a Saturday or Sunday, the transaction will be effective on that date. All transactions shall be affected by a transfer of cash from the Short Term Investment Fund from balances previously deposited therein to the credit of the participant.~~

Authority G.S. 147-69.3(j).

20 NCAC 01G .0507 REDEMPTION OF OWNERSHIP UNITS

~~(a) Participants shall redeem ownership units in the investment fund on the last day of a calendar quarter in which the State Treasurer determines that the size of the Real Estate Investment Fund shall be decreased.~~

~~(b) Participants shall make such redemptions in the nearest multiple of one thousand dollars (\$1,000) which will result in approximately the same ratio of book value of the ownership units of the real estate investment fund to the total book value of its investment portfolio for all participants as of the end of the next preceding month.~~

~~(c) Redemptions shall be effective at the close of business on the last day of the calendar quarter. If the last day falls on a Saturday or a Sunday, the transaction will be effective on that date. All transactions shall be affected by a transfer of cash to the Short Term Investment Fund as balances to be deposited therein to the credit of the participant.~~

Authority G.S. 147-69.3(j).

20 NCAC 01G .0508 REBALANCING OF OWNERSHIP

~~When four calendar quarters have passed without a purchase or redemption of ownership units, the State Treasurer shall rebalance the ownership in the investment fund in any manner he deems appropriate which is not inconsistent with this Section.~~

Authority G.S. 147-69.3.

**SUBCHAPTER 01H - MASTER TRUST FOR
SAFEKEEPING OF SECURITIES**

SECTION .0100 - GENERAL

20 NCAC 01H .0101 GENERAL INFORMATION

~~(a) This Subchapter sets forth the manner in which a bank or trust company shall be certified as a Master Trustee under G.S. 147-78.1.~~

~~(b) All correspondence to the State Treasurer under this Subchapter shall be addressed to:~~

~~Director, Investment and Banking Division
Department of State Treasurer
325 North Salisbury Street
Raleigh, North Carolina 27611.~~

Authority G.S. 147-78.1.

20 NCAC 01H .0102 DEFINITION OF TERMS

The words and phrases defined in this Rule will have the meanings indicated when used in this Chapter, unless the context clearly requires another meaning:

- (1) ~~"Trustee" means the financial institution selected by the State Treasurer pursuant to these Rules to operate the trust;~~
- (2) ~~"RFP" means request for proposal, which is the document that requests offers from prospective trustees and establishes the ground rules for those offers;~~
- (3) ~~"Deposit" means the cash or securities pledged to the State pursuant to this Subchapter;~~
- (4) ~~"Certification period" means the period in which the certification is effective pursuant to 20 NCAC 1H .0203;~~
- (5) ~~"Trust" means the master trust certified under this Subchapter;~~
- (6) ~~"Participant" means a person who is currently participating in the trust;~~
- (7) ~~"State" means the State of North Carolina;~~
- (8) ~~"Applicable agency" means the agency of the State responsible for administering the "good faith" deposits under the law controlling the deposit thereof; and~~
- (9) ~~"Income" means any interest or dividends received for or allotted to a participant on account of a deposit made in the trust.~~

Authority G.S. 147-78.1.

20 NCAC 01H .0103 MINIMUM STANDARDS

- (a) ~~The trustee shall be licensed in North Carolina to perform the business included in the final contract.~~
- (b) ~~The trust shall be established and operated in such a manner that no unjustifiable losses shall be chargeable to the participant and no costs or losses shall be chargeable to the State.~~
- (c) ~~The form and content of management fees shall be as stated in the RFP.~~
- (d) ~~The trust shall provide the following levels of service:~~
 - (1) ~~Safekeeping of participant-owned securities in the trustee's name and control for the benefit of the State and the participant, with income to be remitted as collected to participants not in default; and~~
 - (2) ~~A pooled investment fund so that participants may deposit cash in lieu of securities. Income declared for distribution shall be paid to participants not in default.~~
- (e) ~~Accounts for participants shall be maintained so that the deposits and the income accruing thereon for each participant shall be distinguished.~~
- (f) ~~It shall be the duty of the trustee to promptly invest any cash deposits or income required to be retained under 20 NCAC 1H .0401 in a common trust fund which may be invested in any security enumerated in G.S. 147-69.1(c).~~

(g) ~~Individual accounts with participants under the trust shall be accomplished by a trust document designed for this purpose and previously approved by the State Treasurer.~~

(h) ~~The trustee shall maintain at all times a place of deposit in Raleigh for cash or securities to be transferred by the applicable agency. This may be accomplished either through a branch or through a correspondent bank or trust company.~~

Authority G.S. 147-78.1.

20 NCAC 01H .0104 DELEGATION OF AUTHORITY

~~The Director of the Investment and Banking Division of the Department of State Treasurer shall be empowered to act on behalf of the State Treasurer in carrying out these Rules.~~

Authority G.S. 147-78.1.

SECTION .0200 - CERTIFICATION OF MASTER TRUST

20 NCAC 01H .0201 REQUIREMENTS FOR THE RFP

- (a) ~~The RFP shall contain all of the requirements that must be met by a trustee before certification can be granted.~~
- (b) ~~The RFP issued by the State Treasurer shall require at least the following information:~~
 - (1) ~~Experience, capability and financial ability of the applicant to provide master trustee services;~~
 - (2) ~~Services and options that will be offered to participants;~~
 - (3) ~~Systems of accounting and reporting to the participants, to the State Treasurer and to the applicable agency;~~
 - (4) ~~A plan for implementation of the trust;~~
 - (5) ~~Audit and insurance needs of the trust; and~~
 - (6) ~~A detailed breakdown of all costs to be borne by the participants.~~

Authority G.S. 147-78.1.

20 NCAC 01H .0202 ISSUANCE OF THE RFP

- (a) ~~The State Treasurer shall give notice of the intent to issue the RFP by any method or methods reasonably designed to inform potential bidders of the scheduled issuance of said RFP.~~
- (b) ~~Once the RFP is issued, a reasonable period shall be granted to submit written questions to be answered in writing to all parties receiving an RFP, or at an offerors' conference.~~
- (c) ~~Offers will be made in two parts; technical requirements in one proposal and a separate cost proposal.~~
- (d) ~~The offeror submitting the best technical proposal at the least relative cost in the opinion of the State Treasurer shall be selected as master trustee, but the State Treasurer shall have the right to reject all bids if this is deemed to be in the best interest of the participants.~~
- (e) ~~Where two or more proposals have no significant dissimilarities, the State Treasurer may use other factors of record to make a selection, including prior experience of a trustee with the trust established by these Rules. The State~~

~~Treasurer may require additional information from these applicants when deemed appropriate.~~

~~(f) The State Treasurer may choose not to issue an RFP at the end of a trustee's certification period when he finds that not doing so is in the best interests of the participants and potential participants.~~

Authority G.S. 147-78.1.

**20 NCAC 01H .0203 CONTRACT PERIOD:
TERMINATION OF TRUSTEE**

~~(a) The contract period shall be five years. Said period shall begin running on the estimated start up date of the trust as stated in the offeror's proposal and shall end at 12:01 a.m. on the day after the five years conclude.~~

~~(b) The State Treasurer may extend the contract period for one or more months, not exceeding a total of twelve months, when, in his sole discretion, he deems it in the best interest of the participants or in the interest of equity.~~

~~(c) In the event of termination of the contract for any reason, the State Treasurer may require the transfer of the securities, or, with the approval of the participant their cash value at market, in the trust to a newly certified trust or to the State Treasurer.~~

Authority G.S. 147-78.1.

20 NCAC 01H .0204 TERMINATION FOR CAUSE

~~(a) If in the opinion of the State Treasurer, there is a danger to the interest of the participants or if any rules of the State Treasurer have been violated, the State Treasurer shall have the right to decertify the trustee temporarily or permanently. No later than 10 days after receipt of the notification, the trustee may request a contested case hearing, but the order shall remain in full force and effect until final resolution of the contested case.~~

~~(b) If the trust is terminated, the State Treasurer shall issue a new RFP in accordance with these Rules within 60 days.~~

Authority G.S. 147-78.1.

20 NCAC 01H .0205 AVAILABILITY OF RECORDS

~~The State Treasurer and the State Auditor shall have access to all documents of the trust and of the individual trusts established pursuant thereto, shall be able to make any examinations they deem necessary to insure the safety of the trust, and shall have the right to copies of all trust documents at the expense of the trustee.~~

Authority G.S. 147-78.1.

SECTION .0300 - OPERATION OF MASTER TRUST

**20 NCAC 01H .0301 ESTABLISHMENT OF
INDIVIDUAL ACCOUNTS**

~~Each eligible participant shall request permission of the applicable agency pursuant to the duly adopted rules of the applicable agency to establish an individual account. If the request states a proper purpose for the account, the applicable~~

~~agency shall approve the request and send the request to the master trustee for action. The trustee shall use the agreement approved by the State Treasurer for this purpose. Until the individual account is established no deposits may be made.~~

Authority G.S. 147-78.1.

**20 NCAC 01H .0302 ELIGIBLE SECURITIES: CASH
DEPOSITS**

~~(a) Securities may not be deposited unless authorized by law or the rules of the applicable agency.~~

~~(b) Cash may not be deposited in lien of securities where prohibited by law or the rules of the applicable agency.~~

Authority G.S. 147-78.1.

**20 NCAC 01H .0303 DEPOSIT OF CASH OR
SECURITIES**

~~When a participant intends to make a deposit to the individual account, the participant shall notify the applicable agency of its intent pursuant to the duly adopted rules of the applicable agency. If the amounts and securities are satisfactory, the applicable agency shall notify the participant and the master trustee that the deposit is approved. The cash and securities may be transferred from the participant to the master trustee by any means mutually agreeable to them. Upon receipt of the deposit, the master trustee shall notify the applicable agency as provided under the trust agreement.~~

Authority G.S. 147-78.1.

**20 NCAC 01H .0304 SUBSTITUTION OF
SECURITIES**

~~(a) The participant may substitute cash or securities, for existing cash or securities deposited without prior approval of the applicable agency when substitution is provided by, and in strict accordance with the rules of the applicable agency. The trustee shall immediately notify the applicable agency of the substitution.~~

~~(b) All other substitutions may be made only after the express approval of the applicable agency as provided in the duly adopted rules of the applicable agency. Upon receipt of the substituted collateral, the trustee shall immediately notify the applicable agency of the substitution.~~

Authority G.S. 147-78.1.

20 NCAC 01H .0305 REQUIRED REPORTING

~~(a) The trustee shall provide at a minimum the following reports:~~

- ~~(1) Confirmation to the applicable agency of all deposits, withdrawals or substitutions of cash or securities.~~
- ~~(2) A monthly report to the applicable agency showing at a minimum the CUSIP No., common name, par value and market value of all securities held and the amount of all cash deposits held for each and every participant,~~

~~and the total amount of fees charged to the participant for the month. At the end of each June and December, a copy of the monthly report shall also be sent to the State Treasurer.~~

- ~~(3) A monthly report to each participant summarizing the beginning and ending balances for the month and all transactions for the month.~~

~~All reports shall be transmitted within a reasonable time after date of the report.~~

~~(b) Upon demand by the Head of the applicable agency, the trustee shall provide a detailed statement of account since the beginning of the current month. This shall be delivered within 3 days of the receipt of the request by the trustee.~~

Authority G.S. 147-78.1.

20 NCAC 01H .0306 WITHDRAWAL OF CASH OR SECURITIES

~~No deposit may be withdrawn from an individual account without the express written approval of the applicable agency. The trustee may pay income to a participant not currently in default in accordance with the provisions of the trust.~~

Authority G.S. 147-78.1.

20 NCAC 01H .0307 FEES

~~All fees for services as trustees shall be collected directly from the depositor of an individual account as provided in the master trust agreement.~~

Authority G.S. 147-78.1.

SECTION .0400 - DEFAULT BY DEPOSITOR

20 NCAC 01H .0401 NOTIFICATION OF DEFAULT

~~(a) When, pursuant to the duly adopted rules of the applicable agency, the trustee has received notification of the default, the trustee shall:~~

- ~~(1) Hold as cash deposits all income then payable or later received on the cash and securities deposited under the master trust;~~
- ~~(2) Hold the proceeds of all maturing securities as cash deposits under the trust;~~
- ~~(3) Cease to effect any substitutions of securities without the express written consent of the applicable agency; and~~
- ~~(4) When specifically instructed to do so by the applicable agency, sell any securities which no longer qualify for deposit and after deducting its fees in accordance with the trust, hold the net proceeds as cash deposits under the trust.~~

~~(b) When, pursuant to the duly adopted rules of the applicable agency, the trustee has received notification of the cancellation of the notification of default, the trust shall resume normal operations with regard to the individual trust on future income and substitutions of collateral but all moneys transferred to cash deposits pursuant to Paragraph (a) of this Rule, shall continue to~~

~~be treated as deposits until otherwise authorized by the applicable agency under Rule 20 NCAC 1H .0305.~~

Authority G.S. 147-78.1.

20 NCAC 01H .0402 SALE OF SECURITIES AFTER DEFAULT

~~When, pursuant to the duly adopted rules of the applicable agency, the trust has received a request for delivery of cash from the deposit in excess of the amount of cash deposited, the trustee shall sell as much of the securities as are needed to provide the total amount of cash necessary. The trustee may consult with the participant about the securities to be sold. The trustee may sell, at his sole discretion, all or part of any specific issue of securities to be sold.~~

Authority G.S. 147-78.1.

TITLE 21 – OCCUPATIONAL LICENSING BOARDS AND COMMISSIONS

CHAPTER 60 – BOARD OF REFRIGERATION EXAMINERS

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC State Board of Refrigeration Examiners intends to adopt the rule cited as 21 NCAC 60 .0214.

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.refrigerationboard.org

Proposed Effective Date: *February 1, 2015*

Public Hearing:

Date: *October 31, 2014*

Time: *2:00 p.m.*

Location: *889 US 70 Highway W., Garner, NC 27529*

Reason for Proposed Action: *This rule is proposed for adoption to comply with G.S. 93B-15.1 in setting out the procedure and requirements for application for licensure by a military trained applicant or military spouse.*

Comments may be submitted to: *Barbara Hines, 889 US 70 Highway W., Garner, NC 27529; phone (919) 779-4711; fax (919) 779-4733; email refrigeration14@gmail.com*

Comment period ends: *December 15, 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 .0200 – EXAMINATIONS

21 NCAC 60 .0214 LICENSURE FOR MILITARY-TRAINED APPLICANT; LICENSURE FOR MILITARY SPOUSE

(a) Licensure for a military-trained applicant. Upon receipt of a request for licensure pursuant to G.S. 93B-15.1 from a military-trained applicant, the Board shall issue a license to the applicant who satisfies the following conditions:

- (1) submission of a complete Application for License to Practice Refrigeration Contracting;

- (2) submission of a license fee in accordance with G.S. 87-58;
- (3) providing documentation to satisfy conditions set out in G.S. 93B-15.1(a)(1) and (2); and
- (4) providing documentation that the applicant has not committed any act in any jurisdiction that would constitute grounds for refusal, suspension, or revocation of a license in North Carolina at the time the act was committed.

(b) Licensure for a military spouse. Upon receipt of a request for licensure pursuant to G.S. 93B-15.1 from a military spouse, the Board shall issue a license to the applicant who satisfies the following conditions:

- (1) submission of a complete Application for License to Practice Refrigeration Contracting;
- (2) submission of a license fee in accordance with G.S. 87-58;
- (3) submission of written documentation demonstrating that the applicant is married to an active member of the U.S. military;
- (4) providing documentation to satisfy conditions set out in G.S. 93B-15.1(b)(1) and (2);
- (5) providing documentation that the applicant has not committed any act in any jurisdiction that would constitute grounds for refusal, suspension, or revocation of a license in North Carolina at the time the act was committed; and
- (6) is in good standing and has not been disciplined by the agency that had jurisdiction to issue the license, certification, or permit.

Authority G.S. 87-59B; 93B-15.1.

This Section contains information for the meeting of the Rules Review Commission on September 18, 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)
Stephanie Simpson (2nd Vice Chair)
Jeanette Doran
Ralph A. Walker
Anna Baird Choi

COMMISSION COUNSEL

Abigail Hammond	(919)431-3076
Amber Cronk May	(919)431-3074
Amanda Reeder	(919)431-3079

RULES REVIEW COMMISSION MEETING DATES

November 20, 2014	December 18, 2014
January 15, 2015	February 19, 2015

**RULES REVIEW COMMISSION MEETING
MINUTES**

September 18, 2014

The Rules Review Commission met on Thursday, September 18, 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, Jay Hemphill, Jeff Hyde, Stephanie Simpson, Ralph Walker, and Faylene Whitaker.

Staff members present were: Commission counsels Abigail Hammond, Amber Cronk May, and Amanda Reeder; and Julie Brincefield, Alex Burgos, and Dana Vojtko.

The meeting was called to order at 10:01 a.m. with Chairman Currin presiding.

Chairman Currin 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.

Commissioner Walker introduced Chief Justice Mark Martin of the North Carolina Supreme Court.

Chief Justice Martin addressed the Commission.

Chairman Currin introduced Campbell Law School student Teagan Humphries.

APPROVAL OF MINUTES

Chairman Currin asked for any discussion, comments, or corrections concerning the minutes of the August 21, 2014 meeting. There were none and the minutes were approved as distributed.

FOLLOW-UP MATTERS

Department of Public Safety – 14B NCAC 07A .0116. The rule was unanimously approved.

Dental Examiners, Board of – 21 NCAC 16D .0104, .0106; 16E 0103, .0104.

The agency did not respond in accordance with G.S. 150B-21.12. Therefore, there was no action for the Commission to take at the meeting.

LOG OF FILINGS (PERMANENT RULES)

Office of the Commissioner of Banks

All rules were unanimously approved.

State Board of Elections

All rules were unanimously approved.

Commissioner of Insurance

All rules were unanimously approved.

Coastal Resources Commission

All rules were unanimously approved.

Department of Transportation

All rules were unanimously approved.

Board of Podiatry Examiners

All rules were unanimously approved.

Respiratory Care Board

All rules were unanimously approved.

TEMPORARY RULES

Building Code Council

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

Brandon Truman, with the Attorney General's office on behalf of the agency, addressed the Commission.

Dan Tingen and Barry Gupton with the agency addressed the Commission.

Robert Privott of the North Carolina Home Builders Association addressed the Commission.

Mitchell Armbruster of the Smith Anderson Law Firm addressed the Commission.

The Commission declined to approve the temporary rules in accordance with G.S. 150B-21.1(b). The Commission found the Building Code Council did not meet the requirements for temporary rules as set forth in G.S. 150B-21.1(a), as the Council failed to state a serious and unforeseen threat to the public health, safety, or welfare in its statement of the Findings of Need.

In addition, the Rules Review Commission objected to the proposed temporary rules in the Energy Conservation Code, Tables 402.1.1, 402.1.3, and Rules 402.3.5 and 402.5, as well as the Residential Code, Tables N1102.1, N1102.1.2, and Rules N1102.3.5 and N1102.5 based upon ambiguity. The Commission found the language allowing a permit holder to deviate from the standards based upon safety concerns of the specific individual without any guidance in the rules did not set clear standards in those Codes.

Pursuant to G.S. 150B-21.1(b2) and at the request of the Council, the rules were returned to the Council on September 22, 2014.

EXISTING RULES REVIEW

Seafood Industrial Park Authority

The agency did not conduct the review and all rules contained in the report expired on September 18, 2014 pursuant to G.S. 150B-21.3A(d). No action was required by the Commission.

Department of Environment and Natural Resources

15A NCAC 01A – The Commission unanimously approved the report as submitted by the agency.

15A NCAC 01S – The Commission unanimously approved the report as submitted by the agency.

Secretary of State

18 NCAC 03 – The Commission unanimously approved the report as submitted by the agency.

18 NCAC 05 – The Commission unanimously approved the report as submitted by the agency.

Ann Wall with the agency addressed the Commission.

Acupuncture Licensing Board

The Commission unanimously approved the report as submitted by the agency.

Board of Massage and Bodywork Therapy

The Commission approved the report as submitted by the agency, with Commissioner Dunklin opposed.

Board of Optometry

The Commission rescheduled the review of this report to March 2015 at its August 2014 meeting. Therefore, there was no action for the Commission to take at the meeting.

Examiners of Fee-Based Practicing Pastoral Counselors

The Board requested a waiver of Rules 26 NCAC 05 .0203 and .0211.

The Commission approved the waiver request, with Commissioners Doran and Hyde opposed.

John Arey and Lee Dukes with the agency addressed the Commission.

The Commission rescheduled the date of review for the report pursuant to Rule 26 NCAC 05 .0204. The Commission will review the Board's report at its February 2016 meeting.

Department of Commerce

As this report was not scheduled for review at the September meeting, it was reviewed at the end of the regularly scheduled business.

The Board requested a waiver of Rule 26 NCACC 05 .0203 for a six day extension to the filing deadline of the report for review at the October 2014 meeting.

The Commission approved the waiver, with Commissioner Dunklin and Commissioner Doran opposed.

COMMISSION BUSINESS

The Commission discussed holding a special meeting in December in order to consider the proposed rules of the Mining and Energy Commission.

The meeting adjourned at 12:31 p.m.

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

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

Respectfully Submitted,

Alexander Burgos
Paralegal

September
2014

Rules Review Commission
Meeting
Please **Print** Legibly

Name	Agency
MITCHAMBAKUSIK	ACS Temp
Teagan Humphries	Campbell Law Student
BARRY GLETON	NCDOT - NCBCC
Ann Christian	NCALB
Margaret McDonald	NCDPS
Ann Wall	NCSOS
Andrew Kingoff	NCALB
JOHN ARRY	NCBFBPC
Lee Dukes	NCFBPPC
Dave Home	Smith Anderson
Bob Potter	NCDOT
JEFF INKS	WOMA
ROBERT PRINCE	NCHSA
DAN TINGEN	NCBCC
Joan Troy	SBOE
GEORGE MCCUE	SBOE
Karen Waddell	NCDOT
Beth Blackwell	NCDOT
Vicki Martin	TRPWC
Lisa Martin	Nc Home Builders Assn.
Loree Christopher	NCCOB

Sept. 2014

Rules Review Commission
Meeting
Please Print Legibly

Name	Agency
Roné Campbell	NCCOB
STEVEN WEBB	NCHBA
Carlin Bakerwell	NCSBDE
Neal Galehouse	NCDOT
Brank Tranan	DOJ
Christina Ryan	DOC
Paola Leary	NCAAB
Will Smith	NCDOT
Jennifer Everett	NADENR
Pepper DePas	NC Bd Podiatry Exam.
Aileen Landi	NCDOT
Ebony Pittman	NCDOT / AGO
Lee Dukes	NCEFBPPC
JOHN ARBY	NCEFBPPC
ROBERT FRIVOTT	NCHBA

**LIST OF APPROVED PERMANENT RULES
September 18, 2014 Meeting**

BANKS, OFFICE OF THE COMMISSIONER OF

<u>Application</u>	04	NCAC 03C .0101
<u>Examination by Commissioner</u>	04	NCAC 03C .0102
<u>Report to Banking Commission</u>	04	NCAC 03C .0103
<u>Review by Banking Commission</u>	04	NCAC 03C .0104
<u>Bank Certificate</u>	04	NCAC 03C .0107
<u>National Bank Conversion</u>	04	NCAC 03C .0111
<u>Elimination of Director Liability</u>	04	NCAC 03C .0112
<u>Establishment of Branches</u>	04	NCAC 03C .0201
<u>Investigation</u>	04	NCAC 03C .0403
<u>Order</u>	04	NCAC 03C .0404
<u>Review by the Banking Commission</u>	04	NCAC 03C .0405
<u>Waiver by Commissioner</u>	04	NCAC 03C .0407
<u>Books and Records</u>	04	NCAC 03C .0901
<u>Required Accounts</u>	04	NCAC 03C .0902
<u>Retention: Reproduction and Disposition of Bank Records</u>	04	NCAC 03C .0903
<u>Letters of Credit</u>	04	NCAC 03C .0904
<u>Investment Authority</u>	04	NCAC 03C .0905
<u>Loan Documentation</u>	04	NCAC 03C .1001
<u>Leasing of Personal Property</u>	04	NCAC 03C .1002
<u>Basis for Computation and Maintenance</u>	04	NCAC 03C .1402
<u>Fees, Copies and Publication Costs</u>	04	NCAC 03C .1601
<u>Establishment of a Non-Branch Banking Business Office (NBBO)</u>	04	NCAC 03C .1702
<u>Establishment of Courier Services</u>	04	NCAC 03C .1801
<u>Compliance and Disclosure Requirements</u>	04	NCAC 03C .1802

ELECTIONS, STATE BOARD OF

<u>Instruction for Filing a Petition for Rule-making</u>	08	NCAC 15 .0101
<u>Declaratory Rulings: Availability</u>	08	NCAC 15 .0102
<u>Multipartisan Assistance Teams</u>	08	NCAC 16 .0101
<u>Team Members</u>	08	NCAC 16 .0102
<u>Training and Certification of Team Members</u>	08	NCAC 16 .0103
<u>Visits by Multipartisan Assistance Teams</u>	08	NCAC 16 .0104
<u>Removal of Team Members</u>	08	NCAC 16 .0105

INSURANCE, COMMISSIONER OF

<u>Approval of Courses</u>	11	NCAC 06A .0809
<u>Definitions</u>	11	NCAC 11F .0501
<u>Individual Annuity or Pure Endowment Contracts</u>	11	NCAC 11F .0502
<u>Group Annuity or Pure Endowment Contracts</u>	11	NCAC 11F .0503
<u>Application of the 1994 GAR Table</u>	11	NCAC 11F .0504
<u>Model Rule for Recognizing a New Annuity Mortality Table ...</u>	11	NCAC 11F .0505

PUBLIC SAFETY, DEPARTMENT OFRotation Wrecker Service Regulations

14B NCAC 07A .0116

COASTAL RESOURCES COMMISSIONPurpose

15A NCAC 07H .2601

Approval Procedures

15A NCAC 07H .2602

General Conditions

15A NCAC 07H .2604

Specific Conditions

15A NCAC 07H .2605

TRANSPORTATION, DEPARTMENT OFEligibility for Program

19A NCAC 02E .0219

Solicitation and Award of Contract

19A NCAC 02E .0702

Prequalifying to Award - Professional Services Firms

19A NCAC 02E .0703

PODIATRY EXAMINERS, BOARD OFTemporary License for Clinical Residency/Fellowship

21 NCAC 52 .0213

Forms and Applications

21 NCAC 52 .0611

RESPIRATORY CARE BOARDBoard Office

21 NCAC 61 .0102

**RRC DETERMINATION
PERIODIC RULE REVIEW
Necessary without Substantive Public Interest
September 18, 2014**

Environment and Natural Resources, Department of

15A NCAC 01A .0102

15A NCAC 01S .0101

Secretary of State, Department of the

18 NCAC 05B .0102

18 NCAC 05B .0103

18 NCAC 05B .0105

18 NCAC 05B .0106

18 NCAC 05B .0107

18 NCAC 05B .0108

18 NCAC 05B .0201

18 NCAC 05B .0202

18 NCAC 05B .0203

18 NCAC 05B .0204

18 NCAC 05B .0205

18 NCAC 05B .0206

18 NCAC 05B .0207

18 NCAC 05B .0301

18 NCAC 05B .0302

18 NCAC 05B .0303

18 NCAC 05B .0304
18 NCAC 05B .0305
18 NCAC 05B .0306
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18 NCAC 05B .0308
18 NCAC 05B .0309
18 NCAC 05B .0310
18 NCAC 05B .0311
18 NCAC 05B .0312
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18 NCAC 05B .0504
18 NCAC 05B .0505
18 NCAC 05B .0601
18 NCAC 05B .0602
18 NCAC 05B .0603

Acupuncture Licensing Board

21 NCAC 01 .0101
21 NCAC 01 .0102
21 NCAC 01 .0103
21 NCAC 01 .0105
21 NCAC 01 .0106
21 NCAC 01 .0107
21 NCAC 01 .0202
21 NCAC 01 .0401
21 NCAC 01 .0501
21 NCAC 01 .0701
21 NCAC 01 .0702
21 NCAC 01 .0703
21 NCAC 01 .0704
21 NCAC 01 .0705
21 NCAC 01 .0706
21 NCAC 01 .0707
21 NCAC 01 .0709
21 NCAC 01 .0710
21 NCAC 01 .0711

Massage and Bodywork Therapy, Board of

21 NCAC 30 .0101
21 NCAC 30 .0102
21 NCAC 30 .0202
21 NCAC 30 .0203
21 NCAC 30 .0204
21 NCAC 30 .0205
21 NCAC 30 .0206
21 NCAC 30 .0301
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**RRC DETERMINATION
PERIODIC RULE REVIEW
Necessary with Substantive Public Interest
September 18, 2014**

Acupuncture Licensing Board

21 NCAC 01 .0104
21 NCAC 01 .0201
21 NCAC 01 .0301
21 NCAC 01 .0402

Massage and Bodywork Therapy, Board of

21 NCAC 30 .0201
21 NCAC 30 .0701

**RRC DETERMINATION
PERIODIC RULE REVIEW
Unnecessary
September 18, 2014**

Secretary of State, Department of the

18 NCAC 03 .0101
18 NCAC 03 .0201
18 NCAC 03 .0202
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18 NCAC 03 .0702
18 NCAC 03 .0703
18 NCAC 03 .0704

CONTESTED CASE DECISIONS

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

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Chief Administrative Law Judge
JULIAN MANN, III

Senior Administrative Law Judge
FRED G. MORRISON JR.

ADMINISTRATIVE LAW JUDGES

Melissa Owens Lassiter Don Overby J. Randall May	A. B. Elkins II Selina Brooks Craig Croom
J. Randolph Ward	

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FILED

STATE OF NORTH CAROLINA

2014 MAY 13 PM 12:45

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS

COUNTY OF GUILFORD

13 DHR 13351

Mary Lynne Nance,
Petitioner,

vs.

North Carolina Department of Health and
Human Services, Division of Health Service
Regulation,
Respondent.

FINAL DECISION

THIS MATTER came on for hearing on March 14, 2014, before Administrative Law Judge Selina M. Brooks in High Point, North Carolina.

PROTECTIVE ORDER

Any information related to residents, including their names, mentioned in this proceeding shall be considered confidential and is used for the sole purpose of findings in this proceeding alone and is not properly disclosed in any other setting or hearing.

APPEARANCES

For Petitioner: Alicia C. Edwards and Edward R. Sharp
 Legal Aid of North Carolina, Inc.
 122 N. Elm Street, Suite 700
 Greensboro, NC 27401

For Respondent: Derek L. Hunter
 Assistant Attorney General
 N.C. Department of Justice
 P.O. Box 629
 Raleigh, NC 27602-0629

ISSUE

Whether Respondent substantially prejudiced Petitioner's rights and exceeded its authority or jurisdiction, acted erroneously, failed to use proper procedure, acted arbitrarily or capriciously, or failed to act as required by law or rule when Respondent substantiated the allegation that Petitioner abused a resident of Heartlands Living & Rehabilitation in Greensboro, North Carolina.

APPLICABLE LAW

N.C. Gen. Stat. §§ 150B-23(f) and 131E-256
42 C.F.R. § 488.301
10A N.C.A.C. 130.0101

EXHIBITS ADMITTED INTO EVIDENCE

Respondent's Exhibits 1-3, 5-7, 10-14, and 17-19 were admitted into the record.

WITNESSES

For Petitioner: Mary Lynne Nance

For Respondent: Elishiae Brown – Nurse Aide at Heartland Living & Rehabilitation
Sherri Ingram-Bass – Administrator at Heartland Living & Rehabilitation
Jenny Baxter – HCPR Investigator

BASED UPON careful consideration of the sworn testimony of witnesses presented at the hearing, documents received and admitted into evidence, and the entire record in this proceeding, the Undersigned makes the following findings of fact. The Undersigned has weighed all the evidence and has assessed the credibility of the witnesses by taking into account the appropriate factors for judging credibility, including, but not limited to, the demeanor of the witness; any interest, bias, or prejudice the witness may have; the opportunity of the witness to see, hear, know, and remember the facts or occurrences about which the witness testified; whether the testimony of the witness is reasonable; and whether such testimony is consistent with all other believable evidence in the case. In the absence of a transcript, the Undersigned has referred to her notes to refresh her recollection and, in certain instances, citations are made to the audiotapes of the hearing.

FINDINGS OF FACT

1. Petitioner was employed as a Certified Nursing Assistant ("CNA") at Heartlands Living & Rehabilitation ("Heartlands") in Greensboro, North Carolina. She was responsible for assisting residents with activities of daily living. Petitioner completed all required training related to her job duties, including training pertaining to residents' rights and on the facility's abuse and neglect policies. (Tape 1, Side 1; Respondent's Exhibits 1-3)

2. Heartlands is a health-care facility as defined by N.C. Gen. Stat. § 131E-256.

3. At all times relevant to this proceeding, R.W. was an 84-year-old resident of Heartlands, who was approximately 5'5" and 246 pounds. Her diagnoses included metastatic lung cancer with bone mets; metastatic breast cancer; hypertension; congestive heart failure; renal mass; diabetes; deep vein thrombosis; extensive colitis; and early dementia. (T. 1, S. 1; Resp. Exs. 13, 17 and 18)

4. Petitioner is approximately 5'2" and 130 pounds. (T. 1, S. 1)
5. On April 21, 2013, Petitioner was assigned to care for resident R.W. who was having a bad day and had been refusing care during Petitioner's shift. (T. 1, S. 1)
6. R.W. refused to feed herself when Petitioner offered her breakfast. Petitioner reported this refusal to the nurse who spoke to R.W. Eventually, R.W. fed herself. (T. 1, S. 1)
7. Initially, R.W. refused to be transferred to the bathroom, and to allow Petitioner to change her diaper or bed pad. After Petitioner informed her that her bed was soaked with urine, R.W. consented to care. (T. 1, S. 1)
8. Petitioner had to change the linens of an occupied bed because R.W. would not leave the bed. (T. 1, S. 1)
9. Making an occupied bed was part of Petitioner's job duties and it was expected by Respondent that Petitioner would be able to complete that duty on her own. (T. 1, S. 1; Resp. Ex. 2)
10. Petitioner obtained the fresh bed linens and explained to R.W. what she was going to do. Petitioner pulled the privacy curtain completely closed around R.W.'s bed, and changed R.W.'s diaper and bed pad. (T. 1, S. 1)
11. Petitioner then rolled R.W. over to change the sheets on the bed. R.W. "screamed" that she was falling. Petitioner told R.W. that she would not fall and put her right hand on R.W.'s hip to hold her up while Petitioner continued to change the sheets with her left hand. (T. 1, S. 1 and 2)
12. A housekeeper, Tracy Hughes, put her head through the privacy curtain to ask Petitioner if she needed help. Petitioner said yes, and the housekeeper left. (T. 1, S. 1)
13. Petitioner's co-worker, Elishiae Brown, who is also a nursing aide at Heartlands, then came into the room. Ms. Brown denied assisting Petitioner with the task, but told her employer that she came into the room after Petitioner had completed the task. (T. 1, S. 1-2; Resp. Exs. 10-11)
14. Ms. Brown testified that R.W. has a history of "screaming" and that she always requested assistance with R.W. because of her "screaming" and complaints of pain.
15. Upon inquiry, R.W. told Ms. Brown that she was "okay", just in pain. Ms. Brown testified that she asked R.W. three times how she was and each time R.W. said that she was fine so Ms. Brown left the room. (T. 1, S. 2)

16. Ms. Brown testified that she did not report any incident to her employer on April 21, 2013, because she did not witness any abuse that day and she did not believe there was anything to report. (T. 2, S. 1; Resp. Ex. 11)

17. Ms. Brown testified that it was typical of R.W. to say that she was in pain and to “scream” during care. Ms. Brown testified that she always had someone assist her while caring for R.W. because R.W. “screamed a lot” and “was in a lot of pain”. (T. 1, S. 2; T. 2, S. 1).

18. Ms. Hughes reported an allegation of abuse to the Director of Housekeeping who reported the allegation to Sherri Ingram-Bass who is employed as the Administrator of Heartlands and conducted an investigation. She interviewed Petitioner, R.W., Ms. Brown, and Ms. Hughes. (T. 2, S. 1; Resp. Ex. 14)

19. A full body assessment was performed on R.W. by the RN supervisor on the same day as the alleged incident, and no physical injuries were found. (T. 2, S. 1; Resp. Ex. 14)

20. Ms. Ingram-Bass testified that when she interviewed R.W., she initially denied anything had happened. After Ms. Ingram-Bass informed R.W. that she received a report that “someone had been mean to her” then R.W. indicated that “Nancy” shoved her against the wall. Ms. Ingram-Bass testified that in her second interview, R.W. indicated that “Nancy” struck her. (T. 2, S. 1; Resp. Ex. 14)

21. Residents typically know their nursing aides by their first names. There is another CNA at Heartlands named Nancy. (T. 2, S. 1)

22. Ms. Ingram-Bass substantiated the allegation against Petitioner in the Abuse Investigation Summary based upon R.W.’s statements concerning “Nancy” and the statements of the alleged eyewitness Ms. Hughes, on the fact that Petitioner documented behaviors by R.W. and no one else had done so. (T. 2, S. 1; Resp. Exs. 14 and 18)

23. Jennifer Baxter is employed as a nurse investigator for the Health Care Personnel Registry. After receiving the 24-Hour Report and the 5-Day Working Report from Heartlands, Ms. Baxter determined that an on-site investigation was necessary. She reviewed R.W.’s medical records, R.W.’s medication list, nursing notes, Petitioner’s personnel file, and Heartlands’ Abuse Investigation Summary. (T. 2, S. 1; Resp. Exs. 12 & 17)

24. Ms. Baxter testified that R.W. had an extensive medical history, multiple terminal diagnoses, a history of pain and was on pain medication. (T. 2, S. 1)

25. Ms. Baxter interviewed R.W., Petitioner, Ms. Hughes, Ms. Brown, and Vondra Humphreys, the Director of Nursing, during the course of her investigation. (T. 2, S. 1)

26. Ms. Baxter wrote an Investigation Conclusion Report in which she substantiated the allegation of abuse based upon the conflicting statements by Petitioner and Ms. Brown concerning whether Ms. Brown assisted Petitioner in caring for R.W. as Petitioner requested or

merely came in the room and observed Petitioner at work, and based upon the fact that Petitioner documented behaviors by R.W. and no one else had done so. (T. 2, S. 1; Resp. Ex. 18)

27. In her Investigation Conclusion Report, Ms. Baxter documents that Ms. Hughes claimed to have witnessed the alleged abuse, heard R.W. "scream" but upon inquiry R.W. stated "she was fine just in pain" and although Petitioner requested assistance Ms. Hughes did not provide it. (Resp. Ex. 18, p 3)

28. Ms. Baxter also notes that "[Ms. Hughes] stated Ms. Nance mentioned R.W. hit Ms. Nance and [Ms. Hughes] recalled she told Ms. Nance the behaviors need to be documented." (R. Ex. 18, p. 3)

29. The Petitioner testified that in the past she had made verbal complaints to the Director of Nursing and the Director of Housekeeping against the Housekeeping staff for vacuuming the walls and ceilings while meals were being served to residents. She thought the allegations against her were in retaliation for these complaints. (Resp. Ex. 7, p. 2)

30. When she was interviewed by Ms. Baxter, Ms. Ingram-Bass corroborated Petitioner's testimony that she had made these complaints. (Resp. Ex. 18, p. 3 & 4)

31. Ms. Baxter sent a letter with an Entry Of Finding to Petitioner, dated July 24, 2013, informing Petitioner that the investigation was completed and that the allegations were substantiated. (T. 2, S. 1; Resp. Ex. 19)

32. Petitioner contested the substantiated findings by filing a Petition for Contested Case Hearing with the Office of Administrative Hearings, and a contested case hearing was held before the Undersigned.

33. The Undersigned takes note that neither Ms. Brown, Ms. Ingram-Bass, nor Ms. Baxter saw the alleged incident occur.

33. The Undersigned finds the testimony of Ms. Ingram-Bass and Ms. Baxter, both of whom relied upon the statements of others, to carry lesser weight than the testimony of Petitioner.

34. The Undersigned takes note that Ms. Hughes, the only person alleged to have seen the incident occur, did not testify and her statement and interview with the HCPR investigator were not admitted into evidence.

35. The Undersigned takes note that the testimony of Ms. Brown supports Petitioner's position that no abuse occurred.

36. The Undersigned finds the testimony of Petitioner to be credible and to carry greater weight.

CONCLUSIONS OF LAW

1. The Office of Administrative Hearings has jurisdiction over the parties and the subject matter pursuant to N.C. Gen. Stat. Chapters 131E and 150B.
2. All parties have been correctly designated and there is no question as to misjoinder or nonjoinder.
3. As a CNA working in a skilled facility, Petitioner is a health care personnel and is subject to the provisions of N.C. Gen. Stat. §§ 131E-255 and 131E-256.
4. "Abuse" is defined as the willful infliction of injury, unreasonable confinement, intimidation, or punishment with resulting physical harm, pain, or mental anguish. 10A NCAC 13O.0101.
5. Petitioner has the burden of proving by a preponderance of the evidence that Respondent has substantially prejudiced Petitioner's rights and has exceeded its authority or jurisdiction, acted erroneously, failed to use proper procedure, acted arbitrarily or capriciously, or failed to act as required by law or rule. N.C. Gen. Stat. § 150B-29(a).
6. N.C. Gen. Stat. § 131E-256(a)(1)(a) requires the Department of Health and Human Services (DHHS) to maintain a registry containing the names of all health care personnel working in health care facilities in North Carolina who have been subject to findings of abuse of a resident.
7. The Health Care Personnel Registry must be consistent and fair in its application of the law to health care personnel.
8. There was no credible evidence offered at the hearing concerning the alleged abusive conduct.
9. Petitioner has met her burden of proving that Respondent's decision to substantiate a finding of abuse against Petitioner was erroneous, arbitrary, and capricious, and contrary to law, rule, and Respondent's authority.

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

DECISION

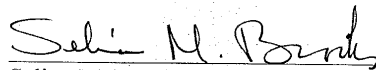
Respondent's decision to list an allegation of abuse next to Petitioner's name on the Health Care Personnel Registry should be **REVERSED**.

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 12th day of May, 2014.



Selina M. Brooks
Administrative Law Judge

FILED

STATE OF NORTH CAROLINA
COUNTY OF CABARRUS

2014 MAY -2 PM 12:45

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
13 EDC 18876

OFFICE OF

Tara Jane Dumas,
Petitioner,
v.
North Carolina Department of Public
Instruction,
Respondent.

ADMINISTRATIVE HEARINGS
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FINAL DECISION

This matter came on to be heard before Administrative Law Judge Selina M. Brooks on March 6, 2014 in Charlotte, North Carolina.

APPEARANCES

For the Petitioner: Tara Jane Dumas, *Pro se*
731 Capstone Avenue
Concord, NC 28025

For the Respondent: Tiffany Y. Lucas
Assistant Attorney General
North Carolina Department of Justice
Post Office Box 629
Raleigh, NC 27602

ISSUE

Whether Petitioner's Standard Professional 1 (initial) license should have been converted to a Standard Professional 2 (continuing) license.

APPLICABLE STATUTES AND POLICIES

N.C. Gen. Stat. § 115-296
State Board of Education Policy TCP-A-004

WITNESSES

For Petitioner: Tara Jane Dumas

For Respondent: Nadine C. Ejire
Mary B. Webb
Julie B. Kiser
James C. Underwood, Jr.

EXHIBITS ADMITTED INTO EVIDENCE

For Petitioner: Exhibits 1 – 20

For Respondent: ExhiBits 1 – 6, 8-12

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

FINDINGS OF FACT

1. N.C. General Statute §115C-296(a) provides, in pertinent part, as follows:

The State Board of Education shall have entire control of licensing all applicants for teaching positions in all public elementary and high schools of North Carolina; and it shall prescribe the rules and regulations for the renewal and extension of all licenses... for each grade and type of license which it authorizes.

2. Consistent with its statutory authority to control the licensure process and to set licensure standards and requirements, the State Board of Education (hereinafter the “SBE”) has adopted a policy, TCP-A-004, entitled “Policies on the Beginning Teacher Support Program.” Among other things, Section 4.00 of the policy provides that “[i]nitial (Standard Professional 1) licenses are issued to teachers with fewer than three years of appropriate teaching experience (normally considered to be public school experience) in their initial licensure area. All teachers who hold initial (Standard Professional 1) licenses...are required to participate in a three year induction period with a formal orientation, mentor support, observations and evaluation prior to the recommendation for continuing (Standard Professional 2) licensure.” (Resp. Exhibit 1)

3. Section 4.90 of the policy, entitled “Conversion Process” sets forth the process by which the Licensure Section at the North Carolina Department of Public Instruction (“DPI”) converts a teacher’s initial (Standard Professional 1) license to a continuing (Standard Professional 2) license. Section 4.90 provides, in relevant part, that “[a] principal must rate a probationary teacher “as proficient” on all five NC Professional Teaching Standards on the most recent Teacher Summary Rating Form before recommending a teacher for a Standard Professional 2 license.” (Resp. Exhibit 1)

4. In this case, Petitioner, who held an initial (SP 1) license and who was a third-year beginning teacher, was employed by the Charlotte-Mecklenburg County Public Schools

System during the 2012-2013 school year as a first-grade teacher at Reedy Creek Elementary School. (T. p. 96)

5. On or about March 20, 2013, Charlotte-Mecklenburg Schools, requested a one-year extension of Petitioner's initial license (SP 1) through June 30, 2014, in order for her to complete the Beginner Teacher Support Program. (T. pp. 103-104; Resp. Exhibit 8) At the time the extension request was made, Petitioner anticipated that she would be out of school on leave for an extended period of time, and therefore, would not have the requisite number of instructional days to count towards her third year of teaching as required in the Beginning Teacher Support Program. (T. pp. 64-65, 104; Resp. Exhibit 7, pp. DPI 000205-207) The extension request was granted by DPI; subsequently, however, Charlotte-Mecklenburg Schools notified DPI that an extension was no longer needed as Petitioner had returned to work in sufficient time to meet the instructional days requirements of the Beginning Teacher Support Program. (T. pp. 19, 104-105; Resp. Exhibit 9)

6. Thereafter, on or about May 6, 2013 Charlotte-Mecklenburg Schools submitted a recommendation to DPI that Petitioner's Standard Professional 1 license not be converted to a Standard Professional 2 license. (T. p. 27; Resp. Exhibits 10 & 11)

7. The recommendation not to convert to a Standard Professional 2 license was based on Petitioner's failure to achieve a "proficient" rating on all five NC Professional Teaching Standards on the most recent Teacher Summary Rating Form completed by Mary Webb, the principal at the school where Petitioner was teaching. Consistent with Section 4.90 of State Board Policy TCP-A-004, therefor, Charlotte-Mecklenburg Schools did not recommend Petitioner for a continuing (SP 2) license. (Resp. Exhibit 10; T. p. 27)

8. DPI accepted Charlotte-Mecklenburg Schools' recommendation that Petitioner not be granted a continuing license and denied conversion of the Petitioner's Standard Professional 1 license to a Standard Professional 2 license. The denial was based upon the Petitioner's failure to satisfy the requirements of the Beginning Teacher Support Program under SBE Policy TCP-A-004 in that she did not achieve a rating of "proficient" in all five standards on the Teacher Summary Rating Form. (T. pp. 16, 21-22; Resp. Exhibits 10-12)

9. Petitioner appealed the decision not to convert her license to the Office of Administrative Hearings.

10. At the hearing in this matter, Principal Webb testified about her rationale for not rating the Petitioner "as proficient" or above in all five NC Professional Teaching Standards. In completing the summative evaluation for the Petitioner, Principal Webb relied upon her own observations and interactions with the Petitioner, as well upon input received from her staff, including other school personnel who had observed the Petitioner and completed formal evaluations and/or informal "walkthrough" evaluations of the Petitioner. (T. pp. 27-28, 31-33, 57-61; Resp. Exhibits 4, 5 & 6)

11. Standard IV of the NC Professional Teaching Standards – *Teachers facilitate learning for their students*, consists of eight elements:

- Element 4a provides that “[t]eachers know the ways in which learning takes place, and they know the appropriate levels of intellectual, physical, social, and emotional development of their students.”
- Element 4b provides that “[t]eachers plan instruction appropriate for their students.”
- Element 4c provides that “[t]eachers use a variety of instructional methods.”
- Element 4d provides that “[t]eachers integrate and utilize technology in their instruction.”
- Element 4e provides that “[t]eachers help students develop critical-thinking and problem-solving skills.”
- Element 4f provides that “[t]eachers help students work in teams and develop leadership qualities.”
- Element 4g provides that “[t]eachers communicate effectively.”
- Element 4h provides that “[t]eachers use a variety of methods to assess what each student has learned.”

(Resp. Exhibit 6, p. 5)

12. Julie Kiser, an instructional support person and the literary facilitator at Reedy Creek Elementary, testified at the hearing about her observations of the Petitioner’s classroom teaching during the 2012-2013 school year. (Resp. Exhibit 6, pp. 32-43, DPI 000171-187, 197-199) Ms. Kiser acknowledged that there were times “when [Petitioner] was very prepared and taught very good lessons,” but noted that the Petitioner’s “weakest area was meeting the individual needs of the children[.]” (T. pp. 75-76) The ability to provide “differentiated instruction” is important because the Petitioner, like all teachers, “had children ... [performing] severely below grade level and some performing – many performing average and some performing way above grade level. And each child deserves the opportunity to be able to get good instruction to make a year or more worth of growth during the year. You have to meet every child’s needs, not just the average children.” (T. pp. 79-80) Ms. Kiser provided input regarding her concerns about the Petitioner’s ability to provide differentiated instruction to Principal Webb. (T. pp. 76-79).

13. James Underwood, Petitioner’s colleague at Reedy Creek Elementary who served as the Dean of Students during the 2012-2013 school year, testified at the hearing about his observations of the Petitioner in the classroom both from his perspective as the Dean of Students called in to deal with disciplinary matters, as well as in his role as evaluator. Based upon his classroom observation of the Petitioner on January 10, 2013, Mr. Underwood encouraged Petitioner to vary or differentiate her instructional techniques to accommodate the various learning styles of the students in her classroom. In the January 10, 2013 evaluation document, Mr. Underwood also offered suggestions to Petitioner for making herself more accessible to all students in the classroom and to provide more consistent monitoring of students. (T. pp. 90-91; Resp. Exhibit 6, pp. 23, 28) Mr. Underwood provided input to Principal Webb about areas in which he felt Petitioner needed to improve. (T. pp. 87-89) On April 25, 2013, Mr. Underwood communicated in an e-mail to Principal Webb his concerns about the Petitioner’s lack of proximity and inattention to her students that morning when he thrice visited her classroom. (Resp. Exhibit 2, p. DPI 000027). Mr. Underwood’s concern that day was that the children in the Petitioner’s class were not getting the support and help they needed from their teacher. (T. pp. 91-93)

14. Assistant Principal Tonya Johnson gave input to Principal Webb concerning her evaluation of Petitioner's classroom teaching following an observation conducted on March 8, 2013. In the evaluation document, Assistant Principal Johnson noted concerns about the Petitioner's development in Standard II – *Teachers establish a respectful environment for a diverse population of students*; and in Standard IV – *Teachers facilitate learning for their students*. With respect to Standard II, Assistant Principal Johnson commented that, "[a]s part of Mrs. Dumas' support plan, she is working toward establishing positive relationships with her diverse student population. During this lesson, Mrs. Dumas was more subject centered than student centered." With respect to Standard IV, Assistant Principal Johnson commented that "[o]verall, [Petitioner] is developing in this standard. Mrs. Dumas is learning to address individual student's needs through differentiation. This will help support higher time on task and facilitate student engagement." (Resp. Exhibit 6, pp. 8-19) Principal Webb discussed the concerns raised in the evaluation document with Assistant Principal Johnson following the observation. (T. pp. 57-58)

15. Based upon her own observation of the Petitioner, as well as upon input from her administrative team, Principal Webb concluded that Petitioner had not yet achieved proficiency in the majority of the elements comprising Standard IV. In the evaluation she completed on Petitioner following a classroom observation conducted on October 23, 2012, Principal Webb indicated her concerns about the Petitioner in satisfying the elements of Standard IV, noting that "differentiation and resources supports are not consistently provided for instructional objectives...all students did not have a clear understanding of what was expected for the math game. There was no differentiated instruction or supports observed." "By differentiating instruction, all students will be more successful on the instructional activities." (Resp. Exhibit 6, pp. 50-52) Subsequently, on February 12, 2013, Principal Webb communicated in a letter to the Petitioner that she was at risk of insufficient ratings in Standards II and IV. (T. pp. 49-51; Resp. Exhibit 4, pp. DPI 000074-75) Then, on March 19, 2013, Principal Webb communicated in an e-mail to the Petitioner that the area in which she was not consistently proficient was Standard IV. (T. pp. 39-40; Resp. Exhibit 2, pp. DPI 00037-38)

16. By the time Principal Webb completed the Petitioner's summative evaluation on or about April 25, 2013, although Petitioner had demonstrated proficiency in the areas of integrating and utilizing technology in her instruction (element 4a), as well as in helping students work in teams and develop leadership skills (element 4f), in Principal Webb's view, Petitioner was not yet proficient in the other six elements comprising Standard IV. Petitioner failed to demonstrate that she could effectively "differentiate her instruction based on the learning needs of her students." Therefore, because Petitioner failed to "consistently provide lessons that meet the learning needs of students during the entire instructional day," and because Petitioner had "not yet developed the skills that allow her to consistently assess and adjust teaching so learning can take place[.]" Principal Webb gave Petitioner an overall rating of "developing" rather than "proficient" in Standard IV. (T. pp. 47-49, 67; Resp. Exhibit 3, p. DPI 000065; Resp. Exhibit 6, p. 5)

17. Nadine Ejire, Assistant Section Chief in the Licensure Section at DPI, testified that because local school district personnel have direct contact with teachers on a daily basis, the school districts are in the best position to evaluate whether teachers have satisfied the NC

Professional Teaching Standards. Accordingly, DPI based its decision not to convert Petitioner's initial license to a continuing license on the recommendation and supporting documentation received from Charlotte Mecklenburg Schools regarding the Petitioner's failure to achieve the required level of proficiency in all five NC Professional Standards under TCP-A-004. (T. pp. 21-22).

CONCLUSIONS OF LAW

1. The Office of Administrative Hearings has personal and subject matter jurisdiction over this contested case. The parties received proper notice of the hearing in this matter. To the extent 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. The burden is on Petitioner to demonstrate, by a preponderance of the evidence, that the Respondent erred in not converting her initial license to a continuing license. Peace v. Employment Sec. Comm'n, 349 N.C.315, 507 S.E. 2d 272 (1988)

3. Petitioner has not met her burden of demonstrating that Respondent has deprived her of property or has otherwise substantially prejudiced her rights and that Respondent has:

- (1) Exceeded its authority;
- (2) Acted erroneously;
- (3) Failed to use proper procedure;
- (4) Acted arbitrarily or capriciously; or
- (5) Failed to act as required by law.

Based on the foregoing, the undersigned makes the following:

DECISION

The Petitioner has not met her burden of proof by the preponderance of the evidence and, therefore, the Petition for Contested Case hereby is **DENIED**.

NOTICE

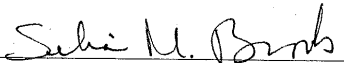
This is a Final Decision issued under the authority of N.C. Gen. Stat. § 150B-34.

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.

IT IS SO ORDERED.

This the 1st day of May, 2014.


Selina M. Brooks
Administrative Law Judge

Filed

2014 10 17 09

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
13 OSP 19639

Office of
Administrative Hearings

JOSEPHINE KEKE,

Petitioner,

V.

FINAL DECISION

NORTH CAROLINA
DEPARTMENT OF
HEALTH AND HUMAN
SERVICES,

Respondent.

This case was heard before the undersigned Administrative Law Judge Craig Croom on February 24, 2014 at the North Carolina Office of Administrative Hearings in Raleigh, North Carolina.

Michael C. Byrne
Law Office of Michael C. Byrne
150 Fayetteville Street, Suite 1130
Raleigh, NC 27601
Attorney for Petitioner

Adam Shestak
Assistant Attorney General
North Carolina Department of Justice
Post Office Box 629
Raleigh, NC 27602
Attorney for Respondent

Malecha Collins
Karen Couch

WITNESSES FOR PETITIONER

Stanley Oyenabo
Christina Okafor
Josephine Keke

ISSUE

Whether Respondent had just cause to separate Petitioner from employment with Respondent on the alleged grounds that Petitioner voluntarily resigned by failing to report to work as scheduled over a period of three days without notifying her employer of her absence?

PROCEDURAL HISTORY

The Court granted Petitioner's request to sequester witnesses barring a representative for each side.

FINDINGS OF FACT

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

1. Petitioner Josephine Keke is a career status employee, pursuant to N.C. Gen. Stat. § 126-1.1, of the Respondent North Carolina Department of Health and Human Services in a position subject to the North Carolina Human Resources Act.
2. Petitioner was at all relevant times a Technical Support Specialist at Respondent's Central Regional Hospital.
3. No evidence was presented as to a history of absenteeism on the part of the Petitioner barring the specific time frame of this case.
4. On September 9, 2013, Petitioner followed the Respondent's requirement of calling in to a designated contact, Ms. Malecha Collins, that she was out with a back injury. Per policy, any absences beyond one day shall be addressed by Petitioner's supervisor, Karen Couch.
5. Ms. Couch generally worked a Monday to Friday work schedule. Stanley Oyenabo, a registered nurse on the unit, delivered several pages of paperwork to the unit from

Petitioner. In this paperwork, Petitioner requested Family and Medical Leave Act (hereinafter FMLA) leave from September 9-September 23, 2013 because of her back injury. Petitioner's FMLA leave balance was not exhausted.

6. The FMLA form contained a certification from a medical provider, but the provider failed to fill out the contact section with his or her contact information. Petitioner, at the time the paperwork was submitted, was unaware of this missing information.
7. Mr. Oyenabo delivered the FMLA paperwork to Angie Boss, Ms. Couch's supervisor. He stated that Ms. Boss indicated she would take care of forwarding the paperwork to Ms. Couch.
8. Petitioner temporarily resided with her daughter in Shallotte, North Carolina, where she was being taken care of by her daughter. Ms. Couch had Petitioner's cell phone number. Petitioner received no calls from Ms. Couch. Ms. Couch did try to call Petitioner, but could not recall what number she called. No proof that such calls were made, such as phone records, was submitted in evidence.
9. Ms. Couch sent Petitioner a letter dated September 17th directing Petitioner to contact the hospital. Petitioner learned of this letter some days afterward and sent a colleague, Ms. Christina Okafor, to the hospital on her behalf. Petitioner said she sent colleagues because on a previous experience when she was out sick Ms. Couch had not returned her call.
10. Ms. Okafor spoke with Ms. Boss. Ms. Boss confirmed that she had received Petitioner's FMLA paperwork. She did not indicate to Ms. Okafor that there was any deficiency in the paperwork.
11. Ms. Couch considered Petitioner's FMLA request "invalid" because it was "incomplete," since the provider contact section was blank. Ms. Couch stated she sent the September 17th letter to alert Petitioner of this FMLA issue. However, the September 17th letter makes no reference to defective FMLA paperwork and does not reference FMLA at all.
12. Some days later, Ms. Couch sent another letter to Petitioner saying Petitioner was being separated for failing to report to work. This letter also made no reference to defective FMLA paperwork. Petitioner received this letter while on three weeks of vacation leave, previously approved by Ms. Couch, following her FMLA leave.
13. Petitioner came to the hospital in response to this letter and spoke to Ms. Boss. Ms. Boss directed Petitioner to turn in her badge and other information and report to HR. Ms. Boss did not tell Petitioner her FMLA paperwork was considered "invalid".
14. There was no substantive evidence presented to support the contention that Petitioner voluntarily resigned, nor was there evidence that Petitioner was absent from work without trying to contact her employer over a three day period. Indeed, none of the

paperwork from Respondent indicated what three days Respondent contends Petitioner was absent without making contact.

15. Respondent did not present evidence that Petitioner was “unavailable” for work as defined by personnel policy. To the contrary, the evidence was that Petitioner’s balance of leave had not been exhausted.
16. Respondent did not contest at hearing that Petitioner had an injury that entitled her to FMLA leave for the period at issue.
17. Petitioner filed a Fee Petition along with a fee agreement on March 31, 2014.

Based on these findings of fact, the undersigned makes the following:

CONCLUSIONS OF LAW

1. The parties received proper notice of the hearing.
2. The Office of Administrative Hearings has jurisdiction over this case pursuant to Chapters 126 and 150B of the North Carolina General Statutes and all parties had notice of the hearing.
3. Petitioner is a career State employee subject to the North Carolina Human Resources Act, N.C. Gen. Stat. § 126-1.1 (2013). Therefore, Petitioner could only “be warned, demoted, suspended or dismissed by” Respondent “for just cause.” N.C. Gen. Stat. 126-35 (a) (2013), 25 NCAC 01J .0604(a).
4. While the relevant regulations do state that a voluntary resignation and a separation from employment can occur when an employee is absent for three consecutive scheduled work days without contacting the employer, the evidence in this contested case is that this did not take place in the case of Petitioner. Rather, Petitioner promptly made a request for FMLA leave and Respondent took no action with respect to that request. Respondent is not entitled to simply ignore a request for FMLA leave merely because of an omission in the paperwork, particularly under circumstances, as here, where it failed to inform Petitioner of the supposedly fatal omissions in repeated correspondence.
5. Accordingly, Petitioner did not voluntarily resign either legally or in fact. Therefore, Respondent’s dismissal of Petitioner was a dismissal without just cause.
6. N.C. Gen. Stat. § 126-34.02 allows the Office of Administrative Hearings to award attorneys’ fees to an employee ordered reinstated. Therefore, Petitioner is hereby awarded attorney’s fees, which he reasonably incurred in pursuing and prosecuting this action. Based upon the Fee Petition of Petitioner’s Attorney, Michael C Byrne, Petitioner is hereby awarded attorney’s fees and costs in the amount of \$ 5,103.75, which shall be paid as provided by law.

FINAL DECISION

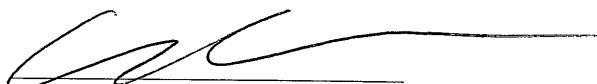
Based upon the foregoing Findings of Fact and Conclusions of Law, Respondent's decision to dismiss/separate Petitioner is **REVERSED**. Respondent is hereby **ORDERED** to retroactively reinstate Petitioner to the same or similar position as a Technical Support Specialist with all back pay and benefits which she would have been entitled to receive since her date of dismissal or separation. Furthermore, Petitioner is hereby awarded Attorney's Fees in the amount of \$ 5,103.75, as supported by the fee petition submitted in this case, to Petitioner's attorney, Michael C Byrne, as provided by law.

NOTICE

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This the 17th day of April, 2014.


Hon. Craig Croom
Administrative Law Judge

Filed

STATE OF NORTH CAROLINA
COUNTY OF WAKE

2014 SEP 23 PM 1:40

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
13 OSP 19639

Office of
Administrative Hearings

JOSEPHINE KEKE,
Petitioner,

v.

NORTH CAROLINA
DEPARTMENT OF
HEALTH AND HUMAN
SERVICES,
Respondent.

**AMENDED
FINAL DECISION**

This case was heard before the undersigned Administrative Law Judge Craig Croom on February 24, 2014 at the North Carolina Office of Administrative Hearings in Raleigh, North Carolina.

APPEARANCES

Michael C. Byrne
Law Office of Michael C. Byrne
150 Fayetteville Street, Suite 1130
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Attorney for Petitioner

Adam Shestak
Assistant Attorney General
North Carolina Department of Justice
Post Office Box 629
Raleigh, NC 27602
Attorney for Respondent

WITNESSES FOR RESPONDENT

Malecha Collins
Karen Couch

WITNESSES FOR PETITIONER

Stanley Oyenabo

Christina Okafor
Josephine Keke

ISSUE

Whether Respondent had just cause to separate Petitioner from employment with Respondent on the alleged grounds that Petitioner voluntarily resigned by failing to report to work as scheduled over a period of three days without notifying her employer of her absence?

PROCEDURAL HISTORY

The Court granted Petitioner's request to sequester witnesses barring a representative for each side.

FINDINGS OF FACT

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

1. Petitioner Josephine Keke is a career status employee, pursuant to N.C. Gen. Stat. § 126-1.1, of the Respondent North Carolina Department of Health and Human Services in a position subject to the North Carolina Human Resources Act.
2. Petitioner was at all relevant times a Technical Support Specialist at Respondent's Central Regional Hospital.
3. No evidence was presented as to a history of absenteeism on the part of the Petitioner barring the specific time frame of this case.
4. On September 9, 2013, Petitioner followed the Respondent's requirement of calling in to a designated contact, Ms. Malecha Collins, that she was out with a back injury. Per policy, any absences beyond one day shall be addressed by Petitioner's supervisor, Karen Couch.
5. Ms. Couch generally worked a Monday to Friday work schedule. Stanley Oyenabo, a registered nurse on the unit, delivered several pages of paperwork to the unit from Petitioner. In this paperwork, Petitioner requested Family and Medical Leave Act

(hereinafter FMLA) leave from September 9-September 23, 2013 because of her back injury. Petitioner's FMLA leave balance was not exhausted.

6. The FMLA form contained a certification from a medical provider, but the provider failed to fill out the contact section with his or her contact information. Petitioner, at the time the paperwork was submitted, was unaware of this missing information.
7. Mr. Oyenabo delivered the FMLA paperwork to Angie Boss, Ms. Couch's supervisor. He stated that Ms. Boss indicated she would take care of forwarding the paperwork to Ms. Couch.
8. Petitioner temporarily resided with her daughter in Shallotte, North Carolina, where she was being taken care of by her daughter. Ms. Couch had Petitioner's cell phone number. Petitioner received no calls from Ms. Couch. Ms. Couch did try to call Petitioner, but could not recall what number she called. No proof that such calls were made, such as phone records, was submitted in evidence.
9. Ms. Couch sent Petitioner a letter dated September 17th directing Petitioner to contact the hospital. Petitioner learned of this letter some days afterward and sent a colleague, Ms. Christina Okafor, to the hospital on her behalf. Petitioner said she sent colleagues because on a previous experience when she was out sick Ms. Couch had not returned her call.
10. Ms. Okafor spoke with Ms. Boss. Ms. Boss confirmed that she had received Petitioner's FMLA paperwork. She did not indicate to Ms. Okafor that there was any deficiency in the paperwork.
11. Ms. Couch considered Petitioner's FMLA request "invalid" because it was "incomplete," since the provider contact section was blank. Ms. Couch stated she sent the September 17th letter to alert Petitioner of this FMLA issue. However, the September 17th letter makes no reference to defective FMLA paperwork and does not reference FMLA at all.
12. Some days later, Ms. Couch sent another letter to Petitioner saying Petitioner was being separated for failing to report to work. This letter also made no reference to defective FMLA paperwork. Petitioner received this letter while on three weeks of vacation leave, previously approved by Ms. Couch, following her FMLA leave.
13. Petitioner came to the hospital in response to this letter and spoke to Ms. Boss. Ms. Boss directed Petitioner to turn in her badge and other information and report to HR. Ms. Boss did not tell Petitioner her FMLA paperwork was considered "invalid".
14. There was no substantive evidence presented to support the contention that Petitioner voluntarily resigned, nor was there evidence that Petitioner was absent from work without trying to contact her employer over a three day period. Indeed, none of the

paperwork from Respondent indicated what three days Respondent contends Petitioner was absent without making contact.

15. Respondent did not present evidence that Petitioner was “unavailable” for work as defined by personnel policy. To the contrary, the evidence was that Petitioner’s balance of leave had not been exhausted.
16. Respondent did not contest at hearing that Petitioner had an injury that entitled her to FMLA leave for the period at issue.
17. Petitioner filed a Fee Petition along with a fee agreement on March 31, 2014.

Based on these findings of fact, the undersigned makes the following:

CONCLUSIONS OF LAW

1. The parties received proper notice of the hearing.
2. The Office of Administrative Hearings has jurisdiction over this case pursuant to Chapters 126 and 150B of the North Carolina General Statutes and all parties had notice of the hearing.
3. Petitioner is a career State employee subject to the North Carolina Human Resources Act, N.C. Gen. Stat. § 126-1.1 (2013). Therefore, Petitioner could only “be warned, demoted, suspended or dismissed by” Respondent “for just cause.” N.C. Gen. Stat. 126-35 (a) (2013), 25 NCAC 01J .0604(a).
4. While the relevant regulations do state that a voluntary resignation and a separation from employment can occur when an employee is absent for three consecutive scheduled work days without contacting the employer, the evidence in this contested case is that this did not take place in the case of Petitioner. Rather, Petitioner promptly made a request for FMLA leave and Respondent took no action with respect to that request. Respondent is not entitled to simply ignore a request for FMLA leave merely because of an omission in the paperwork, particularly under circumstances, as here, where it failed to inform Petitioner of the supposedly fatal omissions in repeated correspondence.
5. Accordingly, Petitioner did not voluntarily resign either legally or in fact. Therefore, Respondent’s dismissal of Petitioner was a dismissal without just cause.
6. N.C. Gen. Stat. § 126-34.02 allows the Office of Administrative Hearings to award attorneys’ fees to an employee ordered reinstated. Therefore, Petitioner is hereby awarded attorney’s fees, which he reasonably incurred in pursuing and prosecuting this action. Based upon the Fee Petition of Petitioner’s Attorney, Michael C Byrne, Petitioner is hereby awarded attorney’s fees and costs in the amount of \$ 5,103.75, which shall be paid as provided by law.

FINAL DECISION

Based upon the foregoing Findings of Fact and Conclusions of Law, Respondent's decision to dismiss/separate Petitioner is **REVERSED**. Respondent is hereby **ORDERED** to retroactively reinstate Petitioner to the same or similar position as a Technical Support Specialist with all back pay and benefits which she would have been entitled to receive since her date of dismissal or separation. Furthermore, Petitioner is hereby awarded Attorney's Fees in the amount of \$ 5,103.75, as supported by the fee petition submitted in this case, to Petitioner's attorney, Michael C Byrne, as provided by law.

NOTICE

This Final Decision is issued under the authority of N.C.G.S. § 150B-34. Pursuant to N.C.G.S. § 126-34.02, any party wishing to appeal the Final Decision of the Administrative Law Judge may commence such appeal by filing a Notice of Appeal with the North Carolina Court of Appeals as provided in N.C.G.S. § 7A-29 (a). The appeal shall be taken within 30 days of receipt of the written notice of final decision. A notice of appeal shall be filed with the Office of Administrative Hearings and served on all parties to the contested case hearing.

This the 25th day of April, 2014.



Hon. Craig Croom
Administrative Law Judge

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OFFICE OF ADMINISTRATIVE HEARINGS
4/21/2014 1:33 PM

STATE OF NORTH CAROLINA
COUNTY OF WASHINGTON

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
13OSP18590

Renecia Morgan Petitioner v. Washington County Department of Social Services Respondent	FINAL DECISION
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THIS MATTER came on to be heard before the Hon. J. Randolph Ward, Administrative Law Judge, in Halifax, North Carolina, on February 20, 2014.

APPEARANCES

For Petitioner: Dene' V. Alexander
The Law Office of Dene' V. Alexander, PLLC
Po Box 14402
Durham, N.C. 27709

For Respondent: Robert Wendell Hutchins
The Hutchins Law Firm
PO Drawer 1085
Plymouth, N.C. 27962

WITNESSES

Petitioner testified and presented the following witnesses: Ms. Patricia Dawson, a former caseworker with Respondent, who retired after 26 years of service with Respondent; and Petitioner's mother, Rev. Camilla Morgan.

Respondent presented the following witnesses: Ms. Carolyn Gurganus, Food Stamps Supervisor with Respondent; Ms. Teresa Downing, Medicaid supervisor with Respondent; Mr. Julius Walker Jr., Vice Chair of the Washington County Social Services Board; Mr. Ed Davenport, Chair, Washington County Social Services Board; and Ms. Rhonda Woolard, Director of Washington County Department of Social Services.

EXHIBITS**Petitioner's Exhibits:**

1. July 22, 2013 Statement (letter) of Dr. Myung Kil Jeon, M.D.
2. June 18, 2013 letter from Ms. Rhonda Woolard, Director of Washington County Department of Social Services, to Petitioner Renecia Morgan.
3. Letter from Petitioner Renecia Morgan, received June 20, 2013, to Ms. Rhonda Woolard, Director of Washington County Department of Social Services.
4. June 21, 2013 letter from Ms. Rhonda Woolard, Director of Washington County Department of Social Services, to Petitioner Renecia Morgan.
5. September 17, 2013 letter from Ms. Rhonda Woolard, Director of Washington County Department of Social Services, to Petitioner Renecia Morgan.
6. July 3, 2013 letter from Petitioner Renecia Morgan, to Ms. Rhonda Woolard, Director of Washington County Department of Social Services.
7. July 9, 2013 letter from Ms. Rhonda Woolard, Director of Washington County Department of Social Services, to Petitioner Renecia Morgan.
8. July 22, 2013 letter from Ms. Rhonda Woolard, Director of Washington County Department of Social Services, to Petitioner Renecia Morgan.
9. July 3, 2013 letter from Petitioner Renecia Morgan, to Ms. Rhonda Woolard, Director of Washington County Department of Social Services.
10. July 3, 2013 letter from Petitioner Renecia Morgan, to Ms. Rhonda Woolard, Director of Washington County Department of Social Services.
11. July 3, 2013 letter from Petitioner Renecia Morgan, to Ms. Rhonda Woolard, Director of Washington County Department of Social Services.
12. July 23, 2013 Statement of Ms. Patricia Dawson, former employee the Washington County Department of Social Services.

Respondent's Exhibits:

1. Washington County Department of Social Services' *Personnel Policies and Procedures Manual*.
2. N.C. Gen. Stat. § 126-35 (2013).

ISSUE

Whether Respondent had just cause to dismiss Petitioner from her employment?

UPON DUE CONSIDERATION of the sworn testimony of each witness presented at the hearing, assessing its weight and credibility in light of the demeanor of the witness; the opportunity of the witness to see, hear, know, and recall relevant facts and occurrences; the interests, bias, or prejudice the witness might have; whether the testimony of the witness is reasonable and consistent with other credible evidence; and, taken together with the admitted documents and exhibits, weighing all the evidence of the facts and inferences alleged, or lack thereof, in the record as a whole, the undersigned Administrative Law Judge makes the following:

FINDINGS OF FACT

1. Prior to her dismissal, Petitioner Renecia Morgan had been employed with Respondent Washington County Department of Social Services for approximately six years, including the 24 months immediately preceding her termination on June 21, 2013.
2. Petitioner was hired by Respondent on October 18, 2007, and initially served as a Work First Case Manager. In 2011, she was transferred to the Food and Nutrition Services Unit to handle Food Stamp applications, where she worked until her dismissal.
3. Petitioner was diagnosed with Graves' Disease in 2008, but her supervisors readily accommodated the few occasions when it interrupted her work, and the condition was never a disruptive burden on her ability to complete the work assigned to her.
4. By early June 2013, Respondent agency's leadership was made aware that Ms. Patricia Dawson, the case manager for the Work First Financial Assistance ("WFFA" or "Work First") caseload for Respondent, would be retiring. When asked, Ms. Dawson recommended that Petitioner take over her WFFA case manager duties, because she felt that Petitioner's prior experience best prepared her to handle those duties.
5. On June 5, 2013, Ms. Caroline Gurganus, Food Assistance Supervisor, and Ms. Theresa Downing, Medicaid Supervisor, met with Petitioner to discuss their intention to assign her to be the WFFA manager beginning July 1, 2013. At the time of this meeting, Ms. Gurganus and Ms. Downing thought that there were only about 20 WFFA cases, but said they would be getting additional information about that. During this meeting, Petitioner got the impression that she would be asked to handle all of the WFFA cases, in addition to her existing Food Stamp caseload. She felt she would be overloaded and unable to meet expectations, and she became upset at this prospect. She testified that her blood pressure spiked, and she missed work the rest of that day. She had also missed work the previous week with similar symptoms.

6. The following day, June 6, 2013, Ms. Gurganus and Ms. Downing received a report showing that there were 54 WFFA cases -- substantially more than they had supposed -- and they determined to divide the WFFA caseload among Petitioner and two other employees handling Food Stamp applications, Ms. Clarice Patrick and Ms. Sally Biggs. Ms. Gurganus and Ms. Downing met with Petitioner to tell her this, and also discussed reducing her Food Assistance caseload to accommodate her new responsibility handling WFFA cases. Petitioner's subsequent correspondence shows that she perceived that she was being assigned 17 WFFA cases, and that, "Mrs. Gurganus suggested that someone might be assigned to take on part of my caseload." However, Petitioner declined to accept WFFA cases and stated that she did not think it was fair that the other Food Assistance caseworkers should have to take on more cases.
7. When she retired, Ms. Dawson was responsible for 57 WFFA cash assistance cases and also spent about 10% of her time with an additional 37 Medicaid "transitional," or short-term assistance, cases. On the date of the hearing, two caseworkers, Ms. Patrick and Ms. Biggs, were successfully maintaining the WFFA caseload, then somewhat smaller, as well as portions of the Food Stamp cases. Asked by Petitioner to provide a supportive statement, Ms. Dawson estimated that 17 WFFA cases would take "2-3 hours" a day, and additionally, as the most experienced caseworker handling such cases, that Petitioner would be fielding questions from other caseworkers. She opined that this "could be difficult" if Petitioner were also handling "600 Food Stamp cases," and that if Petitioner's Food Stamp cases "already require 7.5 hours [per] day," then additional work would reduce her ability to do her Food Stamp work effectively. Ms. Gurganus, who had personal experience handling both types of cases, testified that the agency's 1,800 Food Stamp cases were divided among four caseworkers -- an average of 450 each -- and that it was discussed with Petitioner that her Food Stamp responsibilities would be reduced when she took on WFFA cases. Ms. Downing, who had personal experience handling WFFA cases, testified that Petitioner was capable of handling the workload that she and Petitioner's other supervisors sought to give her.
8. The undersigned finds that there was no scenario contemplated by Petitioner's supervisors in which she would be required to manage 600 Food Stamp cases and/or spend 7.5 hours per day managing Food Stamp cases, while simultaneously managing a significant caseload of WFFA cases, and that Petitioner was clearly and repeatedly made aware of her supervisors' intention to assign to her a reasonable and manageable caseload prior to her termination.
9. At Petitioner's request, Washington County Social Services Director Rhonda Woolard met with her on June 17, 2013, together with Ms. Gurganus and Ms. Downing. At this meeting, it was specifically discussed that Petitioner was being asked to take on 17 Work First cases -- a third of the total -- and that her Food Stamp caseload would be reduced to allow her reasonable time to complete her assigned duties. Petitioner declared that, "I will help as much as possible but I refuse to take a Work First caseload." All parties at this meeting testified there was no acrimony or raised voices and that Director Woolard specifically and repeatedly questioned Petitioner to ascertain that she was refusing to undertake to do the work her supervisors were assigning. Petitioner testified that the

quoted statement was intended to convey that she “couldn’t do it” and that she was “refusing to do both” WFFA and Food Stamp cases.

10. The following day, Director Woolard, together with Ms. Gurganus and Ms. Downing, again met with Petitioner. Director Woolard again described to Petitioner the reasons for the change in her work assignments and the expectation that she would manage portions of the WFFA and Food Stamp caseloads. Director Woolard then asked Petitioner whether she would undertake her assignment or if her attitude about it remained the same. Petitioner answered, “The same.”
11. Petitioner was given a letter from Director Woolard on June 18, 2013, setting a “pre-dismissal conference” for her the following morning, and citing the agency’s *Personnel Policies and Procedures Manual* for the prospect that “willful failure or refusal to carry out a reasonable order” would be “considered unacceptable personal conduct” for which she could be dismissed, and quoting Petitioner’s refusal to accept a WFFA caseload. The letter emphasized that a final decision to terminate Petitioner had not been made and invited her to provide “any information you want [Director Woolard] to consider” regarding Petitioner’s employment.
12. On June 19, 2013, Director Woolard held the pre-dismissal conference with Petitioner and again explained the reasons for the change in work duties and again informed Petitioner of the expectations for her work performance. Petitioner stated that she could not accept the changed assignment then, but she would be willing to discuss it with the Director when she was satisfied with the status of her Food and Nutrition Services caseload.
13. On June 20, 2013, Petitioner gave Director Woolard a letter to consider in making the decision whether to dismiss her from her job. Referring to her statement that, “I will help as much as possible but I refuse to take a Work First caseload,” quoted in the Director’s letter, Petitioner’s letter said, “I realized how that statement could have been regarded as insubordinate,” a term Petitioner testified she understood to mean “disrespectful.” Petitioner “apologize[d] for the tone of my response,” but did not state that she was willing to accept a work assignment that included a WFFA caseload.
14. On June 21, 2013, Director Woolard met with Petitioner and terminated her employment for insubordination constituting unacceptable personal conduct.
15. On July 3, 2013, Petitioner appealed Respondent’s decision to dismiss her directly to Director Woolard. At each level of the appeal, Petitioner asserted that she was unable to do the work, not because she did not want to do the work, but due to the magnitude of work and her health. However, the evidence shows that Petitioner was able to complete similar tasks without significant interference by, or exacerbation of, her medical condition.

16. An appeal hearing was held on July 16, 2013, and Respondent sent a letter dated July 22, 2013 upholding the decision to dismiss Petitioner, and providing information regarding Petitioner's appeal rights.
17. On July 24, 2013, Petitioner appealed to the Washington County Social Services Board of Directors, and an appeal hearing was held on September 17, 2013. After Petitioner and Director Woolard each spoke before the Board, Petitioner's attitude towards her work assignment remained unclear. Mr. Julius Walker, Vice Chair of the Board, asked Petitioner directly whether, if the opportunity to return to work for Respondent was offered, she would be willing to take a caseload of WFFA cases, along with a Food Assistance caseload. Petitioner said no, she would not do a WFFA caseload. Mr. Walker testified that he asked again if she would still refuse to take the WFFA caseload. Petitioner answered, yes, that she would refuse to take the WFFA caseload because she had too much other work to do and did not have time. After its deliberations, the Board unanimously voted to uphold the decision of the Director to terminate Petitioner's employment.
18. In light of Petitioner's demonstrated abilities, the informed opinions of her supervisors and Ms. Dawson concerning the nature of the work assigned, as well as Petitioner's capabilities, the undersigned finds that Petitioner was capable of performing the duties assigned by Respondent, including the WFFA caseload.
19. When discussing her refusal to accept the WFFA cases, both in testimony and in her correspondence with Respondent, Petitioner expressed frustrations with program changes and the Department's computer system; that her Graves' Disease symptoms can be exacerbated by stress; and, an unexplained and unsubstantiated skepticism about her supervisors' repeatedly-stated intentions to adjust her Food Stamp caseload to compensate for new WFFA-related duties. In particular, there is no evidence to suggest that handling the WFFA cases had or would put Petitioner in danger medically or at a greater risk than performance of the Food Stamp case management duties that she had performed and continued to perform until her termination. The evidence reveals no credible reason to believe Petitioner could not perform the work assigned her, nor a reasonable excuse for not undertaking to perform that assignment.
20. Petitioner willfully and intentionally refused a reasonable and proper assignment by her authorized supervisors without reasonable cause or excuse.
21. Whereas Petitioner offered no reason to believe that a lesser sanction that permitted her to continue working for Respondent would result in her appropriately accepting work assignments, Respondent had just cause to terminate Petitioner's employment.
22. Petitioner's letter addressed to the Office of Administrative Hearings, complaining of her termination by Respondent, was timely received as a Petition and filed on October 22, 2013.

23. To the extent that portions of the following Conclusions of Law addressing mixed issues of law and fact are Findings of Fact, such factual findings shall be deemed incorporated herein by reference as Findings of Fact.

CONCLUSIONS OF LAW

1. To the extent that portions of the foregoing Findings of Fact addressing mixed issues of law and fact are Conclusions of Law, such legal conclusions shall be deemed incorporated herein by reference as Conclusions of Law.
2. A court need not make findings as to every factual dispute that arises from the evidence, and needs only find those facts which are material to the settlement of the dispute. *Flanders v. Gabriel*, 110 N.C. App. 438, 440, 429 S.E.2d 611, 612, *aff'd*, 335 N.C. 234, 436 S.E.2d 588 (1993).
3. As a former career employee of a local social services department, the Petitioner was entitled to appeal her dismissal by commencing a contested case in the Office of Administrative Hearings. N.C. Gen. Stat. §§ 126-5(a)(2)b. and 150B-23(a). Her petition was timely filed within 30 days of receipt of the final agency decision, following exhaustion of Respondent's grievance procedure. N.C. Gen. Stat. § 126-34.02. The Office of Administrative Hearings has jurisdiction over the parties and the subject matter of this action, and the parties received proper notice of the hearing.
4. As a "career state employee," Petitioner could not be discharged for disciplinary reasons, except for "just cause." N.C. Gen. Stat. §§ 126-1.1(a); 126-35(a). The "burden of showing that a career State employee ... was discharged ... for just cause rests with the department or agency employer." N.C. Gen. Stat. § 126-35(d). The foregoing statutory language was in effect at the time of Petitioner's discharge. It was essentially re-codified, effective August 21, 2013, at N.C. Gen. Stat. § 126-34.02(d).
5. "Just cause" for disciplinary action, including dismissal, exists when a career employee has been guilty of "unsatisfactory job performance," or "unacceptable personal conduct." 25 NCAC 01J .0604.
6. Petitioner's willful and intentional refusal to comply with a reasonable and proper assignment by her authorized supervisors, without reasonable cause or excuse, was an act of insubordination. *Souther v. New River Area Mental Health Dev. Disabilities & Substance Abuse Program*, 142 N.C. App. 1, 6, 541 S.E.2d 750, 754 *aff'd sub nom. Souther v. New River Area Mental Health Developmental Disabilities and Substance Abuse Program*, 354 N.C. 209, 552 S.E.2d 162 (2001). "Insubordination means the willful failure or refusal to carry out a reasonable order from an authorized supervisor. Insubordination is unacceptable personal conduct for which any level of discipline, including dismissal, may be imposed without prior warning." 25 NCAC 01J .0614(7). "One act of unacceptable personal conduct presents 'just cause' for any discipline, up to and including dismissal. [*Cites omitted*]. No showing of actual harm is required to satisfy

the definition” of unacceptable personal conduct. *Hilliard v. N. Carolina Dep't of Correction*, 173 N.C. App. 594, 597, 620 S.E.2d 14, 17 (2005).

7. Unacceptable personal conduct does not necessarily establish just cause for all types of discipline. If the employee's act qualifies as a type of unacceptable conduct, the tribunal proceeds to this inquiry: whether that misconduct proven amounted to just cause for the disciplinary action taken. Whether such just cause exists must be determined based upon an examination of the facts and circumstances of each individual case. *Warren v. N.C. Dep't of Crime Control & Pub. Safety*, ___ N.C. App. ___, 726 S.E.2d 920, 925, 2012 WL 2305781 (N.C. App., 2012).
8. Upon consideration of the particular facts and circumstances of this case, including the nature of the unacceptable personal conduct, and its intentional and considered repetition, these acts of insubordination provided just cause for Respondent's termination of Petitioner. *Id.*, at 925.
9. Respondent has carried its burden of proof by the greater weight of the evidence that it had just cause to terminate Petitioner's employment. N.C. Gen. Stat. § 126-35(d).

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

FINAL DECISION

THE DECISION of the Washington County Social Services Board to terminate Petitioner's employment is upheld and **AFFIRMED**.

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 21st day of April, 2014.

A handwritten signature in black ink, appearing to read "J. Randolph Ward", is written over a horizontal line.

J. Randolph Ward
Administrative Law Judge

2000 MAY 23 PM 2:

Office of
Administrative Hearings

**IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
14 DOJ 00878**

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ORDER GRANTING SUMMARY JUDGMENT TO PETITIONER AND PROPOSAL FOR DECISION

APPEARANCES

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

ISSUE

Has Petitioner been convicted of a combination of 4 or more Class A or Class B misdemeanors?

FINDINGS OF FACT

1. Both parties are properly before this Administrative Law Judge, in that jurisdiction and venue are proper, both parties received notice of hearing, and that the Petitioner received by mail the proposed Denial of Justice Officer's Certification letter, mailed by Respondent Sheriffs' Commission on December 23, 2013.

2. The North Carolina Sheriffs' Education and Training Standards Commission (hereinafter referred to as the "Commission" or "Sheriffs' Commission") has the authority granted under Chapter 17E of the North Carolina General Statutes and Title 12 of the North Carolina Administrative Code, Chapter 10B, to certify justice officers and to deny, revoke, or suspend such certification.

3. The proposed denial of Petitioner's application for justice officer certification is based on four (4) misdemeanor criminal convictions which appeared on Petitioner's criminal record at the time of Respondent's December 23, 2013, Notification of Probable Cause to Deny Justice Officer Certification.

4. 12 NCAC 10B.0204(d)(5) states the Sheriffs' Commission may deny the certification of a justice officer when the Commission finds that the applicant has committed or been convicted of:

(5) any combination of four or more crimes or unlawful acts defined in 12 NCAC 10B .0103 (10)(a) as a Class A misdemeanor or defined in 12 NCAC 10B .0103 (10)(b) as a Class B misdemeanor regardless of the date of commission or conviction.

5. At the time Respondent issued its December 23, 2013, written notification, Petitioner stood convicted of the following misdemeanor offenses:

- i. Class A misdemeanor - Simple Worthless Check, 2004 CR 053653;
- ii. Class B misdemeanor - Assault on a Female, 2001 CR 051218;
- iii. Class B misdemeanor - Injury to Personal Property, 2001CR 051225; and
- iv. Class A misdemeanor - Injury to Personal Property, 1996 CR 000582.

6. Petitioner filed a request for an administrative hearing on February 3, 2014. The basis of Petitioner's request for an administrative hearing was that Petitioner was in the process of having certain criminal convictions removed from his criminal record. Each party filed its Prehearing Statement pursuant to the Court's February 19, 2014, Order For Prehearing Statements.

7. On January 31, 2014, Petitioner filed a Motion in Surry County District Court seeking to set aside his Assault on a Female conviction in case number 2001 CR

051218, in addition to his Injury to Personal Property conviction in case number 2001CR 051225. (Petitioner's Exhibit 1)

8. On February 3, 2014, said Motion came to be heard in Surry County District Court. By Order of the same date, the Honorable Judge Charles M. Neaves, Jr. entered an Order setting aside Petitioner's Assault on a Female conviction in case number 2001 CR 051218, and also setting aside Petitioner's Injury to Personal Property conviction in case number 2001CR 051225. (Petitioner's Exhibit 2)

9. Thereafter, on March 11, 2014, Assistant District Attorney Tim Watson filed voluntary dismissals in both 2001 CR 051218 and 2001 CR 051225. (Petitioner's Exhibits 3 and 4)

10. At the time of the proposed denial of Petitioner's application for justice officer certification on December 23, 2013, Petitioner stood convicted of 4 misdemeanor offenses in violation of 12 NCAC 10B .0204 (d) (5), as set out above in subparagraph 5 in greater detail.

11. However, because case numbers 2001 CR 051218 and 2001 CR 051225 were recently set aside and subsequently dismissed by the Surry County District Attorney's Office, Petitioner no longer stands convicted of 4 misdemeanor offenses pursuant to 12 NCAC 10B .0204 (d)(5). Therefore, there is no genuine issue of material fact for hearing in this dispute, and Petitioner is entitled to summary judgment as a matter of law. In entering this Order Granting Summary Judgment to Petitioner, the undersigned is making no findings of fact and conclusions of law as to whether Petitioner has "committed" the offenses which were set aside in case numbers 2001 CR 051218 (Assault on a Female) and 2001 CR 051225 (Injury to Personal Property).

CONCLUSIONS OF LAW

1. The parties are properly before the undersigned Administrative Law Judge and jurisdiction and venue are proper.

2. Pursuant to 12 NCAC 10B .0204(d)(5), the Commission may revoke, suspend, or deny the certification of a justice officer when the Commission finds that the applicant for certification or certified officer has committed or been convicted of:

(5) any combination of four or more crimes or unlawful acts defined in 12 NCAC 10B .0103(10)(a) as a Class A misdemeanor or defined in 12 NCAC 10B .0103(10)(b) as a Class B misdemeanor regardless of the date of commission or conviction.

3. Pursuant to 12 NCAC 10B .0103(2), "convicted" or "conviction" means and includes, for purposes of that Chapter, 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.

4. Pursuant to 12 NCAC 10B .0205(3)(d), when the Commission denies the certification of a justice officer, the period of sanction shall be for an indefinite period, but continuing so long as the stated deficiency, infraction, or impairment continues to exist, where the cause of sanction is commission or conviction of offenses as specified in 12 NCAC 10B .0204(d)(5).

5. At the time Respondent issued its proposed denial of Petitioner's application for justice officer certification on December 23, 2013, Petitioner stood convicted of the following four (4) misdemeanor offenses: 1) Simple Worthless Check, 2004 CR 053653; 2) Assault on a Female, 2001 CR 051218; 3) Injury to Personal Property, 2001CR 051225; and 4) Injury to Personal Property, 1996 CR 000582. Petitioner's application for certification was therefore subject to denial in December 2013 pursuant to 12 NCAC 10B .0204(d)(5).

6. On February 3, 2014, Petitioner's Assault on a Female conviction in 2001 CR 051218 and Injury to Personal Property conviction in 2001CR 051225 were set aside. Thereafter, the District Attorney's Office voluntarily dismissed 2001 CR 051218 and 2001 CR 051225.

7. Petitioner no longer stands convicted of a combination of four or more crimes or unlawful acts defined in 12 NCAC 10B .0103 (10)(a) as a Class A misdemeanor or defined in 12 NCAC 10B .0103 (10)(b) as a Class B misdemeanor. Therefore, there is no genuine issue of material fact for hearing in this dispute, and Petitioner is entitled to summary judgment as a matter of law on the charge that Petitioner has been convicted of a combination of four or more Class A or Class B misdemeanor offenses. The undersigned is making no findings of fact or conclusions of law as to whether Petitioner committed the Assault on a Female offense in 2001 CR 051218, or the Injury to Personal Property offense in 2001CR 051225.

PROPOSAL FOR DECISION


Based upon the foregoing FINDINGS OF FACT and CONCLUSIONS OF LAW, the undersigned recommends the Respondent take no action to deny Petitioner's application for certification based on the Assault on a Female conviction in 2001 CR 051218 and the Injury to Personal Property conviction in 2001CR 051225, which were set aside and dismissed after Petitioner submitted his application for certification through the Commission. This proposal shall in no way affect the Commission's ability to consider the possible commission of any of the above-referenced offenses that were set aside.

NOTICE

The Agency making the Final Decision in this contested case is required to give each party an opportunity to file Exceptions to this Proposal for Decision, to submit Proposed Findings of Fact and to present oral and written arguments to the Agency. N.C.G.S. § 150B-40(e).

The Agency that will make the Final Decision in this contested case is the North Carolina Sheriffs' Education and Training Standards Commission.

This the 21st day of May, 2014



Craig Croom
ADMINISTRATIVE LAW JUDGE